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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 250

RIN 3206–AL98

Personnel Management in Agencies

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule is intended to align human capital management practices to broader agency strategic planning activities, and better align human capital activities with an agency's mission and strategic goals. This will enable agency leadership to better leverage the workforce to achieve results. In addition, the final regulation will allow agencies to gather additional information from employee surveys.

DATES: This rule is effective April 11, 2017.

FOR FURTHER INFORMATION CONTACT: For information, please contact Jan Chisolm-King by email at *janet.chisolm-king@opm.gov* or by telephone at (202) 606–1958.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) maintains statutory responsibility under 5 U.S.C. 1103(c) to guide, enable, and assess agency strategic human capital management processes. On February 8, 2016, OPM published the *Personnel Management in Agencies* proposed rule in the **Federal Register** (81 FR 6469) that would amend 5 CFR part 250 subpart B, *Strategic Human Capital Management,* and 5 CFR part 250 subpart C, *Employee Surveys.* The purpose of this rule is to better assist agencies with developing strong human capital practices for achieving agency goals and objectives, and to further empower the human capital community to collectively identify and address cross-cutting human capital challenges. OPM issues a final rule to revise 5 CFR, part 250 subparts B and C.

The rule establishes the Human Capital Framework (HCF), which replaces the Human Capital Assessment and Accountability Framework (HCAAF). This rule also reduces and clarifies the reporting procedures agencies are required to follow; creates a data-driven review process (HRStat); and describes workforce planning methods that agencies are required to follow.

Lastly, the rule strengthens and modernizes the Employee Survey process by identifying questions that exhibit appropriate psychometric properties which better align to the topics cited in the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, sec. 1128, codified at 5 U.S.C. 7101).

Alignment of Strategic Human Capital Management (5 CFR, Part 250, Subpart B) to GPRA–MA

The final rule sets forth a set of actions and practices that will better position human capital to demonstrate its contribution to agency mission through the alignment of Strategic Human Capital Management practices to the Government Performance and Results Act Modernization Act (GPRA–MA) of 2010 (Pub. L. 111–352). GPRA–MA requires performance assessments of Government programs for purposes of assessing agency performance and improvement.

Following promulgation of this rule, OPM will provide additional guidance for agencies about the planning and implementation requirements presented within this regulation.

Strategic Human Capital Management (5 CFR Part 250 Subpart B)

The federal workforce plays a vital role in executing the important missions of federal agencies in service to the American people. As such, the Strategic Human Capital Management processes used to cultivate and manage the workforce must be integrated into agency planning and management processes, remain current with research and best practices, allow for proactive responses to anticipated environmental changes, and seek to continuously maximize the efficiency and effectiveness of Human Resource (HR) service delivery.

This rule supports the implementation of OPM's statutory responsibility under 5 U.S.C. 1103(c) to guide, enable, and assess agency strategic human capital management processes. Part 250 of Title 5, subpart B, implements the requirements of 5 U.S.C. 1103(c), and section 1103(c)(1) requires OPM to design a set of systems, including appropriate metrics, for assessing the management of human capital by federal agencies and to define those systems in regulation. Section 1103(c)(2) requires OPM to include standards addressing a series of specified topics. These requirements are further explained within this rule. Subpart B also provides an avenue for Chief Human Capital Officers (CHCOs) to carry out their required functions under 5 U.S.C. 1402(a).

Current regulations implement 5 U.S.C. 1103(c) by adopting the HCAAF system required by 5 U.S.C. 1103(c)(1) and providing the systems definitions and standards required by 5 U.S.C. 1103(c)(2). The HCAAF is a framework that integrates five human capital systems—Strategic Alignment, Leadership and Knowledge Management, Results-Oriented Performance Culture, Talent Management, and Accountability. These systems define practices for the effective and efficient management of human capital and support the steps involved in the planning and goal setting, implementation, and evaluation of human capital policies, programs, and initiatives in the Federal Government. This rule changes the current regulation, by replacing the HCAAF with the HCF.

As described throughout this section, in addition to replacing the HCAAF with the HCF, subpart B of this rule will:

1. Require agencies to develop a Human Capital Operating Plan (HCOP).
2. Require agencies to participate in Human Capital Reviews (HCRs) with OPM.
3. Institutionalize the requirement for agencies to conduct HRStat reviews.
4. Remove the requirement for agencies to develop and submit a Strategic Human Capital Plan.
5. Remove the requirement for agencies to develop and submit annual Human Capital Management Reports (HCMR).
6. Require OPM to issue the quadrennial Federal Workforce Priorities Report.

7. Communicate the workforce planning methods agencies are required to follow.

8. Ensure the consistent application of human capital practices by clearly defining key human capital management terms.

Replace the Human Capital Assessment and Accountability Framework (HCAAF) With the Human Capital Framework (HCF)

As discussed above, current regulations implement the requirements of 5 U.S.C 1103(c) by adopting the five systems of HCAAF. The HCF will replace the HCAAF and integrate four human capital systems—Strategic Planning and Alignment, Performance Culture, Talent Management, and Evaluation. OPM expects that the new systems and system definitions will result in improved outcomes for human capital programs that enable the accomplishment of agency mission objectives.

The HCF uses ''Performance Culture'' and ''Talent Management'' as the descriptors for the two systems under which the government's major people and organization activities and programs occur. It also prescribes ''Strategic Planning and Alignment'' and ''Evaluation'' as the two supporting management systems required for the development, measurement, and management of agency human capital agendas.

Standards are defined for each of the four systems and agencies will be expected to apply them as the bases for their work. Agencies will be required to implement each standard within their strategies, but will have autonomy to determine which focus areas (within each system) should be implemented to lead to the best outcomes.

Require Agencies To Develop a Human Capital Operating Plan (HCOP)

The HCOP is a planning document (not a report) that provides details about how human capital strategies are being implemented in support of agency strategic. Additionally, the HCOP serves as a tool for agency leadership to set a clear path for achieving stated human capital strategies; identify and secure resources for supporting human capital policies, programs, and initiatives; and determine which timeframes and measures to use to assess progress, while demonstrating how the standards of each HCF system are being fulfilled within each strategy. The HCOP will correspond to the same timeframe covered by agency strategic plans and reviewed and updated annually.

Human Capital Reviews (HCRs) With OPM

These reviews are annual, in-person meetings for agency human capital leaders to discuss the implementation and achievement of human capital goals, including risks, barriers and successful practices. The reviews will serve as an opportunity for OPM to provide feedback to agencies, as well as identify and share practices and identify cross-cutting human capital challenges. This rule does not impose new requirements for agencies to submit written narratives. Previously, agencies were required to submit reports containing human capital information to OPM via a static written document. The revised rule affords agencies, in discussions with OPM, to collaboratively review agencies progress towards achieving their specific goals while providing a mechanism for OPM to identify cross-cutting and agency-specific human capital challenges that warrant further attention.

Institutionalize the Requirement for Agencies To Conduct HRStat Reviews

The quarterly review process is managed by agencies to identify and monitor human capital measures and targets that inform the progress agencies are making towards meeting their agency specific goals. The outcomes from the reviews should report the approach agencies take for corrective actions in areas for which they are not making substantial progress.

Remove the Requirement for Agencies To Develop and Submit a Strategic Human Capital Plan (SHCP)

GPRA–MA requires agencies to indicate how human capital resources will support agency strategic goals within their strategic plans. Because human capital strategies supporting each mission-oriented goal and objective are identified in agency strategic plans, additional SHCPs are unnecessary. The increased alignment of human capital strategies to agency goals is intended to enhance human capital and organizational performance outcomes, by making data driven decisions.

Remove the Requirement for Agencies To Develop and Submit Annual Human Capital Management Reports (HCMR)

OPM will monitor agency outcomes in human capital management through the Human Capital Evaluation Framework (HCEF), which consists of evaluating progress achieved through HRStat reviews, HCRs, and independent audits. As such, agencies are no longer required to develop and submit annual Human Capital Management Reports (HCMR). As mentioned above, the regulation does not impose new requirements for agencies to submit written narratives.

Require OPM To Issue the Quadrennial Federal Workforce Priorities Report

The report is developed through research and the analysis of environmental trends, agency experiences and needs. The report communicates key governmentwide human capital priorities and suggested strategies to strengthen the communication amongst and between agency leadership and human capital practitioners. Additionally, the report serves as an informative tool for the Chief Human Capital Officers Council (CHCOC) because it signals what human capital priorities are required for the establishment of enterprise-wide plans and the coordination of resources amongst the human capital community. We anticipate that the first report would be released in mid-2017.

The changes to the regulation focus on establishing requirements that maintain efficient and effective (integrated) human capital management practices now and into the future. This also provides Federal agencies with the flexibility to determine how to identify and implement human capital strategies that will achieve strong organizational outcomes for their specific mission and goals.

The public comment period for the proposed regulation ended on April 8, 2016. OPM received 35 comments on the proposed rule: 15 from Federal agencies, 18 from private individuals, and two (2) from organizations. OPM carefully considered the comments and as a result, made minor revisions to the final regulation. The final regulation will become effective 120 days after the publication date of this notice, in order to give agencies time to amend policies and communicate changes to their human resources staff. Below is a discussion of the comments that OPM received.

Response to Comments, Subpart B—Strategic Human Capital

Section 250.201—Small Agencies

Four agencies were concerned as to whom the regulation applied.

To clarify, OPM revised § 250.201, *Coverage and Purpose,* to explicitly state that Subpart B applies to agencies covered by sec. 901(b) of the Chief Financial Officers (CFO) Act of 1990 (Pub. L. 101–576), as well as 5 U.S.C. 1401.

Section 250.203—Human Capital Framework (HCF)

An agency questioned the reason behind placing the HCF in regulation.

Language within 5 U.S.C. 1103 requires OPM to design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies, which was known as the Human Capital Assessment Accountability Framework (HCAAF) and is now becoming the Human Capital Framework. The law further states that the systems shall be defined in regulation and include standards, which OPM has done with the inclusion of the systems and standards with their supporting definitions within regulation.

An agency stated that they believed that two of the four systems of the HCF, Talent Management (TM) and Performance Culture (PC), appear to have significant areas of overlap.

The two systems, Talent Management and Performance Culture, have two distinct definitions. For example, the definition for Talent Management incorporates workforce planning, or the process to identify and close skills gaps. It also states, the system ''implements and maintains programs to attract, acquire, develop, promote and retain quality and diverse talent''. Within the proposed focus areas for the Talent Management system, the ways to ''promote and retain'' quality and diverse talent includes, for example, recruitment and outreach, as well as succession planning.

On the contrary, the Performance Culture system is defined as a system that ''engages, develops, and inspires a diverse, high-performing workforce by creating, implementing, and maintaining effective performance management strategies, practices, and activities that support mission objectives.'' The focus areas include performance management and diversity and inclusion.

The two systems are distinct as Talent Management includes the identification and hiring of a workforce needed to accomplish an organizations mission while Performance Culture promotes practices that work to retain talent after being on board.

An agency commented that using employee lifecycle terminology within the HCF would be easier for practitioners and managers to understand (*e.g.,* staffing, performance management, awards, training, etc.). OPM's Human Capital Line of Business (HRLOB) recently developed a comprehensive set of terminology for its new Business Reference Model that is aligned with the employee lifecycle and maps to all existing OPM regulations. The agency preferred the HRLOB terminology and believed that using a consistent set of terms for planning and automation would be more beneficial to the HR community, as a whole.

The employee lifecycle terminology is included within the nomenclature of the Human Capital Framework (HCF), specifically within the focus areas. We concur that practitioners and managers must have an understanding of the language used to explain the various tools and strategies to effectively manage the Federal workforce, which is why we have and will continue to work closely with the HRLOB team and other groups to ensure the use of consistent terms and definitions. Also, it is important to note that the system terms for the HCF serve as overarching explanations for the broader human capital systems while sub elements, such as staffing and awards are subsumed within each of the systems.

Section 250.204(a)(1)—Federal Workforce Priorities Report (FWPR)

OPM determined there may be some confusion between the various requirements posed by GPRA–MA, particularly as it relates to developing and implementing strategic goals and initiatives. Therefore, OPM has removed references of the word ''strategic'' from the title of the ''Federal Workforce Strategic Priorities Report'' and is now titling it the ''Federal Workforce Priorities Report.'' The intent and purpose of the report remains the same as only the title of the report has changed.

An agency questioned why OPM was mandating agencies to align their human capital management strategies with the Federal Workforce Strategic Priorities Report (FWSPR). It was expressed that OPM should encourage agencies to develop human capital strategies that align to agency strategic goals and mission requirements.

The FWPR was developed (in response to a need identified by a Government Accountability Office (GAO) forum comprised of CHCOs) to ''strengthen coordination to address a fragmented human capital community,'' through the coordination of agencies collectively developing ''enterprise solutions to address common human capital challenges'' (GAO–14–168, May 7, 2014). Therefore, agencies are required to address governmentwide human capital priorities and suggested strategies contained in the FWPR as is determined by the CHCOC.

Agencies will continue to develop human capital strategies that align to their agency-specific mission and strategic goals while concurrently addressing cross-cutting human capital challenges. Specific requirements for how agencies implement human capital strategies in support of the FWPR will be clarified through guidance. OPM expects to issue this guidance after the publication of the final rule.

An individual representing an agency expressed concerns regarding the timing of the FWSPR and its effect on Presidential transitions and agency strategic planning.

The FWPR will communicate key governmentwide human capital priorities in advance of the development of an Administration's agenda and agency strategic plans. The report will focus on cross-cutting human capital challenges within the Federal Government, based upon a thorough evaluation of the state of Federal Human Capital Management. This will assist in the development of an Administration's human capital agenda, while ensuring agencies are aware of the key challenges and are prepared to take action as they develop their strategic plans. This will allow for the recruitment, development, and retention of an agile and capable workforce that has the requisite knowledge, skills, and abilities to support agencies' missions and Administration goals.

The publication deadline for the FWPR, which used to be the year in which the term of the President commences, has been modified to include OPM's ability to extend the deadline. This modification is intended to build in flexibility regarding the publication date.

An agency inquired whether agencies would be able to waive the requirement on supporting the priorities contained in the FWSPR by noting that the issue is not relevant to their agency.

Specific requirements and expectations regarding which agencies should align their human capital strategies to support the FWPR, including any exceptions, will be clarified within guidance, which OPM expects to issue after publication of the final rule.

An agency asked whether guidance on governmentwide standards and metrics will be included in the FWSPR.

The FWPR is designed to communicate key governmentwide human capital priorities and suggested strategies, and it will not include reporting requirements for agencies.

Required metrics, as stated within § 250.205 (system metrics) will be specified through guidance, which OPM expects to issue after publication of the final rule. Additionally, information regarding governmentwide standards and metrics as is related to each system within the Human Capital Framework will be made available through the Human Capital Framework Online Resource Guide.

An agency expressed confusion about the ''Federal human capital assessment,'' referenced in § 250.204(d) and the ''Governmentwide Strategic Human Capital Strategy,'' referenced in § 250.204(g).

Both references were in made in error and were actually intended to refer to the FWPR. Therefore, they have been corrected to refer to the FWPR defined under § 250.202.

Section 250.204 (Redesignated as § 250.207)—HRStat

One agency recommended clarifying that HRStat is a quarterly review process.

OPM agreed with the recommendation and noted such in both sections 202 and 207.

Six agencies expressed concern that § 250.204 was confusing. Specifically, they stated the regulation does not clearly demonstrate agencies' roles and expectations as related to HRStat. Also, an agency stated that HRStat Maturity guidelines are complex and descriptive.

OPM has not published guidance regarding the specific requirements for HRStat, other than noting the frequency for which the data-driven reviews should occur (quarterly) and who should lead the reviews (CHCO). The regulation does not note detailed information about the Maturity Model as the information will be made available within guidance.

HRStat is a monitoring process for agencies to identify, measure, and analyze agency human capital data to inform agency leadership about how human capital is contributing to and supporting the accomplishment of agency goals. Agencies, through the leadership of their CHCO, are solely responsible for conducting quarterly HRStat reviews.

These data-driven reviews led by agency CHCOs, in collaboration with the agency Performance Improvement Officers (PIOs), are to discuss and monitor agencies progress with implementing key human capital goals that support the implementation of an agencies Annual Performance Plan (APP). The requirement to establish an APP was established through GPRA–MA.

In addition, the review sessions allow agency leadership to identify and focus on human capital metrics that will inform the achievement of an agency's human capital goals and mission. The quarterly sessions allow for prompt course correction, if necessary, to ensure progress. Other supporting actions to be taken by agencies during their HRStat reviews will be specified through guidance, which OPM expects to issue after publication of this final rule.

Additionally, OPM removed all references to HRStat from § 250.204 and placed it in its own section (§ 250.207) to provide greater clarity about the purpose of HRStat. Section 250.204 has been renumbered in light of the removed language.

Three agencies stated that OPM should provide information on what measures or metrics are included in HRStat.

HRStat is a monitoring process for agencies to identify, measure, and analyze agency Human Capital data to inform agency leadership about how human capital is contributing to and supporting the accomplishment of agency goals. Therefore, the measures associated with the reviews are agency-specific as they are based on agency set goals, and are not prescribed by OPM. So, agencies have the autonomy and flexibility to identify and evaluate measures that will help evaluate the efficacy of their human capital strategies.

Three agencies stated that agencies should not be mandated to use OPM-identified metrics. Instead, agencies should be allowed to use metrics that address agency-specific human capital challenges.

There are two different laws at issue here. First, GPRA–MA establishes the requirement of using data to inform human capital progress towards mission accomplishment. The other law, 5 U.S.C 1103(c), enables OPM to determine the state of human capital through the evaluation of human capital metrics.

GPRA–MA requires that goals are expressed ''in an objective, quantifiable, and measurable form,'' and ''establish common Federal Government performance indicators with quarterly targets to be used in measuring or assessing— overall progress toward each Federal Government performance goal.'' Human capital management is a key contributor to ensuring that performance goals are met. Therefore, OPM established HRStat to provide agency CHCOs with the ability to quantify and report ''objective'' data about human capital progress towards meeting organizational goals. Therefore, agencies have the flexibility to identify, monitor, and measure data needed to assess their progress towards meeting their agency-specific goals through their HRStat reviews. Again, as noted above, the measures associated with the reviews are agency-specific as they are based on agency set goals, and are not prescribed by OPM.

Unlike the measure associated with the reviews that are agency-specific, OPM is required to ''design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies'' as noted within 5 U.S.C 1103(c). Therefore, in response, OPM will identify a set of measures to enable OPM to assess the state of human capital within the Federal Government. The determinants used to assess the state of human capital within the Federal Government warrants the identification of cross-cutting measures that apply to all agencies. Therefore, agency-specific measures used during agency HRStat reviews cannot serve as a resource to inform the state of human capital governmentwide. Agency requirements for governmentwide metrics set forth by OPM under HCF and 5 U.S.C. 1103(c) will be issued through guidance.

Three agencies inquired as to whether OPM will provide guidance on governmentwide standards and metrics.

OPM will issue guidance to fulfill its requirements within 5 U.S.C. 1103(c) to ''design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.''

An agency suggested that agencies should not be required to use the HRStat Maturity guidelines because: (1) they are complex and descriptive, and 2) they were not widely communicated to agencies.

The Maturity Model was developed by a Community of Practice (CoP) workgroup and vetted by the CoP, CHCOC, and OPM. All comments and feedback were addressed and considered prior to finalization of the Model. Consequently, the HRStat CoP and OPM are drafting instructions, which should improve the ability to implement and maintain the process.

An agency noted that HRStat Reviews and HRStat Maturity Guidelines were not described within the regulation.

OPM added language in the regulation stating that HRStat reviews are to be led by the CHCO, in collaboration with the Performance Improvement Officer (PIO), which has remained a requirement throughout the pilot process. OPM will issue guidance regarding further details and requirements of the HRStat review process and the Maturity Model after publication of the final rule.

An agency suggested if OPM intends to rely upon the HRStat Maturity guidelines, OPM must adhere to the requirements of 1 CFR part 51 and specifically utilize the term ''incorporated by reference'' in 5 CFR 250.207, as specified in 1 CFR 51.9.

OPM will not include the recommendation to adhere to the requirements of 1 CFR part 51 and specifically utilize the term ''incorporated by reference'' in 5 CFR 250.207, as specified in 1 CFR 51.9. As a practical matter, in order to comply with § 51.9(b)(2), the final rule would have to ''state[s] the title, date, edition, author, publisher, and identification number of the publication''. The HRStat Maturity guidelines are currently under development, so much of the required information is not yet available.

Although the final rule requires agencies to use the guidelines to affect measurable improvements in maturity levels, like the Maturity Model itself, the HRStat Maturity guidelines are meant to serve as an ''aspirational roadmap''. As such, the HRStat Maturity guidelines will provide helpful information, based on data from the Maturity Model Assessment Tool, to assist the agencies in attaining increasing levels of maturity in their HRStat processes, while maintaining flexibility in the management of their HRStat reviews.

An agency noted that the focus of the HRStat Maturity Model was the recognition that federal agencies operate at different levels of human capital maturity concerning the use of analytics, technology, talent/staff, collaboration, and leadership. OPM emphasized that not all agencies could achieve the scope of impact of aligning human capital outcomes aligned with mission imperatives. The final rule creates a gigantic leap in presuming agencies possess an optimized, mission delivery maturity level for aligning human capital outcomes with agency strategic and performance goals. This presumption may place inordinate burdens on agencies at a time when many HRStat programs are still in the emerging state of HRStat maturity.

The vision of the HRStat Community of Practice workgroup that developed the Maturity Model was that it partially serve as an ''aspirational roadmap.'' In that sense, it is intended to encourage continuous improvement but not to require a specific

amount of improvement within a specific timeframe. Therefore, OPM will not include the recommendation, since no dictated schedule for maturity increases will be established at this time. Although guidance for HRStat is under development, the section pertaining to the Maturity Model will discuss the model, how it's used for assessment, and information on ways to manage programs for maturity.

An agency expressed concern about language that mandated that the Deputy Secretary and senior management team participate in the quarterly HRStat reviews.

The language in § 250.204(c) includes the option of a 'designee.' OPM believes it is essential that agency leadership is aware of the progress and impact of human capital operations, policies, and strategies on an agency's ability to meet its mission, hence the modification of language in § 250.204(c)(3) referring to the necessity of Deputy Secretaries remaining informed about the progress and outcomes of agency's HRStat reviews.

This is particularly important as agency senior leadership, as stated in GPRA–MA, must identify and inform their progress towards meeting agency-specific goals, of which human capital management is a significant contributor. Therefore, it is imperative that the CHCO ensure that their senior leaders are provided with all relevant data about human capital contributions towards meeting agency goals. Additionally, it is expected that the information derived from the reviews will be used to inform agency leadership on how to best support the human capital community. OPM removed and will place into guidance any language regarding C-Suite and management officials' participation in the quarterly HRStat reviews, with the exception of the CHCO and PIO roles, which remain in the regulation.

An agency suggested that the HRStat definition should include all four elements of the new HCF. HRStat should not be limited to strategic planning and alignment.

OPM agrees that HRStat is an approach that should be employed to make improvements in all HCF systems. Upcoming HRStat guidance will provide guiding principles on how to ensure the approach is used to make improvements within all of the systems. However, this fact is inherent in the definition as stated.

Section 250.204(d)—Human Capital Operation Plan (HCOP)

Six agencies expressed concern that § 250.204 was confusing. Specifically, they stated that it did not clearly demonstrate agencies' roles and expectations as related to the HCOP.

OPM removed all references to the HCOP from § 250.204 and placed it in its own section (§ 250.205) to enable OPM to clarify the intent of and purpose for the HCOP. Section 250.204 has been renumbered in light of the removed language. Guidance, which will be published after the final publication of the regulation, will communicate the roles and expectations of agencies as it relates to developing, implementing, and monitoring the implementation of the HCOP.

Two agencies expressed concern about the establishment of a work group, which would be led by the CHCO and comprised of the Chief Operating Officer (COO), Performance Improvement Officer (PIO), Chief Information Officer (CIO), Chief Financial Officer (CFO), Chief Acquisition Officer (CAO), and Equal Employment Opportunity (EEO) Director.

OPM revised § 250.204(d)(i) of the proposed rule to refer to the necessity to have the CHCO collaborate with the agency's senior management team as the integration of the various areas, such as Information Technology, Acquisition, and Finance serve an integral role with the implementation of human capital strategies. This is reinforced within the standards of the Strategic Planning and Alignment System within the HCF.

An agency suggested there needs to be specific timeframes for the HCOP, Evaluation System, Human Capital Strategic Review (HCSR), and Evaluation Report.

OPM expects to issue HCOP and HCR guidance after publication of the final rule, which will include timeframes.

Four agencies expressed concern about the requirement that agencies develop annual HCOPs, including a need to distinguish the difference between the HCOP and the ''four-year annual HCOP.''

It should be noted that the proposed rule erroneously cited § 250.204(d)(ii). The correct citation should have been § 250.204(d)(2). OPM modified the language in the proposed rule to incorporate paragraph (d)(ii) into paragraph (d). In the final rule, this language is now contained within § 250.205. Additionally, the word ''annual'' was removed wherever it preceded ''Human Capital Operation Plan'' or ''HCOP''.

The HCOP supports an agency's Annual Performance Plan (APP) as required through GPRA–MA, which in turn supports an agency's Strategic Plan. The HCOP should be developed with a perspective of how respective human capital policies, programs and implementation strategies will support a 4-year strategic plan with annual targets and goals that will be developed and assessed through the APP. The HCOP should be reviewed and updated, if needed, on an annual basis to ensure the continued alignment of human capital strategies that support agency goals. This is particularly important if agencies note, as a result of conducting their HRStat reviews, that course corrections are warranted. Therefore, changes for how human capital policies and programs support the accomplishment of a respective strategic goal may need to be modified. Thus, aspects of the HCOP will also need to be modified.

An agency questioned if the HCOP reporting requirements are redundant with agency Annual Performance Plan submissions.

All CFO Act agencies will be required to develop an HCOP, but are not required to submit it to OPM unless requested. The HCOP is intended to serve as a strategy development and implementation tool that agency leadership, in particular the CHCO, should use to determine how respective human capital policies, programs and implementation strategies directly support the goals and objectives outlined within the APP. This will include the identification of measures that will inform agency leadership about human capital contributions to and progress towards accomplishing the identified goals. The level of detail included in the HCOP regarding the implementation of human capital strategies is not suitable for inclusion within an agency's Annual Performance Plan, which covers a far greater scope.

250.204(e)—Human Capital Review (HCR)

To eliminate any confusion with the agency strategic review process, required by GPRA–MA (section 1116(f)), OPM is removing references of the word ''strategic'' from the title of the ''Human Capital Strategic Reviews'' and is now titling it the ''Human Capital Reviews.'' The intent and purpose of the reviews remains the same because only the title has changed.

Six agencies expressed concern that § 250.204(e) was confusing. Specifically, they stated that it did not clearly demonstrate agencies' roles and expectations as related to the HCSRs.

OPM removed all references to the HCRs from § 250.204 and placed it in a section dedicated to the HCR (§ 250.206), to enable quicker identification and understanding of the purpose of and intent for the HCRs. Section 250.204 has been renumbered in light of the removed language. OPM will publish guidance upon the publication of the final rule that specifies the roles and responsibilities of agencies as related to the HCRs.

Five agencies wanted a clear understanding of OPM's expectations regarding the HCRs.

As mentioned previously, OPM is required to ''design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies'' as noted within 5 U.S.C 1103(c). To enable OPM to capture critical information that will be used to formulate an assessment of human capital by Federal agencies, OPM is establishing the requirement for agencies to participate in annual HCRs. The reviews also serve as an opportunity for agencies to underscore their

successful practices (that OPM would share with other agencies) while engaging in a discussion with OPM about suggested strategies that can address identified challenges.

The HCRs are annual, evidence-based reviews that evaluate and measure: (1) How agencies identify and implement (human capital) strategies that will lead to the success of a respective agency goal; (2) the efficacy of implementation strategies in support of achieving organizational goals (using the principles of the systems and standards of the HCF; and (3) assesses agencies ability to monitor their progress towards achieving their agency strategic goals through their HRStat reviews.

Agencies are required to meet with OPM on an annual basis to demonstrate how they are developing, implementing, and monitoring how their human capital strategies meet organizational goals. Agencies will discuss (and provide supporting information) to make evident how selected strategies supported organizational outcomes.

Additionally, information derived from agency HRStat reviews, accountability audits, HCRs, and submission of required metrics per 5 U.S.C. 1103(c), will inform the state of human capital within the Federal Government. The HCRs will provide OPM with information to enable OPM to determine human capital contributions towards and impact on agencies' ability to meet the goals identified within their strategic plans while identifying cross-cutting human capital challenges. The outcomes from the reviews will also inform the components of a policy agenda that should be established to support the development and implementation of governmentwide policies and strategies, and provide agencies with an opportunity to receive feedback from OPM to improve human capital implementation strategies and evaluation processes. Specific requirements and explanation of the process will be issued through guidance.

Two agencies asked whether the HCR will replace OPM's annual Accountability System Assessment Tool (ASAT) review.

The HCR will be in addition to the ASAT assessments. The HCRs are annual evidence-based reviews regarding the design and implementation of human capital strategies. The ASAT focuses on the effectiveness of the agency's overall Evaluation System.

Section 250.204(f)—Independent Audits

Two agencies suggested that OPM clarify its role in the Evaluation System. It appears that the new Evaluation System is the old Accountability System, which is ''subject'' to full OPM participation and evaluation. The agencies questioned whether this meant OPM will no longer conduct and ''lead'' periodic, full-scale human capital evaluations of the agencies.

OPM will continue its human capital evaluations. As part of OPM's statutory oversight responsibility, OPM may periodically conduct a full review of an agencies HR operations to ensure efficiency, effectiveness and regulatory compliance.

An agency expressed concern that Federal agencies are again required to submit a report to ''its leadership and OPM'' of the findings of the human capital evaluations (the subsection only references ''audit findings''). OPM should clarify whether this report should include any HRStat or HCR findings, the two remaining mechanisms of the HCEF (as defined in § 250.202). Additionally, OPM should provide the timeframe for issuing the document to agency leadership and OPM.

It should be noted that the proposed rule erroneously cited § 250.204(f)(viii)(B). The proper citation should have been § 250.240(f)(8)(ii). The redesignated § 250.204(f)(8)(ii) is referring to human capital evaluations conducted by an agency's independent audit program or by OPM. HRStat is a quarterly data-driven review that informs agencies' human capital outcomes. The HCRs are annual, evidence-based reviews to assess the design and implementation of human capital strategies. Reports from independent audits should include information pertinent to both HRStat and HCRs. Depending on the scope of the independent or OPM audit, results of HRStat and HCRs may inform the focus of the evaluation and be referenced in the subsequent evaluation report. For example, if Time-to-Hire is one of the HRStat measures used by an agency, independent audits can assess whether timeliness is good or bad and why, which would then require agencies to make corrective actions. The timeframe for reporting back to OPM will always be included in the evaluation report provided to agency leadership.

Small agencies are not required to have independent audit programs. However, if they chose to develop one, the timeframe for reporting findings and corrective action should be explained in the agency evaluation system policy.

Section 250.206 (Redesignated as § 250.209)—Consequences—Improper Agency Actions

An agency believed OPM should include consequences for non-compliance with OPM position classification standards and inconsistency with OPM appeal determinations for like, identical, and similar positions within § 250.206.

According to 5 U.S.C. 5111, OPM has statutory authority to take corrective action and therefore, adding it to this section is unnecessary. In light of revisions to other sections, the proposed § 250.206 is redesignated as § 250.209.

Miscellaneous

An agency recommended that a section of the regulation should address HCOP and HRStat processes for mutual agency human capital collaboration for Cross-Agency Priority Goals, particularly in the area of collaborative ways to close mission critical occupation (MCO) skill gaps, share technologies and tools, participate in category management, and re-allocate tasks to be performed solely by certain agencies to promote efficiency and effectiveness. OPM should be an active partner in these collaborative efforts contained in such a regulatory section

OPM concurs that agency collaboration is an essential approach for implementing sound human capital strategies; however, with regards to Cross-Agency Priority (CAP) Goals, the regulation is not intended to address the implementation of CAP goals. We will encourage agencies to collaborate on implementing strong human capital strategies for other cross-cutting opportunities, such as those identified within the Federal Workforce Priorities Report.

An agency noted that agency strategic plans are four year planning documents that outline an agency's broadest mission goals and objectives. The agency believes OPM's desire to align both the HCOP and HRStat process with the strategic goals and objectives contained in an agency's strategic plan will create an overwhelming burden on federal agencies that will inhibit any meaningful, deep human capital planning in the HCOP and focused analysis through the HRStat process. Further, the agency believes that the task of aligning strategic goals and associated performance goals in the HCOP with human capital implementation strategies, and monitoring progress in relation to human capital policies and programs that cuts across such a vast expanse of agencies' mission imperatives will lead agencies to focus their attention on only the most broad human capital outcomes.

To maintain flexibility in the manner in which agencies may execute their responsibilities stated within the regulation, the details on how agencies are expected to fulfill them will be included in subsequent guidance rather than within the regulation itself. Specifying that alignment will pertain to APGs and CAP goals would be too restrictive for regulation. Therefore, the regulatory requirement to align human capital processes to the agency strategic plan will remain the same. The subsequent guidance, whose establishment will include input from the CHCO Community and relevant communities of practice (*e.g.* HRStat), will then specify the method that agencies will be expected to follow. This may or may not reflect the recommendation provided, depending on the outcome of the guidance development process.

In light of revisions to other sections, the proposed § 250.205 is redesignated as § 250.208. There was confusion within one agency regarding references to OMB Circular No. A–11 guidance on preparing the human capital portions of

an agency's Annual Performance Plan (APP).

The current version of OMB Circular No. A–11 issued in 2015, does not contain specific guidance on preparing the human capital portions of an agency's APP. Therefore, specific references to OMB Circular No. A–11 was removed from the proposed rule.

Twelve agencies inquired as to whether or not OPM was going to issue guidance following the publication of the final rule. Of the twelve, one agency encouraged OPM to engage agencies in the timely drafting of such guidance.

OPM understands the need to assist agencies as they work to better integrate human capital within the agency strategic planning process. As such, OPM will host a series of meetings with agency human capital professionals, as it works to develop guidance per the regulation. Following publication of the final rule, OPM expects to issue guidance related to the HCOP, HCR, required metrics per § 250.208 (System Metrics) and HRStat Maturity Model.

An agency noted that the final rule contained an incorrect cite (31 U.S.C. 1116(d)(5)) as authority for 5 CFR 250, subpart B. The agency noted that the correct cite is 31 U.S.C. 1116(c)(5), which states that an agency's performance update shall ''include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management.''

OPM corrected the cite reference to read: 31 U.S.C. 1116(c)(5).

Employee Survey Process (5 CFR Part 250, Subpart C)

This rule will strengthen and modernize the Employee Survey process by identifying questions that are well written, understandable, and in better alignment to the topics cited in the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, sec.1128, codified at 5 U.S.C. 7101.

Response to Comments, Subpart C—Employee Surveys

OPM received a total of 17 written comments directly addressing Subpart C—Employee Surveys. These comments were from 12 individuals, three agencies, and two organizations. These 17 comments are included in the total of 35 comments cited earlier. Below we summarize and respond to the comments received.

Two individuals indicated that Federal Employee Viewpoint Survey references to senior leader, manager and supervisory levels in questions are not clear to employees taking the survey, notwithstanding the terms' definitions in 5 CFR part 250.

OPM acknowledges that general terms and definitions for leadership levels (senior leader, manager, and supervisor) may vary greatly from agency to agency and it is imperative to give agencies and respondents a clearer understanding of each level for accurate answers/data. In light of the comments and ongoing discussions on the definitions of levels of leadership within organizations, OPM removed the definitions from the regulation to allow for additional discussion and revision for future versions of the survey towards the goal of achieving greater clarity for agencies and survey respondents.

OPM received multiple comments and suggestions on additions to, and deletions from, the proposed list of survey questions from seven individuals, two agencies and two organizations.

Section 1128 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, 5 U.S.C. 7101 note) requires each agency to conduct an annual survey of its employees to assess two topic areas (1) Leadership and Management Practices that contribute to agency performance, and (2) Employee Satisfaction with: (a) Leadership policies and practices; (b) work environment; (c) rewards and recognition; (d) opportunity for professional development and growth; and (e) opportunity to contribute to achieving organizational mission. Any questions suggested by commenters that did not fit these two main areas of the statute (and/or the five sub-areas) were considered to be out of the scope of this regulation and therefore not considered. OPM did not adopt comments suggesting adding new areas with associated new questions, because these areas are not covered in the statute that drives this regulation (cited above). OPM notes, however, that agencies maintain the flexibility to expand their own surveys and add agency-specific questions as appropriate to the agency's needs. In addition, although the questions referenced in this paragraph are outside the scope of the statute and do not need to be retained in regulation, OPM will maintain the suggestions for consideration for future additions to the non-mandatory portion of the Employee Survey.

An organization suggested seven (7) questions for addition to the regulation.

These questions were evaluated to the extent that they (a) fit within the existing areas covered in the statute and (b) were understandable and well-written. All of these questions had been included in past versions of the annual survey and are of continued interest for year-to-year agency trending. Of the seven questions suggested, five questions both clearly fit within the existing areas covered in the statute and were understandable and well-written. These five questions were added to the original 11 questions proposed for the current legislation, for a total of 16 questions going forward. Specifically, the additional questions included in the current regulation are:

1. I believe the results of this survey will be used to make my agency a better place to work.
2. Considering everything, how satisfied are you with your organization?
3. Considering everything, how satisfied are you with your job?
4. I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.
5. I recommend my organization as a good place to work.

Two of the questions suggested for inclusion were: (a) ''arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated'' and (b) ''prohibited personnel practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.'' They were not included in the current regulation because they lacked clarity and would not produce meaningful responses/data. These questions need to be more clearly written to be understandable to respondents and produce actionable results. These two questions also are outside the scope of the statute.

One agency suggested adding questions dealing with veteran issues; an individual and an agency suggested adding questions regarding training; another individual requested the survey include questions to ascertain the education and career of the respondent's parents and spouse; and two other individuals requested additional areas/questions be included that focused on employee motivation as well as burnout, turnover and productivity.

The questions and/or areas for additional questions suggested by these commenters were either outside the scope of the statute and/or already covered by questions included in the current revision of the regulation. No additional changes were made other than the five questions added above.

An individual suggested that the Federal Employee Viewpoint Survey (FEVS) should provide results by race and ethnicity. For instance, currently, results are consolidated into ''minority'' or ''non-minority'' categories.

Confidentiality concerns require the combining of some response categories into more general and less personally-identifiable categories to protect the privacy of the individual responders. In any event, this comment is outside the scope of the proposed rule.

Six individuals, two agencies and two organizations commented on what impact the reduction in survey questions in regulation will have on the existing metrics (indexes), trends and agency survey efforts.

About half the survey questions currently in use are not reflected in the regulation, however these questions have been asked by OPM since 2002. Many questions that have

never been reflected in regulation have been used to produce the indexes provided to agencies each year, as well as the reports provided by OPM for year-to-year trending for agency use. Changes to the survey questions (regardless of whether the questions are represented in this regulation) are made only in consultation with OPM survey experts, agency representatives and stakeholders that use the survey results. OPM will continue to produce question trends and indexes as in prior years, but will be able to revise and improve questions as necessary for better measurement and remove questions which are no longer of interest to agencies. Index scores will continue to be produced but again, OPM will be able to revise, add or remove indexes to respond to agency needs. Information critical to agency success will not be lost, but instead the survey will move toward providing better and more accurate data to agencies as well as improved scientific rigor. Asking questions which are not well written or no longer relevant to agency success, as well as reporting indexes used in the past when newer indexes would better fit agency needs, confines the survey to be a formality rather than a dynamic and useful management tool.

For the purpose of the regulation, a smaller set of understandable and well-written questions directly related to the statute areas, are critical for governmentwide and agency measurement and trends, and this smaller set of 16 questions will be retained in regulation. This set of questions satisfies the statute requirements. Since these questions cannot be revised or removed without a change in regulation, retaining a large number of questions within a regulation limits the effectiveness of the survey to respond to agency needs, to update the survey to address new initiatives, and/or to revise or remove questions that are no longer useful. Therefore, the previous list of 45 statute-based questions has been reduced to a smaller, core set of 16 areas. The results required by statute will continue to be produced.

In addition, OPM will have the option to make revisions as needed to other parts of the survey and those relevant questions that used to appear in the regulation in order to improve measurement qualities and therefore, improve the overall scientific qualities of the annual survey and its value to the Federal Government, while satisfying the statue requirements.

One agency, one organization and two individuals provided comments related to survey methodology: For example, shortening the fielding period and reducing reporting timeframes, frequency of survey administration, and sampling methodologies.

These comments are outside the scope of the proposed rule; therefore, no response is needed.

An organization suggested requiring OPM to report FEVS data publically within 90 days of the date by which an agency completes survey administration.

Currently, while OPM provides services to all executive agencies for the annual survey, no such requirement is reflected in statute. Thus, no timeline can be established. Our goal is to provide agencies with the best information and reports possible, and imposing a timeline would hamper our ability to respond to dynamic situations and decision-needs.

Executive Order 13563 and Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this proposed rule in accordance with E.O. 13563 and 12866.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 250

Authority for Personnel actions in agencies, Employee surveys, Strategic Human Capital Management.

Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM amends title 5, Code of Federal Regulations, as follows:

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 1101 note, 1103(a)(5), 1103(c), 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002).

Subpart B—Strategic Human Capital Management

■ 2. Subpart B is revised to read as follows:

Subpart B—Strategic Human Capital Management

Sec.
250.201 Coverage and purpose.
250.202 Definitions.
250.203 Strategic Human Capital management systems and standards.
250.204 Agency roles and responsibilities.
250.205 Human Capital Operating Plan (HCOP).
250.206 Human Capital Reviews (HCR).
250.207 HRStat.
250.208 System metrics.
250.209 Consequences of improper agency actions.

Subpart B—Strategic Human Capital Management

Authority: 5 U.S.C. 105; 5 U.S.C. 1103(a)(7), (c)(1), and (c)(2); 5 U.S.C. 1401; 5 U.S.C. 1402(a); 31 U.S.C. 901(b)(1); 31 U.S.C. 1115(a)(3); 31 U.S.C. 1115(f); 31 U.S.C. 1116(c)(5); Public Law 103–62; Public Law 107–296; Public Law 108–136, 1128; Public Law 111–352; 5 CFR 10.2; FR Doc No: 2011—19844; E.O. 13583; E.O. 13583, Sec 2(b)(ii).

§ 250.201 Coverage and purpose.

Pursuant to 5 U.S.C. 1103(c), this subpart defines a set of systems, including standards and metrics, for assessing the management of human capital by Federal agencies. These regulations apply to all Executive agencies as defined in 31 U.S.C. 901(b)(1) and support the performance planning and reporting that is required by sections 1115(a)(3) and (f) and 1116(d)(5) of title 31, United States Code.

§ 250.202 Definitions.

Chief Human Capital Officer (CHCO) is the agency's senior leader whose primary duty is to:

(1) Advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles; and

(2) Implement the rules and regulations of the President, the Office of Personnel Management (OPM), and the laws governing the civil service within the agency.

CHCO agency is an Executive agency, as defined by 5 U.S.C. 105, which is required by 5 U.S.C. 1401 and 31 U.S.C. 901(b)(1) to appoint a CHCO.

Director of OPM is, among other things, the President's advisor on actions that may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees. The Director of OPM provides governmentwide leadership and direction in the strategic management of the Federal workforce.

Evaluation system is an agency's overarching system for evaluating the results of all human capital planning and implementation of human capital strategies to inform the agency's continuous process improvement efforts. This system is also used for ensuring compliance with all applicable statutes, rules, regulations, and agency policies.

Federal Workforce Priorities Report (FWPR) is a strategic human capital report, published by OPM by the first Monday in February of any year in which the term of the President commences. OPM may extend the date of publication if needed. The report communicates key Governmentwide human capital priorities and suggested strategies. The report also informs agency strategic and human capital planning.

Focus areas are areas that agencies and human capital practitioners must focus on to achieve a system's standard.

HRStat is a strategic human capital performance evaluation process that identifies, measures, and analyzes human capital data to inform the impact of an agency's human capital management on organizational results with the intent to improve human capital outcomes. HRStat, which is a quarterly review process, is a component of an agency's strategic planning and alignment and evaluation systems that are part of the Human Capital Framework.

Human Capital Evaluation Framework underlies the three human capital evaluation mechanisms (*i.e.,* HRStat, Audits, and Human Capital Reviews) to create a central evaluation framework that integrates the outcomes from each to provide OPM and agencies with an understanding of how human capital policies and programs are supporting missions.

Human Capital Framework (HCF) provides comprehensive guidance on the principles of strategic human capital management in the Federal Government. The framework, as described in § 250.203 below, provides direction on human capital planning, implementation, and evaluation in the Federal environment.

Human Capital Operating Plan (HCOP) is an agency's human capital implementation document, which describes how an agency will execute the human capital elements stated within Agency Strategic Plan and Annual Performance Plan (APP). Program specific workforce investments and strategies (*e.g.,* hiring, closing skill gaps, etc.) should be incorporated into the APPs as appropriate. The HCOP should clearly execute each of the four systems of the HCF. The HCOP should align with the Government Performance and Results Act (GPRA) Modernization Act of 2010, annual performance plans and timelines.

Human Capital Review (HCR) is OPM's annual, evidence-based review of an agency's design and implementation of its HCOP, independent audit, and HRStat programs to support mission accomplishment and human capital outcomes.

Independent audit program is a component of an agency's evaluation system designed to review all human capital management systems and select human resources transactions to ensure efficiency, effectiveness, and legal and regulatory compliance.

Skill gap is a variance between the current and projected workforce size and skills needed to ensure an agency has a cadre of talent available to meet its mission and make progress towards achieving its goals and objectives now and into the future.

Standard is a consistent practice within human capital management in which agencies strive towards in each of the four HCF systems. The standards ensure that an agency's human capital management strategies, plans, and practices:

(1) Are integrated with strategic plans, annual performance plans and goals, and other relevant budget, finance, and acquisition plans;

(2) Contain measurable and observable performance targets;

(3) Are communicated in an open and transparent manner to facilitate cross-agency collaboration to achieve mission objectives; and

(4) Inform the development of human capital management priority goals for the Federal Government.

§ 250.203 Strategic human capital management systems and standards.

Strategic human capital management systems, standards, and focus areas are defined within the Human Capital Framework (HCF). The four systems described below provide definitions and standards for human capital planning, implementation, and evaluation. The HCF systems and standards are:

(a) *Strategic planning and alignment.* A system that ensures agency human capital programs are aligned with agency mission, goals, and objectives through analysis, planning, investment, and measurement. The standards for the strategic planning and alignment system require an agency to ensure their human capital management strategies, plans, and practices—

(1) Integrate strategic plans, annual performance plans and goals, and other relevant budget, finance, and acquisition plans;

(2) Contain measurable and observable performance targets; and

(3) Communicate in an open and transparent manner to facilitate cross-agency collaboration to achieve mission objectives.

(b) *Talent management.* A system that promotes a high-performing workforce, identifies and closes skill gaps, and implements and maintains programs to attract, acquire, develop, promote, and retain quality and diverse talent. The standards for the talent management system require an agency to—

(1) Plan for and manage current and future workforce needs;

(2) Design, develop, and implement proven strategies and techniques and practices to attract, hire, develop, and retain talent; and

(3) Make progress toward closing any knowledge, skill, and competency gaps throughout the agency.

(c) *Performance culture.* A system that engages, develops, and inspires a diverse, high-performing workforce by creating, implementing, and maintaining effective performance management strategies, practices, and activities that support mission objectives. The standards for the performance culture system require an agency to have—

(1) Strategies and processes to foster a culture of engagement and collaboration;

(2) A diverse, results-oriented, high-performing workforce; and

(3) A performance management system that differentiates levels of performance of staff, provides regular feedback, and links individual performance to organizational goals.

(d) *Evaluation.* A system that contributes to agency performance by monitoring and evaluating outcomes of its human capital management strategies, policies, programs, and activities by meeting the following standards—

(1) Ensuring compliance with merit system principles; and

(2) Identifying, implementing, and monitoring process improvements.

§ 250.204 Agency roles and responsibilities.

(a) An agency must use the systems and standards established in this part, and any metrics that OPM subsequently provides in guidance, to plan, implement, evaluate and improve human capital policies and programs. These policies and programs must—

(1) Align with Executive branch policies and priorities, as well as with individual agency missions, goals, and strategic objectives. Agencies must align their human capital management strategies to support the Federal Workforce Priorities Report, agency strategic plan, agency performance plan, and agency budget;

(2) Be based on comprehensive workforce planning and analysis;

(3) Monitor and address skill gaps within governmentwide and agency-

specific mission-critical occupations by using comprehensive data analytic methods and gap closure strategies;

(4) Recruit, hire, develop, and retain an effective workforce, especially in the agency's mission-critical occupations;

(5) Ensure leadership continuity by implementing and evaluating recruitment, development, and succession plans for leadership positions;

(6) Implement a knowledge management process to ensure continuity in knowledge sharing among employees at all levels within the organization;

(7) Sustain an agency culture that engages employees by defining, valuing, eliciting, and rewarding high performance; and

(8) Hold the agency head, executives, managers, human capital officers, and human capital staff accountable for efficient and effective strategic human capital management, in accordance with merit system principles.

(b) Each agency must meet the statutory requirements of the Government Performance and Results Act (GPRA) Modernization Act of 2010, by including within the Annual Performance Plan (APP) human capital practices that are aligned to the agency strategic plan. The human capital portion of the APP must include performance goals and indicators.

(c) An agency's Deputy Secretary, equivalent, or designee is responsible for ensuring that the agency's strategic plan includes a description of the operational processes, skills and technology, and human capital information required to achieve the agency's goals and objectives. Specifically, the Deputy Secretary, equivalent, or designee will—

(1) Allocate resources;

(2) Ensure the agency incorporates applicable priorities identified within the Federal Workforce Strategic Priorities Report and is working to close governmentwide and agency-specific skill gaps; and

(3) Remain informed about the progress of their agency's quarterly HRStat reviews, which are led by the CHCO, in collaboration with the PIO.

(d) The Chief Human Capital Officer must design, implement and monitor agency human capital policies and programs that—

(1) Ensure human capital activities support merit system principles;

(2) Use the OPM designated method to identify governmentwide and agency-specific skill gaps;

(3) Demonstrate how the agency is using the principles within the HCF to address strategic human capital priorities and goals;

(4) Establish and maintain an Evaluation System to evaluate human capital outcomes that is—

(i) Formal and documented; and

(ii) Approved by OPM;

(5) Maintain an independent audit program, subject to full OPM participation and evaluation, to review periodically all human capital management systems and the agency's human resources transactions to ensure legal and regulatory compliance. An agency must—

(i) Take corrective action to eliminate deficiencies identified by OPM, or through the independent audit, and to improve its human capital management programs and its human resources processes and practices; and

(ii) Based on OPM or independent audit findings, issue a report to its leadership and OPM containing the analysis, results, and corrective actions taken; and

(6) Improve strategic human capital management by adjusting strategies and practices, as appropriate, after assessing the results of performance goals, indicators, and business analytics.

(7) The agency's human capital policies and programs must support the implementation and monitoring of the Federal Workforce Priorities Report, which is published by OPM every four years, and—

(i) Improve strategic human capital management by using performance goals, indicators, and business analytics to assess results of the human capital management strategies planned and implemented;

(ii) Ensure human capital activities support merit system principles;

(iii) Adjust human capital management strategies and practices in response to outcomes identified during HRStat quarterly data-driven reviews of human capital performance to improve organizational processes; and

(iv) Use the governmentwide and agency-specific human capital strategies to inform resource requests (*e.g.,* staff full-time equivalents, training, analytical software, etc.) into the agency's annual budget process.

§ 250.205 Human Capital Operating Plan (HCOP).

Each agency must develop a Human Capital Operating Plan (HCOP) that aligns with an agency's Strategic Plan and Annual Performance Plan. The HCOP is to be reviewed and approved annually, and updated as needed. The HCOP must demonstrate how an agency's human capital implementation strategies follow the principles and standards of the HCF while including an explanation of how human capital policies, initiatives, objectives, and resources will be used to achieve agencies' human capital goals. The HCOP will be made available to OPM upon request. The HCOP must—

(a) Be established by the CHCO, in collaboration with the agency's senior management team;

(b) Be used to support the execution of an agency's strategic plan, as an agency's human capital can affect whether or not a strategy or strategic goal is achieved;

(c) Explicitly describe the agency-specific skill and competency gaps that must be closed through the use of agency selected human capital strategies;

(d) Include annual human capital performance goals and measures that will support the evaluation of the agency's human capital strategies, through HRStat quarterly reviews, and that are aligned to support mission accomplishment;

(e) Reflect the systems and standards defined in § 250.203 above, consistent with their agency strategic plan and annual performance plan, to address strategic human capital priorities and goals; and

(f) Address the governmentwide priorities identified in the Federal Workforce Strategic Priorities Report.

§ 250.206 Human Capital Reviews.

Each agency must participate with OPM in a Human Capital Review (HCR). The HCR will be conducted during the evaluation phase and OPM will issue guidance about the HCR requirements.

§ 250.207 HRStat.

The Chief Human Capital Officer must design, implement and monitor agency human capital policies and programs that—

(a) Use the HRStat quarterly reviews, in coordination with the agency Performance Improvement Officer (PIO), to assess the agency's progress toward meeting its strategic and performance goals;

(b) Implement the HRStat Maturity guidelines specified by OPM; and

(c) Use HRStat quarterly reviews to evaluate their agency's progress.

§ 250.208 System metrics.

OPM reserves the right to provide additional guidance regarding metrics.

§ 250.209 Consequences of improper agency actions.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard that OPM administers, OPM may require the

agency to take corrective action. OPM may suspend or revoke a delegation agreement established under 5 U.S.C. 1104(a)(2) at any time if it determines that the agency is not adhering to the provisions of the agreement. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when OPM finds that the agency has not complied with qualification standards OPM has issued, instructions OPM has published, or the regulations in this chapter of the regulation. OPM also may suspend or withdraw these authorities when it determines that doing so is in the interest of the civil service for any other reason.

■ 3. Subpart C is revised to read as follows:

Subpart C—Employee Surveys

Sec.
250.301 Definitions.
250.302 Survey requirements.
250.303 Availability of results.

Subpart C—Employee Surveys

Authority: 5 U.S.C. 105; 5 U.S.C. 7101 note; Public Law 108–136

§ 250.301 Definitions.

Agency means an Executive agency, as defined in 5 U.S.C. 105.

§ 250.302 Survey requirements.

(a) Each executive agency must conduct an annual survey of its employees to assess topics outlined in the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, sec. 1128, codified at 5 U.S.C. 7101.

(1) Each executive agency may include additional survey questions unique to the agency in addition to the employee survey questions prescribed by OPM under paragraph (a)(2) of this section.

(2) The 16 prescribed survey questions are listed in the following table:

(i) Leadership and Management practices that contribute to agency performance	
	My work unit has the job-relevant skills necessary to accomplish organizational goals. Managers communicate the goals of the organization. I believe the results of this survey will be used to make my agency a better place to work.
(ii) Employee Satisfaction with—	
(A)	Leadership Policies and Practices: How satisfied are you with your involvement in decisions that affect your work? How satisfied are you with the information you receive from management on what is going on in your organization? Considering everything, how satisfied are you with your organization?
(B)	Work Environment: The people I work with cooperate to get the job done. My workload is reasonable. Considering everything, how satisfied are you with your job? I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.
(C)	Rewards and Recognition: In my work unit, differences in performance are recognized in a meaningful way. How satisfied are you with the recognition you receive for doing a good job?
(D)	Opportunities for professional development and growth: I am given a real opportunity to improve my skills in my organization. My talents are used well in the workplace.
(E)	Opportunity to contribute to achieving organizational mission: I know how my work relates to the agency's goals. I recommend my organization as a good place to work.

§ 250.303 Availability of results.

(a) Each agency will make the results of its annual survey available to the public and post the results on its Web site unless the agency head determines that doing so would jeopardize or negatively impact national security. The posted survey results will include the following:

(1) The agency's evaluation of its survey results;

(2) How the survey was conducted;

(3) Description of the employee sample, unless all employees are surveyed;

(4) The survey questions and response choices with the prescribed questions identified;

(5) The number of employees surveyed and number of employees who completed the survey; and

(6) The number of respondents for each survey question and each response choice.

(b) Data must be collected by December 31 of each calendar year. Each agency must post the beginning and ending dates of its employee survey and either the survey results described in paragraph (a) of this section, or a statement noting the decision not to post, no later than 120 days after the agency completes survey administration. OPM may extend this date under unusual circumstances.

[FR Doc. 2016–29600 Filed 12–9–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8178; Directorate Identifier 2015–NM–197–AD; Amendment 39–18721; AD 2016–24–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted

by a determination by the manufacturer that shims might not have been installed between certain longerons and longeron joint fittings. This AD requires various repetitive and detailed visual inspections of the affected areas and corrective actions if necessary. This AD also provides terminating action for certain repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2017.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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–2016–8178.

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–2016–8178; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on July 15, 2016 (81 FR 45995) (''the NPRM''). The NPRM was prompted by a determination by the manufacturer that shims might not have been installed between certain longerons and longeron joint fittings. The NPRM proposed to require repetitive inspections of the external surface of the fuselage skin panel for loose or working fasteners, and corrective action if necessary; a detailed visual inspection of the longeron joint fittings for the existence of shims and, if necessary, repetitive inspections of the longeron and the longeron joint fittings for any cracking, and corrective action if necessary. We are issuing this AD to detect and correct missing shims between the longerons and longeron joint fittings, which could result in a gapping condition and lead to stress corrosion cracking of the longeron joint fittings, and could adversely affect the structural integrity of the wing-to-fuselage attachment joints.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–22, dated August 3, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> The aeroplane manufacturer has determined that shims may not have been installed between the longerons and longeron joint fittings at fuselage station X373–380, stringers 7 on the left and right hand side, on certain aeroplanes. The missing shims could result in a gapping condition and could lead to stress corrosion cracking of the longeron joint fittings.
>
> Failure of the longeron joint fitting could compromise the structural integrity of the wing-to-fuselage attachment joint.
>
> This [Canadian] AD mandates inspections in the area of the longeron joint fittings.

Corrective actions include replacing any loose or working fasteners (fasteners that show signs of wear, fatigue, or corrosion), repairing any structural damage, and replacing any cracked longeron or longeron with an amplitude of 50% or more of the calibration signal. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8178.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Incorporate Revised Service Information

Horizon Air requested that we incorporate Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

We agree with the commenter's request to incorporate the revised service information because Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016, is the latest revision. We have changed all service bulletin references in this final rule to Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

Request To Provide Credit for Previous Actions

Horizon Air requested that we add a paragraph addressing credit for previous actions.

We agree. Since we have incorporated revised service information in this final rule, we agree to provide credit for required tasks performed before the effective date of this AD using Bombardier Service Bulletin 84–53–65, dated February 27, 2015. We have added a new paragraph (n) to this AD to provide credit for previous actions and redesignated subsequent paragraphs accordingly.

Additional Changes to NPRM

We have reformatted paragraph (l) in this AD to clarify the requirements.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016. The service information describes procedures for

inspections of the external surface of the fuselage skin panel for loose or working fasteners; a detailed visual inspection of the longeron joint fittings for the existence of shims; high frequency eddy current inspections of the longeron and the longeron joint fittings for any cracking; and replacement of longeron fittings, shims, and fasteners. 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.

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $12,920, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 3 work-hours for the inspection for missing shims, 9 work-hours for the replacement of longeron fittings and shims, and 1 work-hour for a reporting requirement; and would require parts costing $3,222; for a cost of up to $4,327 per product. We have no way of determining the number of aircraft that might need these actions. We have received no definitive data that will enable us to provide cost estimates for repair of loose or working fasteners or structural damage specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2016–24–04 Bombardier, Inc: Amendment 39–18721; Docket No. FAA–2016–8178; Directorate Identifier 2015–NM–197–AD.

(a) Effective Date

This AD is effective January 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4156 through 4453 inclusive, 4456, and 4457.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a determination by the manufacturer that shims might not have been installed between certain longerons and longeron joint fittings. We are issuing this AD to detect and correct missing shims between the longerons and longeron joint fittings, which could result in a gapping condition and lead to stress corrosion cracking of the longeron joint fittings, and could adversely affect the structural integrity of the wing-to-fuselage attachment joints.

(f) Compliance

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

(g) Inspection of the External Surface of the Fuselage Skin Panels

At the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, do a detailed visual inspection of the external surface of the fuselage skin panel for loose or working fasteners (fasteners that show signs of wear, fatigue, or corrosion) and structural damage, in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(1) For airplanes that have accumulated less than 10,000 total flight hours, or less than 5 years in service since new, as of the effective date of this AD: Prior to accumulating 12,000 total flight hours or 6 years in service since new, whichever occurs first.

(2) For airplanes that have accumulated 10,000 total flight hours or more, or 5 years or more in service since new, as of the effective date of this AD: Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first.

(h) Corrective Actions

If any loose or working fastener or any structural damage is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA); or

Bombardier, Inc.'s TCCA Design Approval Organization (DAO); and thereafter do the inspections required by paragraph (i) of this AD. Accomplishment of a repair in accordance with a method approved by the Manager, New York ACO, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO terminates the repetitive inspections required by paragraph (i) of this AD for the repaired area only.

(i) Repetitive Detailed Visual Inspections

Repeat the detailed visual inspection required by the introductory text to paragraph (g) of this AD at intervals not to exceed 12 months or 2,000 flight cycles, whichever occurs first after accomplishment of the most recent inspection, until the actions required by the introductory text to paragraph (j) of this AD are done.

(j) Inspection for Missing Shims

At the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable, do a detailed visual inspection of the longeron joint fittings for the existence of shims, in accordance with paragraph 3.C. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(1) For airplanes that have accumulated less than 10,000 total flight hours, or less than 5 years in service since new, as of the effective date of this AD: Prior to accumulating 18,000 total flight hours or 9 years in service since new, whichever occurs first.

(2) For airplanes that have accumulated 10,000 total flight hours or more, or 5 years or more in service since new, as of the effective date of this AD: Within 8,000 flight hours or 4 years after the effective date of this AD, whichever occurs first; but not to exceed 30,000 total flight hours or 144 months in service since new, whichever occurs first.

(k) Airplanes With Installed Shims: No Further Action Required

If the inspection required by the introductory text to paragraph (j) of this AD reveals that shims are installed in the longeron joint fittings, no further action is required by this AD.

(l) Airplanes With Missing Shims: High Frequency Eddy Current (HFEC) Inspections and Corrective Actions

If the inspection required by the introductory text to paragraph (j) of this AD reveals that any shim is missing from the longeron joint fittings: Before further flight, do a high frequency eddy current (HFEC) inspection of the longeron and the longeron joint fittings for any cracking, in accordance with paragraph 3.D. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(1) If any crack is found, or if any indication with an amplitude of 50% or more of the calibration signal is found, do the actions specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) Before further flight: Replace the longeron joint fittings, in accordance with paragraph 3.E. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(ii) At the applicable time specified in paragraph (l)(1)(ii)(A) or (l)(1)(ii)(B) of this AD: Report the inspection results to Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(A) If the inspection was done on or after the effective date of this AD: Report within 30 days after that inspection.

(B) If the inspection was done before the effective date of this AD: Report within 30 days after the effective date of this AD.

(2) If no crack or indication with an amplitude of 50% or more of the calibration signal is found: Repeat the HFEC inspection required by the introductory text to paragraph (l) of this AD at intervals not to exceed 12,000 flight hours or 6 years, whichever occurs first after accomplishment of the most recent HFEC inspection, in accordance with paragraph 3.D. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(m) Terminating Action for Repetitive HFEC Inspections

Replacement of the longeron joint fittings, in accordance with paragraph 3.E. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016, constitutes terminating action for the repetitive HFEC inspections required by paragraph (l)(2) of this AD.

(n) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (i), (j), (k), (l), and (m) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–53–65, dated February 27, 2015.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–22, dated August 3, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8178.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (q)(3) and (q)(4) of this AD.

(q) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 84–53–65, Revision A, dated February 22, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28597 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5598; Directorate Identifier 2016–NM–001–AD; Amendment 39–18735; AD 2016–25–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2012–22–02 for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. AD 2012–22–02 required measuring the web at station (STA) 320 and, depending on findings, various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions if necessary. This new AD requires, for certain airplanes, replacement of the web, including related investigative and corrective actions if necessary. This AD was prompted by a determination that there were no inspection or repair procedures included in AD 2012–22–02 for airplanes with a certain crown frame web thickness. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5598.

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–2016–5598; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–22–02, Amendment 39–17238 (77 FR 69739, November 21, 2012) (''AD 2012–22–02''). AD 2012–22–02 applied to certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. The NPRM published in the **Federal Register** on April 28, 2016 (81 FR 25357) (''the NPRM''). The NPRM was prompted by a determination that there were no inspection or repair procedures included in AD 2012–22–02 for airplanes with a STA 320 crown frame web thickness less than 0.078 inch, or greater than or equal to 0.084 inch and less than or equal to 0.135 inch. The NPRM proposed to continue to require certain actions required by AD 2012–22–02. The NPRM also proposed to require, for certain airplanes, replacement of the web, including related investigative and corrective actions if necessary. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin. Such damage could result in in-flight decompression of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

United Airlines stated that it concurs with the NPRM.

Request To Remove Redundant Requirements

Boeing requested we change paragraph (i) of the proposed AD to remove redundant language. Boeing requested we remove the second half of the paragraph and subparagraphs (i)(1) and (i)(2) of the proposed AD because they include redundant requirements. Boeing also noted that the redundant requirements include an exception that does not apply to table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

We agree to revise paragraph (i) of this AD for the reasons provided by Boeing. We have revised paragraph (i) of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change described previously, and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015. The service information describes procedures for various inspections for cracks and missing fasteners, web and fastener replacement, and related investigative and corrective actions, if necessary. 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.

Costs of Compliance

We estimate that this AD affects 29 airplanes.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement, inspection, and web replacement [retained actions from AD 2012–22–02].	219 work-hours × $85 per hour = $18,615 per inspection and replacement.	Up to $21,887	Up to $40,502 per inspection and replacement.	Up to $1,174,558 per inspection and replacement.
Post-replacement inspection [retained actions from AD 2012–22–02].	135 work-hours × $85 per hour = $11,475 per inspection cycle.	$0	$11,475 per inspection cycle.	$332,775 per inspection cycle.

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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–22–02, Amendment 39–17238 (77 FR 69739, November 21, 2012), and adding the following new AD:

2016–25–09 The Boeing Company: Amendment 39–18735; Docket No. FAA–2016–5598; Directorate Identifier 2016–NM–001–AD.

(a) Effective Date

This AD is effective January 17, 2017.

(b) Affected ADs

This AD replaces AD 2012–22–02, Amendment 39–17238 (77 FR 69739, November 21, 2012) (''AD 2012–22–02'').

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as specified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that there were no inspection or repair procedures included in AD 2012–22–02 for airplanes with a station (STA) 320 crown frame web thickness less than 0.078 inch, or greater than or equal to 0.084 inch and less than or equal to 0.135 inch. We are issuing this AD to prevent complete fracture of the crown frame assembly, and consequent damage to the skin. Such damage could result in in-flight decompression of the airplane.

(f) Compliance

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

(g) Crown Frame Web Measurement for Certain Airplanes

For Group 1, Configuration 3 airplanes, identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: At the compliance time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, measure the thickness of the crown frame web at STA 320, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all related investigative and corrective actions at the applicable times specified in tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(h) Inspections (Web With No Repair Doubler) and Related Investigative and Corrective Actions (Including Web Replacement)

For Group 1, Configuration 1 airplanes, identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: For airplanes with a web thickness less than 0.136 inch and no repair doubler installed on the web, at the time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, do a detailed inspection for cracks and a general visual inspection for missing fasteners of the crown frame web at STA 320, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as specified in paragraph (l)(2) of this AD. Do the applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(i) Inspection (Web With Repair Doubler) and Related Investigative and Corrective Actions (Including Web Replacement)

For Group 1, Configuration 1 airplanes, identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: For airplanes with a web thickness less than 0.136 inch and a repair doubler installed on the web, at the time specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, do a

detailed inspection for any crack in the upper chord and lower chord of the STA 320 crown frame, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as specified in paragraph (l)(2) of this AD. Do the applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(j) Web Replacement for Certain Airplanes

For Group 1, Configuration 2 airplanes, identified in Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: At the applicable time specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as provided by paragraph (l)(1) of this AD, replace the web, including doing related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all applicable related investigative and corrective actions before further flight.

(k) Post-Replacement Repetitive Inspections of Replaced Web

Following any web replacement required by this AD, at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015: Do a detailed inspection for cracks of the web, upper chord, lower chord, and lower chord splice, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, except as required by paragraph (l)(2) of this AD. Do all applicable corrective actions before further flight. If no crack is found, repeat the inspection thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015. Accomplishment of the inspections required by AD 2009–19–05, Amendment 39–16022 (74 FR 48138, September 22, 2009), terminates the requirements of this paragraph.

(l) Exceptions to the Service Information, With Updated Service Information

(1) Where Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, specifies a compliance time ''after the Revision 2 date of the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015, specifies to contact Boeing for appropriate action, accomplish applicable actions before further flight using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(m) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (h), (i), and (k) of this AD, if those actions were performed before December 26, 2012 (the effective date of AD 2012–22–02), using Boeing Service Bulletin 747–53A2784, dated August 27, 2009.

(2) This paragraph provides credit for the actions required by paragraphs (h), (i), and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2784, Revision 1, dated September 14, 2011. This service information was incorporated by reference in AD 2012–22–02.

(n) 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 (o)(1) of this AD.

(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.

(o) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.Ashforth@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 747–53A2784, Revision 2, dated August 20, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) You may view this 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://*www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29246 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7530; Directorate Identifier 2014–NM–257–AD; Amendment 39–18730; AD 2016–25–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by a report of cracking in a certain section of the secondary structure of the wing. This AD requires a one-time inspection of the trailing edge rib, and corrective action if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2017.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@*

fokker.com; Internet *http://www.myfokkerfleet.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–2015–7530.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7530; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on December 24, 2015 (80 FR 80299) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0271, dated December 12, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

> Service experience with the Fokker 100 type design has shown that cracking can occur in the secondary structure of the wing at station 8700, rib Part Number (P/N) D15445–013/–014 (or lower dash number) in the trailing edge section. The hydraulic actuator assembly, hydraulic lines, the cable pulleys, the anti-upfloat quadrant and the associated mechanical linkages including flutter dampers are all positioned in the affected area, between wing stations 8200 and 9270.
>
> This condition, if not detected and corrected, could lead to failure of the affected rib, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services published Service Bulletin (SB) SBF100–57–048, which provides inspection instructions to detect any cracks in the affected area.
>
> For the reasons described above, this [EASA] AD requires a one-time [detailed] inspection of the trailing edge rib at wing station 8700 and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim action and further AD action may follow, possibly to introduce new ALS [Airworthiness Limitations Section] tasks, if justified by the inspection results.

Corrective actions include repair of cracking in the secondary structure of the wing at station 8700, rib part number (P/N) D15445–013/–014 (or lower dash number), in the trailing edge section.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7530.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Service Bulletin SBF100–57–048, dated October 27, 2014. This service information describes procedures for inspecting the trailing edge section at the rib of wing station 8700 for cracking. 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.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $680, or $85 per product.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2016–25–04 Fokker Services B.V.: Amendment 39–18730; Docket No. FAA–2015–7530; Directorate Identifier 2014–NM–257–AD.

(a) Effective Date

This AD is effective January 17, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by report of cracking in the secondary structure of the wing at station 8700. We are issuing this AD to detect and correct cracking that could lead to failure of the affected rib and consequent reduced control of the airplane.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD: Do a detailed inspection for cracking of the trailing edge rib at wing station 8700, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–048, dated October 27, 2014. If any crack is found, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA).

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Fokker B.V. Service's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European AD 2014–0271, dated December 12, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7530.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100–57–048, dated October 27, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29243 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 159 and 173

[USCBP–2016–0065; CBP Dec. No. 16–25]

RIN 1515–AE16

Electronic Notice of Liquidation

AGENCY: U.S. Customs and Border Protection, HDS; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations reflecting that official notice of liquidation, suspension of liquidation, and extension of liquidation will be posted electronically on the CBP Web site. The regulatory revisions reflect that official notice of liquidation will no longer be posted at the customhouses or stations and that official notices of suspension of liquidation and extension of liquidation will no longer be mailed. Additionally, this rule makes certain technical corrections to the CBP regulations to reflect statutory amendments.

DATES: This final rule is effective on January 14, 2017.

FOR FURTHER INFORMATION CONTACT: Virginia McPherson, ACE Business Office, Office of Trade, *virginia.h.mcpherson@cbp.dhs.gov.* Randy Mitchell, Trade Policy and Programs, Office of Trade, *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1500), provides U.S. Customs and Border Protection (CBP) with the authority, under rules and regulations prescribed by the Secretary of the Treasury, to, among other things, give or transmit notice of liquidation pursuant to an electronic data interchange system. *See* 19 U.S.C. 1500(e). Similarly, CBP is authorized to

give notice of extension of liquidation in such form and manner (which may include electronic transmittal) as prescribed by regulation and notice of suspension of liquidation in such manner as considered appropriate. *See* 19 U.S.C. 1504(b) and (c). Additionally, the National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), to provide for, among other things, the electronic status of liquidation. *See* 19 U.S.C. 1411.

Currently, notices of liquidation for formal entry, including notices of liquidation by operation of law, are physically posted in the customhouse or station at the port of entry on CBP Form 4333, and this physical posting is deemed the legal evidence of liquidation. When extension or suspension of liquidation occurs, official notices are mailed on an appropriately modified CBP Form 4333–A.

On October 14, 2016, CBP published a notice in the **Federal Register** (81 FR 71019) proposing to amend title 19 of the Code of Federal Regulations (''19 CFR'') to reflect that official notice of liquidation, suspension of liquidation, and extension of liquidation would be posted electronically on the CBP Web site rather than being physically posted at the customhouses or stations or mailed. CBP also proposed eliminating the mailed paper courtesy notices of liquidation but stated its intention to continue sending electronic courtesy notices of liquidation, extension, and suspension via a CBP-authorized electronic data interchange system to the electronic filer when entries liquidate or are extended or suspended. The proposed amendments were intended to modernize, centralize, and facilitate the method by which importers are provided official notice of liquidation, extension, and suspension. Additionally, CBP proposed certain technical corrections to sections 159.11(a), 159.12(f), and 173.4a of 19 CFR to update the regulatory language to reflect statutory changes to sections 504 and 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1504 and 1520). The notice of proposed rulemaking requested public comments. The public comment period closed on November 14, 2016.

CBP received four comments regarding the proposed amendments to part 159 of 19 CFR regarding posting official notice of liquidation, suspension of liquidation, and extension of liquidation on the CBP Web site. No comments were received on the technical corrections to the regulations contained in sections 159.11(a), 159.12(f), and 173.4a of 19 CFR reflecting the statutory changes to 19 U.S.C. 1504 and 1520.

Discussion of Comments

Four comments were received in response to the notice of proposed rulemaking. CBP has addressed the comments below:

Comment: Three commenters expressed support for the proposed changes to post liquidation information on CBP's Web site, *www.cbp.gov.*

CBP Response: CBP appreciates the support and the input from the commenters.

Comment: One commenter suggested that the regulations state that the link will be visible on the CBP home page so that it remains conspicuous regardless of future CBP Web site changes and the public will not have to search for the link.

CBP Response: CBP agrees that the link needs to be conspicuous although not necessarily on the homepage. The link will be labelled ''Official Notices of Liquidation'' and, pursuant to 19 CFR 159.9(b), it will be placed in a conspicuous place on CBP's Web site in such a manner that it can readily be located and consulted by all interested persons. CBP assures that the link will remain conspicuous regardless of any potential future CBP Web site changes.

Comment: One commenter stated that the regulations should include a definition of what constitutes the posting and its data elements.

CBP Response: CBP disagrees that adding a definition of what constitutes the posting and its data elements is necessary because CBP believes such a definition would not add value or clarity. As proposed, the regulations at 19 CFR 159.9 provide that the posting will occur on CBP's Web site, address the date of posting, state that the electronic posting will be deemed the legal evidence of liquidation, and address liquidations by operation of law.

Comment: One commenter stated that the regulations appear not to deal with reliquidations and proposed adding reliquidation to 19 CFR 159.9(b).

CBP Response: CBP disagrees with the commenter. CBP intends that the posting of reliquidations will also be done electronically. Section 173.3(b) regarding reliquidation (which is in the current regulations and was not proposed to be amended) provides that notice of reliquidation will be given in accordance with the requirements for giving notice of the original liquidation. Accordingly, CBP believes there is no need to add reliquidation to 19 CFR 159.9(b).

Comment: One commenter stated that the regulation should spell out in detail how the date of posting will appear.

CBP Response: CBP disagrees that the regulation needs to spell out in detail how the date of posting will appear as the posting will be in a format that is easy to understand. The date of posting will appear in standard MM/DD/YYYY format. For example, December 31, 2016, will appear as 12/31/2016.

Comment: One commenter asked if importers or brokers will be able to print the notice and asked if the printed notices would include the posting date.

CBP Response: A printed copy may be obtained using a web browser's print functionality which should include the information that is displayed on the screen, such as the posting date.

Comment: One commenter stated that the liquidation information posted on the CBP Web site should be searchable using data elements.

CBP Response: CBP agrees and has designed the liquidation information posted on the CBP Web site to be searchable using data elements.

Comment: One commenter stated that the large majority of liquidations take place on a Friday and asked if that practice will continue.

CBP Response: CBP has designed the functionality so that entries that are set for auto-liquidation, that is, liquidations that occur on the standard 314-day cycle without CBP intervention will continue to be made on Fridays. However, for manual liquidations where CBP action is required, liquidations will generally post to the Web site within 90 minutes after CBP processes the liquidation.

Comment: Two commenters suggested that the 15-month timeline for maintaining liquidation information on the CBP Web site should be stated in the regulations.

CBP Response: CBP agrees that adding this language to the regulations will be beneficial. Accordingly, CBP has added language to §§ 159.9(c)(1), 159.12(b), and 159.12(c) stating that notices of liquidation, extension, and suspension, respectively, will be maintained on the CBP Web site for a minimum of 15 months.

Comment: One commenter requested that CBP place in the regulations the process for requesting access to notices that are no longer available on the Web site beyond the 15-month timeline.

CBP Response: CBP disagrees that this process needs to be included in the regulations. Guidance will be provided in the Automated Commercial Environment (ACE) Business Rules

Process Document, which can be updated in a quicker manner than the regulations should a more efficient process for obtaining historical information be developed. When the information is no longer available on the CBP Web site, a request may be made to CBP for historical information by contacting the filer's assigned client representative or by contacting the appropriate port or Center of Excellence and Expertise directly. Additionally, ACE account holders may run queries to obtain the historical information without having to contact CBP.

Comment: One commenter stated that CBP has the ability to post notices regarding liquidations by operation of law immediately when they occur in the electronic environment rather than ''within a reasonable period'' after each liquidation by operation of law. Another commenter asked that CBP post notice of liquidation by operation of law within 14 days of the liquidation.

CBP Response: CBP disagrees that it has the ability to post this information immediately upon occurrence because in many situations, CBP is unaware of the liquidation by operation of law for some time after it has occurred. However, the commenters validly pointed out that the electronic environment enables CBP to post notice without delay. Accordingly, based on these comments, CBP has amended the regulation at 19 CFR 159.9(c)(2)(i) to state that CBP will post this information when it has determined that an entry has liquidated by operation of law, and has removed the phrase regarding posting within a reasonable time period.

Comment: One commenter asked if the term ''filer'' was the filer code or the name of the importer of record and noted that both the filer code and the importer of record should be included with the information posted on the CBP Web site.

CBP Response: The term ''filer'' is not referencing the filer code or importer of record number but is instead referring to the party transmitting entry/entry summary data to CBP. The filer code is a searchable data element and will be displayed in the search results. However, as stated in the notice of proposed rulemaking, when the results of a search are viewed, the CBP Web site will not display the importer of record numbers.

Comment: One commenter asked if people in one location may search the notices for another location and used the example of being in Miami and searching notices from Long Beach.

CBP Response: Because information will be posted on the CBP Web site, all notices of liquidation throughout the country will be available to view and search regardless of the physical location of the searcher.

Comment: One commenter asked that the liquidation information remain on the CBP Web site indefinitely until historical information is available to sureties through the ACE portal, so that the surety can generate search results easily for its own list of entries. This commenter also requested that ''Surety Code'' be added to the list of data elements.

CBP Response: As stated elsewhere in the document, the liquidation information will be maintained on the CBP Web site for a minimum of 15 months. Regarding sureties, CBP has provided for surety code to be a searchable data element.

Comment: One commenter asked that the surety on an entry be included in 19 CFR 159.9(d) as a party to receive courtesy notices of liquidation.

CBP Response: A surety on an entry is able to receive courtesy notice if it is set up in ACE to receive courtesy notices of liquidation. However, based on this comment, CBP has amended the regulation at 19 CFR 159.9(d) to state that courtesy notices of the extension will be sent to the entry filer or its agent and the surety on an entry.

Comment: One commenter asked that the filer and the surety be included as a recipient of courtesy notices of extension of liquidation in 19 CFR 159.12(d)(2) in order to maintain consistency with 19 CFR 159.12(b) and (c) regarding whom the regulations identify as parties receiving courtesy notices.

CBP Response: CBP agrees that the regulations should each be consistent in this regard. Accordingly, based on this comment, CBP has amended the regulation at 19 CFR 159.12(b), (c), and (d)(2), to state that courtesy notices of the extension will be sent to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange.

Conclusion

Accordingly, after review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above, the proposed rule published in the **Federal Register** (81 FR 71019) on October 14, 2016. Specifically, the final rule contains the following changes based on the comments:

—Clarification in § 159.9(c)(1), which pertains to the date of liquidation, that notices of liquidation will be maintained on *www.cbp.gov* for a minimum of 15 months.

—Clarification in § 159.9(c)(2)(i), which pertains to entries liquidated by operation of law, that notice of such will be posted when CBP determines that an entry has liquidated by operation of law.

—Clarification in § 159.9(c)(2)(ii) by making editorial changes for ease of reading.

—Clarification in § 159.9(d), which pertains to courtesy notice of liquidation, that CBP will endeavor to provide courtesy notice to the entry filer or its agent and the surety on an entry.

—Clarification in § 159.12(b), which pertains to notices of extension, that notices of extension will be maintained on *www.cbp.gov* for a minimum of 15 months and that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.

—Clarification in § 159.12(c), which pertains to notices of suspension, that notices of suspension will be maintained on *www.cbp.gov* for a minimum of 15 months and that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.

—Clarification in § 159.12(d)(2), which pertains to additional extensions at the importer's request, that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.

Executive Orders 13563 and 12866

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'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

Regulatory Flexibility Act

This section examines the impact of this rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies

to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Background

Most goods imported into the United States are subject to duty assessments, which CBP conducts during a process known as liquidation. During this liquidation process, CBP performs a final computation of duties (not including vessel repair duties) on the entry covering the imported merchandise and then closes out the entry. In accordance with current regulations, CBP officially notifies importers,[1] as well as the public, of a formal entry's liquidation by posting a weekly bulletin notice of liquidation in a readily-located and consulted place in the customhouse or station at each port of entry.[2] These notices are generally available for importers and the public to peruse for a few weeks before they are placed in CBP storage. CBP provides the same official notice of liquidation for informal entries where a duty cannot be determined at the time of entry and for reliquidated dutiable entries.[3] For other informal, mail, and baggage entries, CBP furnishes official notice of liquidation to an importer (and its surety when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery.[4] Once CBP provides official notice of liquidation or reliquidation, importers generally have 180 days to file a protest challenging certain aspects of their entry's liquidation.[5] In addition to these official notices, CBP endeavors to provide importers (and their sureties) informal, courtesy notices of liquidation and reliquidation for entries scheduled to be liquidated or deemed liquidated by operation of law. For the majority of importers filing entries, who actually file electronically, CBP generally sends these filers (and their sureties) courtesy notices of liquidation and reliquidation via a CBP-authorized electronic data interchange system before the official notice (and protest period's start date). For the small portion of importers who file entries by paper, CBP typically mails paper courtesy notices of liquidation and reliquidation using CBP Form 4333–A to these filers on or around the date of the official notice's posting. These courtesy notices are not direct, formal, and decisive notices of liquidation or reliquidation; however, based on anecdotal evidence, most importers rely on these courtesy notices to determine liquidations and reliquidations to avoid the time and resource costs incurred to view official bulletin notices at U.S. customhouses or stations.

Some liquidations may be extended or suspended. If liquidation is extended or suspended, CBP officially notifies the importer and its surety by mail using CBP Form 4333–A, as appropriately modified.[6] CBP also provides importers who file entries electronically and their sureties with electronic courtesy notices of extension and suspension, which are generally sent in advance of mailed notifications. Although these courtesy notices are not direct, formal, and decisive notices of extension or suspension, CBP believes that most importers (and all sureties) rely on them to determine extensions and suspensions because importers receive them before the official notice and they contain the same information. Importers who file entries by paper do not receive electronic or paper courtesy notices of extension and suspension.

In an effort to modernize the liquidation, reliquidation, extension, and suspension notification processes, CBP, through this rulemaking, will discontinue physically posting official bulletin notices of liquidation and reliquidation at U.S. port of entry customhouses and stations. Instead, CBP will post these official notices in a readily-located, conspicuous place on the CBP Web site: *www.cbp.gov.* Additionally through this rule, CBP will begin posting electronically on *www.cbp.gov* official notices of extension and suspension that are currently mailed. CBP will tie all electronic notices directly to an already-developed, automated process by which entries are liquidated, reliquidated, extended, or suspended, ensuring that these actions and CBP's official notifications of these actions occur almost simultaneously. This rule will not change the method in which CBP provides *electronic* courtesy notices of liquidation, reliquidation, extension, or suspension, but it will discontinue the practice of mailing any paper notices. For other informal, mail, and baggage entries, CBP will continue to furnish official notices of liquidation and reliquidation to importers (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery. As described next, these regulatory changes will introduce benefits and costs to importers, including small entities.

For most importers (and their sureties), this rule will simply change the way in which they can access official notices of liquidation, reliquidation, extension, and suspension. Instead of posting weekly official bulletin notices of liquidation and reliquidation at each U.S. customhouse and station and mailing official notices of extension and suspension, CBP will publish these notices on the CBP Web site once this rule is in effect. CBP will also discontinue mailing all paper courtesy notices of liquidation and reliquidation with this rule. Because the vast majority of importers (and all their sureties) already rely on the electronic courtesy notices of liquidation, reliquidation, extension, and suspension that CBP provides, this rule's transition to electronic official notice publications will presumably only affect a small portion of importers. Specifically, this transition to electronic notice publications will only affect those importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those importers who receive and rely on paper courtesy notifications of liquidation and reliquidation and paper official notices of extension and suspension due to their paper entry filings.

Number of Small Entities Affected by Rule

Using historical data, CBP estimates that importers took an average of 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices because the official bulletin notice's posting date was significant to a protest that importer planned to file.[7] CBP also estimates that

[1] For the purposes of this analysis, ''importers'' can also refer to agents, such as brokers, who act on behalf of importers.

[2] *See* 19 CFR 159.9(b).

[3] *See* 19 CFR 159.10.

[4] *See* 19 CFR 159.10.

[5] For entries filed before December 18, 2004, the time limit is within 90 days after liquidation, but for entries filed on or after that date, it is now 180 days (*see* CFR part 174; *see* 19 U.S.C. 1514(c)(3) as amended by section 2103(2)(B), Pub. L. 108–429).

[6] *See* 19 CFR 159.12.

[7] Based on the 2,500 Applications for Further Review (AFRs) filed with protests in 2015. Importers or their attorneys who file AFRs depend on the exact dates of liquidation or reliquidation to

CBP mailed an average of 23,500 paper courtesy notices of liquidation and reliquidation and 3,100 paper notices of extension and suspension each year to importers who filed paper entries.[8] Considering this historical data, CBP estimates that this rule could affect up to approximately 29,100 importers per year. To the extent that the same importer took more than one trip to the U.S. customhouse or station to view an official bulletin notice or received and relied on more than one paper notice, the number of importers affected by this rule will be lower. Nonetheless, because the majority of importers are small businesses, CBP believes this rule will affect a substantial number of small entities.

Impacts of Rule on Small Entities

This rule's transition to fully electronic notices will require the estimated 29,100 importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those who rely on paper notices of liquidation, reliquidation, extension, and suspension to visit the CBP Web site to determine entry liquidations, reliquidations, extensions, and suspensions.[9] To view this rule's official bulletin notices on the CBP Web site, CBP assumes that these importers will spend an added 4 minutes (0.0667 hours)[10] navigating the CBP Web site to find a liquidation, reliquidation, extension, or suspension notice, at a time cost of $2.01 based on the assumed hourly wage rate for importers.[11] Most affected importers will presumably visit the CBP Web site once per year to view an entry's official notice of liquidation, reliquidation, extension, or suspension, for a total cost of $2.01 per year.[12] However, some affected importers, such as those who receive extension and suspension notices that are in effect for an unknown amount of time, could visit the CBP Web site more than once per year for an entry, incurring the access cost of $2.01 each time they visit the CBP Web site. Even if an importer accesses the CBP Web site twice a month for an entry, or 24 times per year, it will incur only a $48.24 cost to do so. The average value per entry was $69,300 in FY 2015.[13] The range of annual importer costs for this rule ($2.01 to $48.24) amounts to between 0.003 percent and 0.07 percent of this average entry value. Likewise, if an importer processes multiple entries per year, its total costs from this rule will be higher but the value of its entries will also be higher, meaning that the average cost to the importer will be between 0.003 percent and 0.07 percent of the entry value regardless of the number of entries the importer files per year. CBP does not consider this to be a significant economic impact.

Along with the minor Web site access cost imposed by this rule, this rule will provide benefits to importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations. This rule's electronic publication of official bulletin notices of liquidation and reliquidation will allow these importers to avoid visiting U.S. customhouses and stations for formal entry liquidation and reliquidation information, which typically occur 2,500 times a year. For each trip to a U.S. customhouse or station avoided, importers will save an estimated 45 minutes (0.75 hours), which will result

file a timely protest, and thus likely travel to a U.S. customhouse or station to physically view official bulletin notices with the official dates of liquidation and reliquidation. Using the 2015 AFR filings as a proxy for trips taken to view official bulletin notices, CBP estimates that importers or their attorneys took 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices. Sources: 19 CFR 174.12(e) and email correspondence with CBP's Office of Trade on July 15, 2016.

[8] Based on data received through email correspondence with CBP's Office of Trade on May 26, 2016; June 22–24, 2016; August 29, 2016; and September 21, 2016.

[9] Importers could set up an Automated Commercial Environment (ACE) account to receive electronic courtesy notices of liquidation, reliquidation, extension, and suspension, but the time cost to do so is likely longer than the time it takes to view official notices on the CBP Web site. As such, CBP assumes that importers who receive and rely on paper notices of liquidation, reliquidation, extension, and suspension now will visit the CBP Web site for official notice rather than set up an ACE account to receive electronic courtesy notices once this rule is effective.

[10] The 4-minute added time burden represents the incremental change in the time burden over the current paper notification process. Source: Email correspondence with CBP's Office of Trade on April 26, 2016.

[11] The time cost estimate is equal to the assumed hourly wage for importers ($30.09) multiplied by the hourly time burden for a trade member to navigate the CBP Web site to find a liquidation, reliquidation, extension, or suspension notice (0.0667 hours), and then rounded. CBP bases the $30.09 hourly wage rate for importers on the Bureau of Labor Statistics' (BLS) 2015 median hourly wage rate for Cargo and Freight Agents ($20.13), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2015 total compensation to wages and salaries for Office and Administrative Support occupations (1.4799), the assumed occupational group for importers, to account for non-salary employee benefits. CBP then adjusted this figure, which was in 2015 U.S. dollars, to 2016 U.S. dollars by applying a 1.0 percent annual growth rate to the figure, as recommended by the U.S. Department of Transportation's value of travel time guidance. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2015 National Occupational Employment and Wage Estimates, United States—Median Hourly Wage by Occupation Code: 43–5011.'' Updated March 30, 2016. Available at *http://www.bls.gov/oes/2015/may/oes435011.htm.* Accessed June 1, 2016.

The total compensation to wages and salaries ratio is equal to the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations ($24.9475) divided by the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category ($16.8575). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004–March 2016,* ''Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2016 by Respondent Type: Office and administrative support occupations.'' June 9, 2016. Available at *http://www.bls.gov/ncs/ect/sp/ececqrtn.pdf.* Accessed June 14, 2016.

Source of suggested growth rate: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update),* ''Table 4 (Revision 2—corrected): Recommended Hourly Values of Travel Time Savings.'' April 29, 2015. *http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf.* Accessed June 1, 2016.

[12] Importers will likely access the CBP Web site once a year to determine whether CBP has officially liquidated, reliquidated, extended, or suspended their entry. If CBP liquidates or reliquidates an entry, which will be the case for the importers who currently take 2,500 trips to U.S. customhouses or stations to view official bulletin notices and who receive 23,500 paper courtesy notices of liquidation and reliquidation annually, the importer will likely not have to access the CBP Web site again after the initial Web site visit to determine the entry's liquidation status. However, in a small number of cases, an importer may have to access the Web site more than once per year, over the course of more than one year to determine its entry's reliquidation status. If CBP extends or suspends an entry, which will be the case for the importers who receive 3,100 paper notices of extension and suspension annually, the importer may have to access the CBP Web site more than once per year, over the course of more than one year to determine the status of its entry's extension or suspension. However, considering the typical timeframes of extensions and suspensions, importers are most likely to access the CBP Web site only once per year for information on their entry's extension or suspension. Moreover, importers will likely receive information from CBP indicating whether CBP has reliquidated their entry or their extension or suspension has ended.

[13] Based on fiscal year 2015 U.S. entry and import value data. Source of entry data: U.S. Customs and Border Protection. *Summary of Performance and Financial Information Fiscal Year 2015.* May 2016. Available at *https://www.cbp.gov/sites/default/files/assets/documents/2016-May/summary-performance-financial-info-2015.pdf.* Accessed September 22, 2016. Source of import value data: U.S. Census Bureau. *FT920: U.S. Merchandise Trade Selected Highlights—October 2014 through September 2015 Releases,* ''Exhibit 3: U.S. Imports—U.S. Customs District of Entry—Total General Customs Value by Month.'' December 5, 2014–November 4, 2015. Available at *https://www.census.gov/foreign-trade/Press-Release/ft920_index.html.* Accessed September 22, 2016.

in a time cost saving of $22.57 using the average hourly wage for importers of $30.09.[14] Importers will also save $16.20 in travel costs per trip based on the estimated distance they sustain from traveling to and from a U.S. customhouse or station—30 miles—and the IRS's $0.54 standard mileage rate for business purposes.[15] To the extent that some trips are taken for multiple purposes, not just for viewing an official bulletin notice of liquidation or reliquidation, fewer costs will be avoided and the benefits of this rule per trip will be lower.

The electronic bulletin notices introduced with this rule will also provide benefits of eased access, relatively quicker notification, and extended viewing to importers. In particular, this electronic transition will allow importers to easily view and query a complete, consolidated list of U.S. entry liquidations, reliquidations, extensions, and suspensions, thus facilitating the process by which these individuals obtain such entry information. For importers who typically rely on paper courtesy notices for liquidation and reliquidation information, which they receive by mail after the official notice's posting, this electronic posting will provide the added benefit of more timely notice and additional protest time. Importers who receive and rely on paper courtesy notices will also benefit from this rule's consolidated electronic notice posting. This change will allow importers and their agents to view liquidation, reliquidation, extension, and suspension notices simultaneously instead of individually as they currently do through paper notices. Furthermore, importers will have at least 14 more months to view official liquidation, reliquidation, extension, and suspension notices before having to request access to the notices through CBP.

Conclusion

Although CBP believes that this rule will affect a substantial number of small entities, specifically importers, CBP believes that the (negative) economic impact of this rule on small entities will not be significant. Accordingly, CBP certifies that this regulation will not have a significant economic impact on a substantial number of small entities. CBP received no public comments on the Electronic Notice of Liquidation Notice of Proposed Rulemaking challenging this certification.

Paperwork Reduction Act

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

Amendments to the CBP Regulations

For the reasons given above, parts 159 and 173 of title 19 of the Code of Federal Regulations (19 CFR parts 159 and 173) are amended as set forth below:

PART 159—LIQUIDATION OF DUTIES

■ 1. The general authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

■ 2. Section 159.9 is revised to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Notice of liquidation.* Notice of liquidation of formal entries will be provided on CBP's public Web site, *www.cbp.gov.*

(b) *Posting of notice.* The notice of liquidation will be posted for the information of importers in a conspicuous place on *www.cbp.gov* in such a manner that it can readily be located and consulted by all interested persons.

(c) *Date of liquidation*—(1) *Generally.* The notice of liquidation will be dated with the date it is posted electronically on *www.cbp.gov* for the information of importers. This electronic posting will be deemed the legal evidence of liquidation. The notice of liquidation will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period and will be posted on *www.cbp.gov* when CBP determines that each entry has liquidated by operation of law and will be dated with the date of liquidation by operation of law.

(ii) For liquidation notices that were posted or lodged in the customhouse, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof was posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(iii) For liquidation notices posted on *www.cbp.gov,* pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date notice thereof is posted on *www.cbp.gov,* or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide the entry filer or its agent and the surety on an entry with a courtesy notice of liquidation for all electronically filed entries liquidated by CBP or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to a CBP authorized electronic data interchange system if the entry was filed electronically in accordance with part 143 of this chapter. This notice will serve as an informal, courtesy notice

[14] The time cost estimate is equal to the assumed hourly wage for importers ($30.09) multiplied by the estimated hourly time burden for a trade member to travel to and from a U.S. customhouse or station (0.75 hours), and then rounded.

[15] Source of miles traveled: Based on estimates from CBP's Office of Trade on May 2, 2016. Source of mileage rate: Internal Revenue Service. *2016 Standard Mileage Rates for Business, Medical and Moving Announced.* IR–2015–137, December 17, 2015. Available at *https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced.* Accessed April 19, 2016.

and not as a direct, formal, and decisive notice of liquidation.

§ 159.10 [Amended]

■ 3. Section 159.10 is amended as follows:

■ a. By removing the words ''posting or lodging of'' from the last sentence in paragraph (b);

■ b. By removing the words ''on CBP Form 4333 posted or lodged'' from the last sentence of paragraph (c)(1); and

■ c. By removing the words ''on a bulletin notice of liquidation, CBP Form 4333,'' from the last sentence of paragraph (c)(3).

■ 4. In § 159.11, paragraph (a) is revised to read as follows:

§ 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated within one year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this part. CBP will endeavor to provide a courtesy notice of liquidation in accordance with § 159.9(d).

* * * * *

■ 5. In § 159.12, revise paragraphs (b), (c), (d)(2), and (f) and remove paragraph (g).

The revisions read as follows:

§ 159.12 Extension of time for liquidation.

* * * * *

(b) *Notice of extension.* If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, the official notice of extension and reasons therefor will be posted on *www.cbp.gov.* The notice of extension will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting. The port director will also endeavor to transmit a courtesy notice of extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the official notice of suspension will be posted on *www.cbp.gov.* The notice of suspension will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting. The port director will also endeavor to transmit a courtesy notice of suspension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(d) * * *

(2) *At importer's request.* If the statutory period has been extended for one year at the importer's request, and the importer thereafter determines that additional time is necessary, it may request another extension in writing before the original extension expires, giving reasons for its request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, the official notice of extension extending the time for liquidation for an additional period not to exceed one year will be posted on *www.cbp.gov,* and CBP will provide courtesy notice of the extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

* * * * *

(f) *Time limitation.* An entry not liquidated within four years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with § 159.9(d), in addition to the notice specified in § 159.9(c)(2)(i).

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

■ 6. The general authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

■ 7. Revise § 173.4a to read as follows:

§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid, the port director may, prior to liquidation of an entry or reconciliation, take appropriate action to refund the deposit or payment of excess duties, fees, charges, or exactions.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: December 6, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–29656 Filed 12–9–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–5792–C–02]

RIN 2501–AD69

Changes to HOME Investment Partnerships (HOME) Program Commitment Requirement; Correction

AGENCY: Office of General Counsel, HUD.

ACTION: Interim final rule; correction.

SUMMARY: On December 2, 2016, HUD published an interim final rule that changes the commitment requirement of the HOME Investment Partnerships (HOME) Program. After publication, HUD discovered that the effective dates and comment due dates were inadvertently reversed. This document corrects the preamble to reflect a 30-day effective date and a 60-day comment period.

DATES: *Effective Date:* The corrected effective date for HUD's interim rule published on December 2, 2016 (81 FR 86947), is January 3, 2017.

FOR FURTHER INFORMATION CONTACT: With respect to this supplementary document, contact Ariel Pereira, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: In the interim final rule FR Doc. 2016–28591, published on December 2, 2016, the following correction is made:

On page 86947, in the first column, correct the **DATES** section to read as follows:

Dates: Effective Date: January 3, 2017.

Comment Due Date: January 31, 2017.

Dated: December 6, 2016.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2016–29643 Filed 12–9–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1037]

Drawbridge Operation Regulation; Connecticut River, East Haddam, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Route 82 Bridge across the Connecticut River, mile 16.8, at East Haddam, Connecticut. This deviation is necessary to allow the bridge owner to perform emergency repairs at the bridge. This deviation allows the bridge to be opened with a 15 minute advance notice during the hours of 7 a.m. through 5 p.m. on December 20, 2016 and December 27, 2016.

DATES: This deviation is effective from 7 a.m. on December 20, 2016 to 5 p.m. on December 27, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–1037] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Route 82 Bridge, mile 16.8, across the Connecticut River, has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.205(c).

The waterway is transited by seasonal recreational traffic and some commercial barge traffic of various sizes.

The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the normal operating schedule to perform emergency repairs at the bridge.

Under this temporary deviation, the Route 82 Bridge shall open on signal on December 20, 2016 between 7 a.m. and 5 p.m. and on December 27, 2016 between 7 a.m. and 5 p.m. if at least 15 minutes advance notice is given by calling the number posted at the bridge.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 7, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–29732 Filed 12–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2016–0053]

RIN 0651–AD13

Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office published in the **Federal Register** on October 7, 2016 a final rule, which will become effective on January 14, 2017, revising the Rules of Practice before the Trademark Trial and Appeal Board. This document corrects errors in certain cross-references, clarifies the manner of testimony taken in a foreign country and the process in depositions upon written questions, and reincorporates the time frames for cross appeals and cross actions in that rule.

DATES: This rule is effective January 14, 2017, and applies to all proceedings pending on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Cheryl Butler, Trademark Trial and Appeal Board, by email at *TTABFRNotices@uspto.gov,* or by telephone at (571) 272–4259.

SUPPLEMENTARY INFORMATION: The USPTO issues this final rule to correct inadvertent errors in certain cross-references in §§ 2.124(f) and 2.126(c), to clarify the manner of testimony taken in a foreign country in § 2.123(a)(2), to clearly incorporate cross-examination in the process of depositions upon written questions in § 2.124(d)(1), and to reincorporate explicit timing requirements for cross-appeals and cross-actions in § 2.145(d)(1) and (3) of its October 7, 2016 final rule revising the Trademark Trial and Appeal Board Rules of Practice. (81 FR 69950) (published under RIN 0651–AC35).

The first sentence of § 2.123(a)(2) is clarified to separate motions to take depositions upon written questions by oral examination from testimony by affidavit or declaration. To implement this clarification, the phrase ''A testimonial deposition'' is replaced with ''Testimony'' and the clause ''by affidavit or declaration, subject to the right of any adverse party to elect to take and bear the expense of cross-examination by written questions of that witness'' is moved to clearly delineate it.

The first sentence of § 2.124(d)(1) should cross reference paragraphs (b)(1) and (2) rather than only (b). A paragraph was added to § 2.124(b) which operated to renumber that section, and the cross reference was not updated. In addition, in the first, third and sixth sentences, further clarification was needed to clearly incorporate the timing for cross-examination upon written questions of testimony by affidavit or declaration.

The second sentence of § 2.124(f) should cross reference § 2.125(c) rather than § 2.125(b). A paragraph was added to § 2.125, which operated to renumber that section, and the cross reference was not updated.

The first sentence of § 2.126(c) should cross reference § 2.125(f) rather than § 2.125(e). A paragraph was added to § 2.125, which operated to renumber that section, and the cross reference was not updated.

The October 7, 2016 final rule amended the timing requirements for appeals and civil actions, but inadvertently omitted the timing requirement for cross-actions from § 2.145(d)(3). Therefore, this correction revises the last sentence in § 2.145(d)(3)

to reincorporate the timing requirement for cross-actions. Also, this correction revises § 2.145(d)(1) concerning cross-appeals to have consistency between § 2.145(d)(3) and (d)(1).

This correcting rule may be issued without prior notice and opportunity for comment as the corrections are nonsubstantive and being implemented to avoid inconsistencies and confusion with the rule issued on October 7, 2016. The USPTO corrects the errors as discussed below.

In FR Doc. 2016–23092, published on October 7, 2016 (81 FR 69950), make the following corrections:

§ 2.123 [Corrected]

■ 1. On page 69981, column 2, in paragraph (a)(2) of § 2.123, the first sentence is corrected to read ''Testimony taken in a foreign country shall be taken: by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate; or by affidavit or declaration, subject to the right of any adverse party to elect to take and bear the expense of cross-examination by written questions of that witness.''

§ 2.124 [Corrected]

■ 2. On page 69982, column 3, in paragraph (d)(1) of § 2.124:

■ i. The cross reference to ''paragraph (b)'' is corrected to read ''paragraphs (b)(1) and (2)'';

■ ii. The term ''direct testimony'' is corrected to read ''direct examination'' in both instances;

■ iii. In the third sentence the phrase ''or service of a testimony affidavit or declaration,'' is added before the phrase ''any adverse party may serve cross questions upon the party who proposes to take the deposition''; and

■ iv. In the sixth sentence the phrase ''or who earlier offered testimony of the witness by affidavit or declaration'' is added after the phrase ''any party who served cross questions may serve recross questions upon the party who proposes to take the deposition''.

■ 3. On page 69983, column 1, in paragraph (f) of § 2.124, the cross reference to ''§ 2.125(b)'' is corrected to read ''§ 2.125(c)''.

§ 2.126 [Corrected]

■ 4. On page 69983, column 3, in paragraph (c) of § 2.126, the cross reference to ''§ 2.125(e)'' is corrected to read ''§ 2.125(f)''.

§ 2.145 [Corrected]

■ 5. On page 69987, column 2, in paragraph (d)(1) of § 2.145, the last sentence is removed and added in its place is ''In inter partes cases, the time for filing a notice of cross-appeal expires 14 days after service of the notice of appeal or 63 days from the date of the decision of the Trademark Trial and Appeal Board or the Director, whichever is later.''

■ 6. On page 69987, column 2, in paragraph (d)(3) of § 2.145, this final sentence is added ''In inter partes cases, the time for filing a cross-action expires 14 days after service of the summons and complaint or 63 days from the date of the decision of the Trademark Trial and Appeal Board or the Director, whichever is later.''

Dated: December 6, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–29728 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP35

Tiered Pharmacy Copayments for Medications

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule, with changes, a proposal to amend its regulations concerning copayments charged to certain veterans for medication required on an outpatient basis to treat nonservice-connected conditions. Prior to this final rule, VA charged non-exempt veterans either $8 or $9 for each 30-day or less supply of medication, and that amount may have changed in future years. This rulemaking replaces those rates and establishes three classes of medications for copayment purposes, identified as Tier 1, Tier 2, and Tier 3. These tiers are defined further in the rulemaking and are distinguished in part based on whether the medications are available from multiple sources or a single source, with some exceptions. Copayment amounts are fixed and would vary depending upon the class of medication. The following medication copayment amounts are applicable on the effective date of this final rule: $5 for a 30-day or less supply of a Tier 1 medication, $8 for a 30-day or less supply of a Tier 2 medication, and $11 for a 30-day or less supply of a Tier 3 medication. For non-exempt veterans these copayment amounts will result in lower out-of-pocket costs, thereby encouraging greater adherence to taking prescribed medications and reducing the risk of fragmented care that results when veterans use non-VA pharmacies to fill their prescriptions. The proposed rule was published on January 5, 2016 and the public comment period closed on March 7, 2016. We received nine comments and respond to these comments here.

DATES: *Effective Date:* This rule is effective on February 27, 2017.

FOR FURTHER INFORMATION CONTACT: Bridget Souza, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2537. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1722A(a), VA must require veterans to pay at least a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition, unless the veteran is exempt from having to pay a copayment because the veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. VA has the authority under 38 U.S.C. 1722A(b) to increase that copayment amount and establish a maximum annual copayment amount (a ''cap'') through regulation. We have implemented this statute in 38 CFR 17.110. Both the copayment amount for certain priority groups, as well as an annual cap on those copayments, are addressed in 38 CFR 17.110(b).

On January 5, 2016, we proposed a new medication copayment formula, in order to address longstanding concerns that the regulatory formula VA had been using was not competitive with non-VA retail copayment structures, lacked parity, may result in decreased medication adherence, and increased the likelihood of fragmented care due to price-shopping. 81 FR 196. The public comment period closed March 7, 2016, and we received nine comments, all of which were generally supportive. Several commenters expressed strong support for lowering the annual medication copayment amount. However, several commenters urged VA to make changes to different aspects of

the proposed rule. The majority of the comments focused on the definition of multi-source medication. We address those comments, and make changes to the rulemaking as noted below.

The new regulatory formula established by this rule focuses on the type of medication being prescribed and would remove the automatic escalator provision, meaning that changes in copayments would only occur through subsequent rulemakings. Veterans exempt by law from copayments under 38 U.S.C. 1722A(a)(3) continue to be exempt. This VA rulemaking includes a definition of ''medication'' and ''multi-source medication.'' We also establish three classes of medications for copayment purposes: Tier 1 medications, Tier 2 medications, and Tier 3 medications. Tiers 1 and 2 includes multi-source medications, a term that is defined in § 17.110(b)(1)(iv). Tier 3 includes medications that retain patent protection and exclusivity and are not multi-source medications. Copayment amounts vary depending upon the Tier in which the medication is classified. A 30-day or less supply of Tier 1 medications has a copayment of $5. For Tier 2 medications, the copayment is $8, and for Tier 3 medications, the copayment is $11. The rule also changes the annual cap for medication copayments, lowering the cap to $700 for all veterans who are required to pay medication copayments.

On September 16, 2015, VA published a final rule maintaining, through December 31, 2016, medication copayment amounts at the 2014 rate for certain priority groups ($8 for veterans in priority groups 2–6 and $9 for veterans in priority groups 7 and 8). See 80 FR 55544. VA anticipated at that time that necessary information technology (IT) structure changes would be in place by December 31, 2016, allowing the current rulemaking to have an effective date of January 1, 2017. However, those changes will not be ready for a full roll-out until February 27, 2017. The effective date of this final rule is February 27, 2017. VA published a separate rulemaking that will extend the current copayment freeze until the effective date of the present rulemaking. The end result is that the higher annual copayment cap of $960 will be in effect through February 26, 2017, and the lower annual cap of $700 will apply the following day. We believe it is unlikely that a veteran will pay more than $700 in medication copayments during the short period of time before the lower annual cap goes into effect. However, in the event that any veteran exceeds the $700 cap in this final rule, before the rule takes effect, VA will refund the amount in excess of the $700 cap to the veteran.

Definition of the Term ''Medication''

In paragraph (a) of proposed section 17.110, we proposed that for the purposes of this section, the term ''medication'' would mean prescription and over-the-counter medications as determined by FDA. One commenter noted that the term ''medication'' is not a regulatory term of art used by FDA and FDA does not determine whether an item is medication. The commenter stated that the rule should instead refer to the regulatory approval authorities for drugs and biologics, section 505 of the Food Drug and Cosmetic Act (FDCA) for drugs, and section 351 of the Public Health Service Act (PHSA) for biologics. The commenter stated that citing these authorities would clarify that the term ''medication'' does not include medical supplies, nutritional items, and devices.

Section 505 of the FDCA is codified at 21 U.S.C. 355 (New drugs) and 355–1 (Risk evaluation and mitigation strategies). Citing the former would inappropriately limit the definition of ''medication'' to new drugs, and citing the latter would address only those instances where FDA determines that a risk evaluation and mitigation strategy is necessary to ensure that the benefits of a new drug outweigh the risks of the drug. While section 351 of the PHSA is applicable to the approval of all biologics, VA believes that it would be potentially confusing to the public if the rulemaking cited to statutory authority related to biologics but not for drugs. However, VA agrees with the commenter's concern that medical supplies and devices are not specifically excluded from the definition of ''medication.'' We have amended the definition accordingly to exclude medical supplies and devices. We also specifically excluded oral nutritional supplements from the definition of ''medication'' because they are exempt from copayments. Oral nutritional supplements are commercially prepared nutritionally enhanced products used to supplement the intake of individuals who cannot meet nutrient needs by diet alone.

Definition of ''Multi-Source Medication'': General Comments

One commenter stated that the definition of multi-source medication in § 17.110(b)(2)(A) is inappropriately broad, misaligned with the conventional use and understanding of the term, risks public confusion, and poses a potential risk to patient safety. The commenter stated that the term is typically used to describe only those drugs that FDA has determined to be therapeutically equivalent (*i.e.,* pharmaceutically equivalent and bioequivalent), and that FDA's definition is also consistent with Centers for Medicare and Medicaid Services' regulatory use of the term ''multiple source'' for purposes of the Medicare and Medicaid programs.

Another commenter stated that the definition of ''multi-source medication'' ''includes multiple categories of drugs defined separately under the Medicaid Drug Rebate Program in 42 U.S.C. 1396r–8(k)(7)(A) as 'multiple source drug,' 'innovator multiple source drug,' 'non-innovator multiple source drug,' and 'single source drug.'" The commenter asserts that VA's proposed definition of multi-source medication conflicts with these statutory definitions. Another commenter stated that the proposed definition of multi-source medication contributes to nonuniformity in federal regulations, noting that TRICARE regulations at 32 CFR 199.21(j) classify generic medications as multi-source products, and specifically define that term.

In response to these commenters, we note that our definition of multi-source medication is intentionally broad to differentiate medication that would fall under Tiers 1 and 2 from those in Tier 3 in the regulation. We determined that the use of a single term to describe medications that do not retain patent protection and exclusivity is appropriate because veterans receiving care from VA, not drug manufacturers, are primarily affected by this rulemaking. VA considered several options on how to address the types of medications we include in the definition of multi-source medications in § 17.110(b)(1)(iv)(A). Our primary considerations were to ensure, first, that the types of medications were adequately defined and, second, that the rulemaking clearly states to which copayment tier each of these types of medications is assigned. It became evident during the drafting process that treating the types of medications currently described in § 17.110(b)(1)(iv)(A) as separately-defined terms was problematic, because adding multiple definitions could lead to confusion. VA believes that using a single term to refer to types of medication with a shared major characteristic is less confusing than referring to multiple separate definitions. The characteristic shared by each type of medication in current § 17.110(b)(1)(iv)(A) is that it is available from multiple sources. VA believes that using the term ''multi-source medication'' has a lower risk of confusing the public than does the use

of separate terms like those suggested by the commenter. The various Medicaid definitions referred to by the commenters are necessary for administration of medication payments or reimbursement by Medicaid to states, retail or hospital pharmacies, other health care providers, and drug manufacturers. That degree of differentiation in definitions is unnecessary for tiered copayment purposes, and would lead to confusion in our veteran population. Likewise, adopting definitions of similar terms used by Medicaid would not be helpful to veterans, as the Medicaid definitions of terms were drafted to serve another purpose and were targeted to their specific audience. As one commenter stated, TRICARE regulations do classify generic drugs as multi-source products. However, as noted above, several classes of medications can properly be described as being multi-source. As the definition of multi-source medication in this rulemaking relates solely to determining whether a particular medication should be in one of three tiers for purposes of VA medication copayments, we do not anticipate that nonuniformity of VA and other agencies' terms will be a problem. We make no changes based on these comments.

Two commenters stated that VA should clarify that the definition of ''multi-source medication'' applies only to VA's copayment structure in order to avoid confusion given the use of similar terminology in other federal regulations. We specify in § 17.110(b)(1)(iv) that the definition of ''multi-source medication'' is for purposes of that section only. We make no changes based on these comments.

Definition of ''Multi-Source Medication'': Biosimilarity and Interchangeability

In paragraph (b)(1)(iv)(A)(*1*)(*ii*) we proposed that the term ''multi-source medication'' would include a medication that has been and remains approved by FDA under section 351(k) of PHSA (42 U.S.C. 262), and has been granted an I or B rating in the current version of the FDA's Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations (the Purple Book). We received multiple, highly technical comments on this issue, which are summarized below. After the summary, we respond to the comments.

Several commenters stated that VA should clarify that it defers to FDA regarding both therapeutic equivalence for drugs and interchangeability for biological products. The commenters asserted that by defining multi-source medication to mean, in part, a medication that has been granted an I or B rating by FDA, VA would treat both biological products that FDA has determined to be interchangeable (I rated) and those deemed biosimilar (B rated) exactly the same. The commenters stated that the proposed rule erroneously conflates entirely the two very distinct approval standards for these two very distinct categories of biological products.

Several commenters stated that the proposed rulemaking failed to recognize the significant differences between generic drugs and biosimilar products. The commenters noted that biosimilar products are not necessarily interchangeable. Whereas drugs typically have small molecule structures that can be completely defined and entirely reproduced, biologics are large-protein molecules that are generally more complex, and reproductions are unlikely to be shown to be structurally identical to the innovator product. In recognition of this difference, the Biologics Price Competition and Innovation Act of 2009 (BPCIA) established separate approval standards for biosimilar and interchangeable biological products, distinct from standards for generic drugs. Generic drugs must be the same as a previously approved Reference Product, and are approved for the same indications. In contrast, to receive FDA approval, biosimilar products must be demonstrated to be ''highly similar,'' but not identical, to the innovator product. Approved B rated biosimilar products have not been determined by FDA to be safe for substitution with the Reference Product. Biologics must meet additional criteria established by the FDA to be interchangeable, or I rated. One commenter urged VA to exclude biosimilar products that FDA has not determined to be interchangeable from the definition of multi-source medication. In the alternative, the commenter stated that VA should clarify that a biological product licensed by FDA as a biosimilar is not interchangeable absent an FDA determination of such.

Commenters noted that the BPCIA sets forth criteria for a biologic being rated as a biosimilar product, and two additional requirements for interchangeability. Only those biosimilar products that have met these two additional criteria are deemed by FDA to be interchangeable. Two commenters stated that FDA sets a higher standard for interchangeability of biological products and other related biosimilar products than it does for biosimilarity or therapeutic equivalence for smaller molecule drugs. The commenters stated that, in the absence of the robust data that FDA requires to make a determination regarding biosimilarity or interchangeability, VA could potentially place patients at significant risk.

One commenter stated that the proposed rulemaking encourages the use of the lowest cost biosimilar regardless of interchangeability and whether the biosimilar has been tested for the indication for which it is prescribed.

One commenter noted that there are some smaller molecule drugs that have not been determined by FDA to be therapeutically equivalent. The commenter stated that VA should consider the unique safety questions surrounding substitution of biological products, including those that have been determined to be biosimilar, especially with regard to immunogenicity.

One commenter stated that VA should clarify that B rated biological products have not been approved as interchangeable with the reference Product. FDA approval as an interchangeable biological product (I rated) requires the successful demonstration of an entirely separate and more rigorous set of standards. The commenter states that VA should clarify that the inclusion of B rated biologics in the definition of multi-source medication does not imply that B rated biologics have been determined by FDA to be interchangeable.

We appreciate the complete analyses provided by the commenters on the topic of biosimilarity and interchangeability, and we have made changes to the regulation responsive to their concerns. Our reasoning follows.

The Purple Book lists biological products, including any biosimilar and interchangeable biological products licensed by FDA under the PHSA. The lists include the date a biological product was licensed under 351(a) of the PHSA and whether FDA evaluated the biological product for reference product exclusivity under section 351(k)(7) of the PHSA. The Purple Book enables a user to see whether a biological product licensed under section 351(k) of the PHSA has been determined by FDA to be biosimilar to or interchangeable with a reference biological product (an already-licensed FDA biological product). Biosimilar and interchangeable biological products licensed under section 351(k) of the PHSA are listed under the reference

product to which biosimilarity or interchangeability was demonstrated.

The BPCIA was enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148) on March 23, 2010. The BPCIA amends the PHSA and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to or interchangeable with an FDA-licensed biological reference product (see sections 7001 through 7003 of the Affordable Care Act). Section 351(k) of the PHSA, added by the BPCIA, sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. There are three relevant definitions in this statute.

Section 351(i) defines biosimilarity to mean that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components and that there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product.

To meet the standard for interchangeability, an applicant must provide sufficient information to demonstrate that the biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient. Additionally, if the biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch (see section 351(k)(4) of the PHSA). Interchangeable products may be substituted for the reference product by a pharmacist without the intervention of the prescribing health care provider (see section 351(i)(3) of the PHSA).

Reference product means the single biological product licensed under section 351(a) of the PHSA against which a biological product is evaluated in a 351(k) application (section 351(i)(4) of the PHSA).

The definition of multi-source medication in this rulemaking was crafted for only one purpose—to differentiate several classes of medication (including drugs and biologics) that can be termed either Tier 1 or 2 for medication copayment purposes. This definition does not equate an I rated product with one that is B rated by FDA. Nor does it conflict with or supersede a determination by FDA that a particular drug is the therapeutic equivalent of another, or that two biologics are biosimilar. The Purple Book lists biological products, including any biosimilar and interchangeable biological products licensed by FDA, and the definition of multi-source medication at paragraph (b)(1)(iv)(A)(*1*)(*ii*) recognizes that fact and categorizes those already-licensed products for VA's purposes. We have added clarifying language to indicate that VA defers to FDA regarding both therapeutic equivalence for drugs and interchangeability for biological products.

We do not agree with the commenter concerned that the rulemaking encourages the use of the lowest cost biosimilar regardless of interchangeability and whether it has been tested for the indication for which it is prescribed. A VA health care provider makes decisions on prescribing specific medications based on the clinical need of the individual patient being treated for a given illness or condition. Prescribing decisions are generally limited to those medications included in the VA National Formulary, which is discussed in greater detail below. If a particular medication is not available, sound clinical practice is for the health care provider to select an alternate medication that is interchangeable or otherwise approved by the FDA for treatment of the illness or medical condition. Cost is only one of several factors considered when VA determines which medications are on the National Formulary. In general, individual prescribing choices are influenced by medication copayment charges only when the issue is raised by the veteran, and only in those instances where a clinically justifiable alternative is available. We make no changes based on this comment.

Definition of ''Multi-Source Medication'': Substitutability

In paragraph (b)(1)(iv)(A)(*3*) we proposed that the term ''multi-source medication'' would include a medication that has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a); and has the same active ingredient or active ingredients, works in the same way and in a comparable amount of time, and is determined by VA to be substitutable for another medication that has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a).

One commenter expressed concerns that the proposed rule gives VA total discretion to determine whether two approved drugs or biological products are ''substitutable.'' The commenter stated that VA should defer to FDA's determination of therapeutic equivalence and interchangeability when making decisions regarding substitutability of products.

The commenter also expressed concern that VA's determination that products are substitutable may be misconstrued by the public as indicating that the products have been determined by FDA to be interchangeable or therapeutically equivalent when they are not.

One commenter stated that the portion of the proposed rulemaking addressing substitutability is written in a manner to suggest that there may be more treatment options, and thus there are competitive forces at play, when certain drugs and biologics have the ''same active ingredient or ingredients, work . . . in the same way, and in a comparable amount of time.'' The commenter argued that it is outside VA's authority to determine when products are ''substitutable'' with one another. The commenter stated that it is FDA's scientific determinations about therapeutic equivalence (for small molecule drugs) and interchangeability (for biologic products) that impact substitutability determinations.

VA agrees that FDA determinations regarding therapeutic equivalence and interchangeability are important considerations. However, substitutability is not the same as therapeutic equivalence or interchangeability. Whether one medication can be substituted for another is a clinical decision made by a health care provider, based on sound clinical judgment, and the decision should be evidence-based. A health care provider may decide to substitute one medication for another to treat a given medical condition for several reasons including, but not limited to, a comparison of relative side effects, contraindications, and potential adverse reactions; patient tolerance of one medication over another; a request by the patient; or an effort to decrease costs for the patient while achieving the same or similar benefits. Therapeutic equivalence and interchangeability may play a part in the decision-making process, dependent upon the range of treatment options available to the health care provider. When therapeutic equivalence and interchangeability are considerations, FDA determinations on these issues are highly relevant. We make no changes based on this comment.

Definition of ''Multi-Source Medication'': Authorized Generics

In paragraph (b)(1)(iv)(A)(*4*) we state that the term ''multi-source medication'' would also include a medication that is a listed drug, as defined in 21 CFR 314.3, that has been approved under FDCA section 505(c) and is marketed, sold, or distributed directly or indirectly to retail class of trade with either labeling, packaging (other than repackaging as the listed drug in blister packs, unit doses, or similar packaging for use in institutions), product code, labeler code, trade name, or trademark that differs from that of the listed drug. The definition in paragraph (b)(1)(iv)(A)(*4*) is substantively identical to the definition of ''authorized generic drug'' found in FDA regulations at 21 CFR 314.3.

One commenter stated that this definition unfairly precludes drugs approved as brand drugs and marketed as generics (authorized generics) from being included as a multiple-source medication at the Tier 1 or 2 copayment amount if there is no generic source rated in the Orange Book or if a drug approved as a brand drug is not lower in cost than other generic sources.

For clarification, the FDA publication ''Approved Drug Products with Therapeutic Equivalence Evaluations'' is commonly known as the Orange Book. The Orange Book identifies drug products approved on the basis of safety and effectiveness by the FDA under the FDCA. The publication does not include drugs on the market approved only on the basis of safety covered by the ongoing Drug Efficacy Study Implementation review or pre-1938 drugs. The main criterion for the inclusion of any product is that the product is the subject of an application with an effective approval that has not been withdrawn for safety or efficacy reasons. In addition, the Orange Book contains therapeutic equivalence evaluations for approved generic drugs. Finally, the Orange Book lists patents that are purported to protect each drug.

The commenter stated that it is unfair to charge veterans more for an authorized generic drug simply because there is no marketed generic drug approved under section 505(j), or when VA's cost for a drug approved as a brand drug is only slightly higher than another generic source.

Nothing in this rulemaking precludes an authorized generic drug from inclusion in either Tier 1 or 2. Authorized generics are prescription drugs produced by brand pharmaceutical companies and marketed under a private label, at generic prices. Authorized generics compete with generic products in that they are identical to their brand counterpart in both active and inactive ingredients, while generic drugs are required to contain only the same active ingredient as the brand name. Pharmaceutical manufacturers typically launch an authorized generic when patent protection and exclusivity have expired, and the authorized generic competes in the marketplace against any generic equivalents approved by FDA.

The three classes of medications defined for copayment purposes, Tier 1, Tier 2, and Tier 3, are found in paragraph (b)(1)(iv)(B)–(D). Multi-source medications generally fall under either Tier 1 or 2; placement in either tier being governed by whether the medication meets all the criteria found at paragraph (b)(2) for Tier 1 placement. The only medications that would fall under Tier 3 are those approved by the FDA under a New Drug Application (NDA) or a biological product approved by the FDA pursuant to a biologics license agreement (BLA) that retains its patent protection and exclusivity. The definition of multi-source medication specifically includes authorized generic drugs at paragraph (b)(1)(iv)(A)(*4*). There is nothing in the criteria for inclusion in Tier 1 or 2 that would disqualify an authorized generic because no other generic equivalent had yet been approved by FDA.

The comment does highlight two elements of the Tier 3 definition that may cause confusion: Patent protection and exclusivity. Tier 3 medication includes medications approved by FDA under a NDA that retains exclusivity. An authorized generic medication is manufactured by the original patent holder under a NDA, but is not marketed under the brand name. While an authorized generic medication may not retain exclusivity for patent purposes, the term ''exclusivity'' does come into play. Authorized generic medications are typically brought to the market during the 180-day exclusivity period during which a first filer of an Abbreviated New Drug Application (ANDA) under the Drug Price Competition and Patent Term Restoration Act (Pub. L. 98–417) can bring to market a generic version of the brand name drug. During this 180 day period no other manufacturer may market a generic version of the medication, other than the original patent holder who can market the authorized generic. To clarify the scope of Tier 3, we will amend the definition of Tier 3 to explicitly state that Tier 3 does not include authorized generic medications defined in paragraph (b)(1)(iv)(A)(*4*).

The commenter further stated that if the concern is that multiple source drug prices be competitive, the requirement should be that a drug approved as a brand drug be equivalent in cost to a generic version not lower in cost, particularly given generic drug pricing volatility. As noted above, the comment is based on an incorrect analysis of the definition of multi-source medication and what is included in each tier for copayment purposes. Authorized generic medications (which are generic versions of a medication that is marketed by the brand drug manufacturer) are not included in Tier 3. By definition, authorized generic medications are considered multi-source medication at paragraph (b)(1)(iv)(A)(*4*). A drug approved by the FDA as a brand drug is considered under this rule in one of two ways, dependent on whether the drug is marketed as both a brand drug and authorized generic medication, or solely as a brand drug. In the latter case, the brand drug would be considered a Tier 3 medication, while in the former case the authorized generic medication would be either a Tier 1 or 2, and the brand drug would be Tier 3. This differentiation between an authorized generic medication and a brand drug is consistent with how many non-VA health insurers categorize these products. The commenter correctly states that generic drug pricing can be volatile. However, VA has been successful at stabilizing generic drug acquisition prices through a variety of government contract vehicles and therefore has minimized generic price volatility. Generic price volatility is not the primary determining factor in whether an authorized generic medication is Tier 1 or 2. We do not agree with the commenter that VA should require brand drug to be equivalent to either the authorized generic version of that drug, or other generic versions of that drug. Finally, the description of authorized generic medication in paragraph (b)(1)(iv)(A)(*4*) does not include a requirement that the medication be lower in cost; that requirement is in (b)(1)(iv)(A)(*2*)(*iii*) and is not applicable to authorized generic medication. We make no change based on this comment.

Tier Structure

One commenter stated that, while the proposed rule is intended to align medication copayments charged by VA with commercial practice, the three-tiered system deviates further from established commercial practice than

the current two-tiered system. The commenter stated that the proposed three-tiered model will lead to confusion, and veterans may be less likely to fill needed prescriptions.

The primary purpose of this rulemaking is not to strictly align VA's medication copayment structure with commercial practice. Rather, it is to make medication copayments more affordable to the greatest number of affected veterans, while recognizing differences in costs of those medications to VA and the effect of that differential for veterans who may exercise a non-VA retail option. The previously utilized two-tiered system was inflexible and nonresponsive to changing conditions, and resulted in some veterans bearing a heavy financial burden to obtain necessary medication. We make no changes based on this comment.

One commenter was concerned that a single source drug or biologic for which there is no generic version is precluded from Tier 2, even where there is a therapeutic alternative that is also a single source drug or biologic. The commenter noted that single source drugs on the VA National Formulary may be clinically effective and cost effective compared to alternative treatments. The VA National Formulary is a listing of products (drugs and supplies) that must be available for prescription at all VA facilities. Only those products that actually have been approved by FDA under a NDA, ANDA, or biologics license, may be added to the National Formulary.

The commenter stated that many high use medications, such as oncology drugs and biologics, are for conditions for which no drug is available under another tier and which may not be on the VA formulary. The commenter asserted that the proposed tier structure will increase costs of these medications for veterans.

One commenter did not support the tiered copayment model, specifically Tier 3. The commenter argued that requiring higher copayments for Tier 3 medication penalizes veterans who benefit from newer medication, those who have no other option than using medication that retain patent protection and exclusivity to treat their medical condition. The commenter further stated that raising copayment amounts may force veterans to pick and choose which of several medications they will fill.

A medication is considered a therapeutic alternative if that medication differs chemically from the medication prescribed, but has the same therapeutic effect as the prescribed medication. An example is the various classes of calcium channel blockers that are prescribed to treat hypertension. One calcium channel blocking medication could be considered a therapeutic alternative to another, dependent upon case-specific factors. Placement of a medication into any of the three copayment tiers is not dependent on whether a therapeutic alternative exists. Rather, the issue is whether a particular medication is a multi-source or single source medication, and whether (in the case of a multi-source medication) the medication qualifies for Tier 1. The primary criteria for determining whether a medication is single source or multi-source is if it is a medication approved by the FDA under a New Drug Application (NDA) or a biological product approved by the FDA pursuant to a biologics license agreement (BLA) that retains its patent protection and exclusivity and is not a multi-source medication identified in paragraph (b)(1)(iv)(A)(*3*) or (*4*). Using ''therapeutic alternative'' as the touchstone to determine whether a medication is single source would not be consistent with the common usage of that term, and would be difficult to administer since medications may sometimes be prescribed to treat several different medical conditions. For one indication, medication X may be the therapeutic alternative to medication Y, and for another indication would be the therapeutic alternative to medication B.

Medication copayment amounts paid in non-VA pharmacies vary dependent upon whether the prescription is for a generic or brand name medication. The tiered copayment structure in this rulemaking follows the same pattern. What is commonly referred to as a brand name medication is equivalent to a medication that would fall under Tier 3. VA estimates that approximately 15 percent of billable prescriptions dispensed in a year will be in Tier 3, and that the total copayments for veterans prescribed Tier 3 medications will remain the same for many veterans and will decrease for a sizable portion. A reduction in the copayment cap provides a unique benefit to veterans who exclusively use Tier 3 medications. The total annual copayment costs for these veterans will not exceed $700, whereas under the prior regulations the costs would be $960, or more for those veterans in priority groups 7 or 8 that are not currently subject to a cap. So, while some veterans may still decide not to fill all of their prescriptions, we estimate that fewer will do so for financial reasons as a result of these changes.

We note that a veteran may request a waiver of medication copayment charges, as provided for in 38 CFR 17.105(c). That section states that the veterans must submit a form requesting a waiver, and that a hearing may be requested. We make no changes based on these comments.

Copayment Amounts

Two commenters stated that this rule will still result in veterans being subject to copayments higher than they would have to pay in a non-VA pharmacy. One commenter argued that VA should offer the same copayment rates available in non-VA pharmacies.

In the impact analysis published concurrently with the proposed rule, VA considered the potential costs or savings to veterans as a result of this rulemaking. Based on a comparison of the current and proposed copayment amounts, we anticipate that most veterans would realize between a 10 and 50 percent reduction in their overall pharmacy copayment liability each year based on historic utilization patterns. By our estimates, 94 percent of copayment eligible veterans would experience no cost increase, and 80 percent would realize a savings of between $1 and $5 per 30-day equivalent of medications. While a small percentage of veterans may experience a small increase in medication copayments, a large majority will encounter no cost increase, or will realize savings, as a result of this rulemaking.

Medication copayment amounts vary widely between different non-VA pharmacies and under commercial health insurer policies, due to many factors. There is no standard non-VA medication copayment rate structure that can be used as a model for creating a copayment structure in VA. Uniformly adopting the lowest level of copayments found outside of VA would result in a copayment system that is not sustainable in the long term, and could possibly violate statutory requirements in 38 U.S.C. 1722A(a), which requires VA to charge a minimum copayment, with certain limited exceptions. VA believes that this rulemaking will result in copayment amounts that will benefit the greatest number of veterans. We make no changes based on these comments.

One commenter stated that manufacturers may be providing VA with competitive prices to increase market share of a single source drug within a therapeutic class, and the lower cost to VA should be passed along to veterans through a lower tier copayment amount. Given the number of pharmaceutical manufacturers and suppliers VA contracts with, and the varying terms and lengths of these

contracts, determining copayments amounts on an individual contract basis would be difficult from an administrative standpoint and could lead to uncertainty as to the amount an individual veteran would pay for a medication copayment. In addition, this could result in different copayments for the same medication where more than one manufacturer or supplier provides that medication. Under this rulemaking, VA does include acquisition cost as an element considered in determining whether a medication will be included in Tier 1. See paragraph (b)(2). We make no changes based on this comment.

Exemption From Copayments

One commenter stated that if a large number of veterans are diagnosed with any one medical condition such as hypertension, medication to treat that condition should be considered service-connected and exempt from copayments. Another commenter stated that any veteran who has served in the military over 20 years, or served in a war or conflict, should be exempt from medication copayments. The commenter also stated that a pool of emergency funds should be set aside for use by veterans who are unable to afford medication copayments.

Exemptions from the medication copayment are controlled by statute. Under 38 U.S.C. 1722A(a)(3), the following veterans are exempt from the medication copayment: A veteran with a service-connected disability rated 50 percent or more; a veteran who is a former prisoner of war; and, a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for a VA pension. VA does not have the statutory authority to exempt other veterans from the medication copayment. While VA does not have the statutory authority to exempt other veterans from medication copayment charges, as noted above a veteran may request a waiver of such charges under 38 CFR 17.105(c). Service connection is not determined by whether a certain number of veterans have been diagnosed with a particular disease or condition. ''Service-connected'' means that the disability was incurred or aggravated in the line of duty while in active military, naval, or air service. 38 CFR 3.1(k). A finding that a disability is service connected means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. 38 CFR 3.303(a). Likewise, VA does not have the statutory authority to set aside appropriated funds for the use of individual veterans. We make no changes based on these comments.

Miscellaneous

One commenter stated that, unlike the Department of Defense, VA provides no opportunity for veterans, manufacturers, or the public to address the comparative clinical benefits, and cost benefits or effectiveness of a drug or biologic under consideration for addition to the National Formulary. The commenter stated that VA should make the formulary decision-making process more transparent. The process VA utilizes to consider changes to the National Formulary is beyond the scope of the rulemaking, and we make no changes based on this comment.

One commenter asked for a clarification on how this rulemaking will impact contracting decisions for the National Contract covering short acting and human insulins, along with future contracting processes. Although changes in the prices of certain medications may affect certain future contracting actions, VA will continue to follow all federal contracting requirements and will make purchases accordingly.

Finally, we make a technical edit to paragraph (b)(1). This paragraph establishes the medication copayment amounts for each tier of medication. As drafted, each clause in paragraph (b)(1)(i) through (iii) reads ''[f]or a 30-day supply or less of . . . medication, the copayment amount is . . .'' This language could be misinterpreted to mean that no medication copayment is charged for medication amounts greater than 30 days. This would be inconsistent with the statutory mandate at 38 U.S.C. 1722A(a), that VA must require certain veterans to pay at least a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition. In prior rulemakings we used the phrase ''for each 30-day or less supply of medication'' when establishing copayment amounts. Paragraph (b)(1) is edited to reflect that same language.

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as a final rule with changes as noted above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will generally be small business neutral. The rule will not affect pharmaceutical manufacturers, as it does not change the amount VA pays for medications to supply its pharmaceutical benefits program, only the amount VA collects from veterans as copayments. To the extent there are effects on pharmaceutical companies, we believe it will most likely have a positive affect if VA is purchasing more medications and supplies from them. Similarly, VA does not believe that this rule will have a significant economic impact on small pharmacies. It is possible that some veterans will choose to fill their prescriptions within VA rather than from a community pharmacist, but we anticipate such a shift will not result in a significant economic impact on a substantial number of such entities. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by

the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information. The required report and this rule have been submitted to Congress and the Comptroller General for review.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 3, 2016, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: December 2, 2016.

Michael Shores,

Acting Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.110 by:
■ a. Revising paragraph (a).
■ b. Revising paragraphs (b)(1)(i) through (iii).
■ c. Adding paragraph (b)(1)(iv).
■ d. Revising paragraphs (b)(2) and (3), and adding a heading to paragraph (b)(4).
■ e. Adding paragraph (b)(5).

The revisions and additions read as follows:

§ 17.110 Copayments for medications.

(a) *General.* This section sets forth requirements regarding copayments for medications provided to veterans by VA. For purposes of this section, the term ''medication'' means prescription and over-the-counter medications, as determined by the Food and Drug Administration (FDA), but does not mean medical supplies, oral nutritional supplements, or medical devices. Oral nutritional supplements are commercially prepared nutritionally enhanced products used to supplement the intake of individuals who cannot meet nutrient needs by diet alone.

(b) * * *

(1) * * *

(i) For each 30-day or less supply of Tier 1 medications, the copayment amount is $5.

(ii) For each 30-day or less supply of Tier 2 medications, the copayment amount is $8.

(iii) For each 30-day or less supply of Tier 3 medications, the copayment amount is $11.

(iv) For purposes of this section:

(A) *Multi-source medication* is any one of the following:

(*1*) A medication that has been and remains approved by the FDA—

(*i*) Under sections 505(b)(2) or 505(j) of the Food, Drug, and Cosmetic Act (FDCA, 21 U.S.C. 355), and that has been granted an A-rating in the current version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book); or

(*ii*) Under section 351(k) of the Public Health Service Act (PHSA, 42 U.S.C. 262), and that has been granted an I or B rating in the current version of the FDA's Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations (the Purple Book). FDA determines both therapeutic equivalence for drugs and interchangeability for biological products.

(*2*) A medication that—

(*i*) Has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a);

(*ii*) Which is referenced by at least one FDA-approved product that meets the criteria of paragraph (b)(1)(iv)(A)(*1*) of this section; and

(*iii*) Which is covered by a contracting strategy in place with pricing such that it is lower in cost than other generic sources.

(*3*) A medication that—

(*i*) Has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a); and

(*ii*) Has the same active ingredient or active ingredients, works in the same way and in a comparable amount of time, and is determined by VA to be substitutable for another medication that has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a). This may include but is not limited to insulin and levothyroxine.

(*4*) A listed drug, as defined in 21 CFR 314.3, that has been approved under FDCA section 505(c) and is marketed, sold, or distributed directly or indirectly to retail class of trade with either labeling, packaging (other than repackaging as the listed drug in blister packs, unit doses, or similar packaging for use in institutions), product code, labeler code, trade name, or trademark that differs from that of the listed drug.

(B) *Tier 1 medication* means a multi-source medication that has been identified using the process described in paragraph (b)(2) of this section.

(C) *Tier 2 medication* means a multi-source medication that is not identified using the process described in paragraph (b)(2) of this section.

(D) *Tier 3 medication* means a medication approved by the FDA under a New Drug Application (NDA) or a biological product approved by the FDA pursuant to a biologics license agreement (BLA) that retains its patent protection and exclusivity and is not a multi-source medication identified in paragraph (b)(1)(iv)(A)(*3*) or (*4*) of this section.

(2) *Determining Tier 1 medications.* Not less than once per year, VA will identify a subset of multi-source medications as Tier 1 medications using the criteria below. Only medications that meet all of the criteria in paragraphs (b)(2)(i), (ii), and (iii) will be eligible to be considered Tier 1 medications, and only those medications that meet all of the criteria in paragraph (b)(2)(i) of this section will be assessed using the criteria in paragraphs (b)(2)(ii) and (iii).

(i) A medication must meet all of the following criteria:

(A) The VA acquisition cost for the medication is less than or equal to $10 for a 30-day supply of medication;

(B) The medication is not a topical cream, a product used to treat musculoskeletal conditions, an antihistamine, or a steroid-containing medication;

(C) The medication is available on the VA National Formulary;

(D) The medication is not an antibiotic that is primarily used for short periods of time to treat infections; and

(E) The medication primarily is used to either treat or manage a chronic condition, or to reduce the risk of adverse health outcomes secondary to the chronic condition, for example, medications used to treat high blood pressure to reduce the risks of heart attack, stroke, and kidney failure. For purposes of this section, conditions that typically are known to persist for 3 months or more will be considered chronic.

(ii) The medication must be among the top 75 most commonly prescribed multi-source medications that meet the criteria in paragraph (b)(2)(i) of this section, based on the number of prescriptions issued for a 30-day or less supply on an outpatient basis during a fixed period of time.

(iii) VA must determine that the medication identified provides maximum clinical value consistent with budgetary resources.

(3) *Information on Tier 1 medications.* Not less than once per year, VA will publish a list of Tier 1 medications in the **Federal Register** and on VA's Web site at *www.va.gov/health.*

(4) *Veterans Choice Program.* * * *

(5) *Copayment cap.* The total amount of copayments for medications in a calendar year for an enrolled veteran will not exceed $700.

* * * * *

[FR Doc. 2016–29515 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0424; FRL–9956–35–Region 4]

Air Plan Approval/Disapproval; MS; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve, in part, and disapprove in part, the State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), on December 11, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 annual fine particulate matter ($PM_{2.5}$) 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.'' MDEQ certified that the Mississippi SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Mississippi. With the exception of the PSD permitting requirements and the interstate transport provisions, for which EPA is not acting upon, and the state board majority requirements respecting significant portion of income, for which EPA is finalizing disapproval, EPA is finalizing that portions of Mississippi's infrastructure submission, submitted to EPA on December 11, 2015, as satisfying certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: This rule will be effective January 11, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0424. 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: Tiereny Bell, 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. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or via telephone at (404) 562–9088.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m^3) to 12.0 μg/m^3. *See* 78 FR 3086 (January 15, 2013). 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 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.

In a proposed rulemaking published on June 8, 2016 (81 FR 36848), EPA proposed to approve in part and disapprove in part Mississippi's December 11, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS. In the June 8, 2016 proposed rulemaking, EPA proposed to disapprove the state board majority requirements respecting significant portion of income of 110(a)(2)(E)(ii). Also in the June 8, 2016 proposal, EPA did not propose any action regarding the preconstruction PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of (D)(i), and (J), and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4). On March 18, 2015 (80 FR 14019), EPA approved Mississippi's December 11, 2015, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2012 Annual $PM_{2.5}$ NAAQS. Therefore, EPA is not taking any action today pertaining to sections 110(a)(2)(C), prong 3 of D(i), and (J). Additionally, on May 25, 2016, EPA finalized a rule related to prong 4 of 110(a)(2)(D)(i)(II) of Mississippi's December 11, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS and will therefore not be acting upon this element today. *See* 81 FR 33139. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA will consider these requirements in relation to Mississippi's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking. The details of Mississippi's submission and the rationale for EPA's actions for this final rule are explained in the June 8, 2016, proposed rulemaking. Comments on the proposed rulemaking were due on or before July 8, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

With regard to the state board majority requirements respecting significant portion of income, EPA is finalizing a disapproval of Mississippi's December 11, 2015, infrastructure submission. Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in this notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, no sanctions will be triggered. However, this final action will trigger the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP. With the exceptions noted above, EPA is taking final action to approve Mississippi's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because the submission is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 February 10, 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 28, 2016.

Heather McTeer Toney,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Z—Mississippi

■ 2. Section 52.1270(e) is amended by adding a new entry ''110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52. 1270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS.	Mississippi	12/11/2015	12/12/2016, [Insert citation of publication in **Federal Register**].	With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements; 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements and the state board majority requirements respecting significant portion of income of section 110(a)(2)(E)(ii).

[FR Doc. 2016–29593 Filed 12–9–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–AC06

Health and Human Services Grants Regulation

AGENCY: Division of Grants, Office of Grants Policy, Oversight, and Evaluation, Office of the Assistant Secretary for Financial Resources, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule makes changes to the Department of Health and Human Services' (HHS) adoption of the Office of Management and Budget's (OMB) (''Uniform Administrative Requirements'') published on December 19, 2014 and the technical amendments published by HHS on January 20, 2016. HHS codified the OMB language, with noted modifications as explained in the preamble to the December promulgation. The HHS-specific modifications to the Uniform Administrative Requirements adopted prior regulatory language that was not in conflict with OMB's language, and provided additional guidance to the regulated community. Unlike all of the other modifications to the Uniform Administrative Requirements, these additional changes, although based on existing law or HHS policy, were not previously codified in regulation. HHS sought comment on these proposed changes in a notice of proposed rulemaking published on July 13, 2016. This final rule implements these regulatory changes. It also corrects one typographical error that was recently discovered in the most recent promulgation of the Uniform Administrative Requirements.

DATES: This rule is effective on January 11, 2017.

FOR FURTHER INFORMATION CONTACT: Quadira Dantro, MSHS, CRA at (202) 260–6825.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes changes to the HHS's adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published on December 19, 2014 (79 FR 75871) and the technical amendments published by HHS on January 20, 2016 (81 FR 3004). HHS codified the OMB language, with noted modifications, in 45 CFR part 75. Unlike all of the other modifications to the Uniform Administrative Requirements, these additional changes, although based on existing law or HHS policy, were not previously codified in regulation. This final rule implements these regulatory changes.

HHS received 24 relevant comments on the notice of proposed rulemaking, half of which were strongly supportive of the proposed rule. HHS addresses all of the comments below.

A. Nondiscrimination Provisions

Comment: HHS received twelve comments on these provisions, all of which were strongly supportive of the codification of the nondiscrimination provisions in HHS awards and the recognition of same-sex marriages. Several of these supportive comments also provided additional areas for consideration specifically regarding the definition of discrimination on the basis of sex. Collectively, the comments indicated that HHS should define discrimination on the basis of sex explicitly to include discrimination on

the basis of sex stereotyping, gender identity, sexual orientation, pregnancy, intersex traits, and the presence of atypical sex characteristics.

Response: HHS appreciates the comments received, and thanks commenters for their positive reactions and helpful suggestions. For the time being, HHS does not believe it is necessary to add additional categories to the list of non-merit based factors. We note that the determination whether a factor is merit-based for purposes of applying the prohibition will depend on the nature of the particular grant at issue. HHS has therefore decided not to amend the nondiscrimination language proposed in 45 CFR 75.300.

Comment: One comment urged HHS and its partner federal agencies to broadly construe age discrimination protections to support young people as well as older Americans. The comment noted that while many age discrimination laws are enacted with older adults in mind, it is important to recognize the stigmatization of young people and adolescents, particularly in the healthcare arena.

Response: HHS agrees that young people and adolescents should have access to health care and services free from discrimination. No alterations of the regulatory text are necessary to implement these protections. We note that, while employment laws enforced by the Equal Employment Opportunity Commission apply to applicants and employees forty or older, youth have additional rights under other federal, state, or local laws. The Age Discrimination Act of 1975 (Age Act), for instance, prohibits discrimination against young people and older Americans on the basis of age in federally funded programs and activities. In some cases, the Age Act permits age distinctions that reasonably take into account age as a factor necessary to the normal operation or the achievement of any statutory objective. State and local discrimination laws may offer broader protection.

Comment: One commenter indicated that HHS should specify that the nondiscrimination provisions included in § 75.300(c) flow down to subawards.

Response: HHS notes that the provisions of 45 CFR part 75 already address the flow down of requirements. 45 CFR 75.101(b)(1) stating that the terms and conditions of Federal awards flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise.

Comment: Several commenters noted that the provisions of § 75.300(c) do not apply to funding under the Temporary Assistance for Needy Families Program (TANF) (title IV–A of the Social Security Act, 42, U.S.C. 601–619). These commenters suggested that HHS should provide additional guidance to TANF grantees on nondiscrimination.

Response: HHS appreciates the importance of continued education on the full scope of nondiscrimination obligations. The Administration for Children and Families shares this commitment.

B. Indirect Cost Rates

Comment: HHS received three comments regarding the proposed eight percent cap on indirect cost rates for foreign organizations. Notably, HHS did not receive any comments that objected to the imposition of the same eight percent cost cap on indirect cost rates for training grants. The comments received suggested that the proposed provision was in conflict with § 75.414(f), and that HHS should instead adopt a ten percent cap on indirect cost rates for these organizations.

Response: A non-Federal entity that has never received an indirect cost rate that is a foreign organization or foreign public entity, or that would conduct a training grant, would be limited to the eight percent modified total direct cost rate as articulated in § 75.414(c)(3). Commenters indicated that this limitation conflicts with § 75.414(f), which would permit an entity that had never received an indirect cost rate to charge a de minimis rate of ten percent.

HHS agrees that this is inconsistent, and has added clarifying language to paragraph (f) to ensure that there is no conflict.

C. Indian Self Determination and Education Assistance Act

Comment: HHS received numerous comments, both through the regulations.gov portal and separately through the HHS Office of Intergovernmental and External Affairs, on the proposed language clarifying that applicability of certain provisions of the Uniform Administrative Requirements to contracts and compacts awarded pursuant to the Indian Self Determination and Education Assistance Act (ISDEAA). The comments received requested additional tribal consultation on these issues.

Response: The Department is in the process of conducting this tribal consultation, and will proceed as appropriate after that consultation has concluded. The regulatory language from the notice of proposed rulemaking is not included in this final rule.

D. Other Issues

HHS received no comments on the portions of the notice of proposed rulemaking suggesting changes to the proposed language regarding same-sex spouses, marriages, and households, payment provisions as applied to states, public access to records, or shared responsibility payments. Consequently, HHS is finalizing the regulatory language without modification. In addition, HHS is amending one provision to correct a typographical error that was inadvertently included in the most recent promulgation of the Uniform Administrative Requirements, so that the HHS promulgation matches the OMB guidance as intended.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), HHS reviewed this final rule and determined that there are no new collections of information contained therein.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule aligns 45 CFR part 75 with various regulatory and statutory provisions, implements Supreme Court decisions, and codifies long-standing policies thus clarifying and enhancing the provisions in HHS's interim final guidance issued December 19, 2014, and amended on January 20, 2016. In order to ensure that the public receives the most value, it is essential that HHS grant programs function as effectively and efficiently as possible, and that there is a high level of accountability to prevent waste, fraud, and abuse. The additions provide enhanced direction for the public and will not have a significant economic impact beyond HHS's current regulations.

Executive Order 12866 Determination

Pursuant to Executive Order 12866, HHS has designated this final rule to be economically non-significant. This rule is not being treated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies

prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. HHS has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, HHS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 13132 Determination

HHS has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects in 45 CFR Part 75

Accounting, Administrative practice and procedure, Cost principles, Grant programs, Grant programs—health, Grants administration, Hospitals, Indians, Nonprofit organizations reporting and recordkeeping requirements, State and local governments.

Dated: November 25, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 75 of title 45 of the Code of Federal Regulations is amended as follows:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

■ 1. The authority citation for 45 CFR part 75 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Amend § 75.101 by adding paragraph (f) to read as follows:

§ 75.101 Applicability.

* * * * *

(f) Section 75.300(c) does not apply to the Temporary Assistance for Needy Families Program (title IV–A of the Social Security Act, 42 U.S.C. 601–619).

§ 75.110 [Amended]

■ 3. Amend § 75.110(a) by removing ''75.355'' and adding, in its place, ''75.335''.

■ 4. Amend § 75.300 by adding paragraphs (c) and (d) to read as follows:

§ 75.300 Statutory and national policy requirements.

* * * * *

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.

(d) In accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.

■ 5. Revise § 75.305(a) to read as follows:

§ 75.305 Payment.

(a)(1) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A–2000 Overall Disbursing Rules for All Federal Agencies.

(2) To the extent that Treasury-State CMIA agreements and default procedures do not address expenditure of program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds, such funds must be expended before requesting additional cash payments.

* * * * *

■ 6. Revise § 75.365 to read as follows:

§ 75.365 Restrictions on public access to records.

Consistent with § 75.322, HHS awarding agencies may require recipients to permit public access to manuscripts, publications, and data produced under an award. However, no HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award identified in §§ 75.361 through 75.364, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records identified in §§ 75.361 through 75.364. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

■ 7. In § 75.414, add paragraphs (c)(1)(i) through (iii) and revise the first sentence of paragraph (f) to read as follows:

§ 75.414 Indirect (F&A) costs.

* * * * *

(c) * * *

(1) * * *

(i) Indirect costs on training grants are limited to a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000;

(ii) Indirect costs on grants awarded to foreign organizations and foreign public entities and performed fully outside of the territorial limits of the U.S. may be paid to support the costs of compliance with federal requirements at a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000; and,

(iii) Negotiated indirect costs may be paid to the American University, Beirut, and the World Health Organization.

* * * * *

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in paragraphs (c)(1)(i) and (ii) and section (D)(1)(b) of appendix VII to this part, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely.* * *

* * * * *

■ 8. Add § 75.477 to read as follows:

§ 75.477 Shared responsibility payments.

(a) *Payments for failure to maintain minimum essential health coverage.* Any payments or assessments imposed on an individual or individuals pursuant to 26 U.S.C. 5000A(b) as a result of any failure to maintain minimum essential coverage as required by 26 U.S.C. 5000A(a) are not allowable

expenses under Federal awards from an HHS awarding agency.

(b) *Payments for failure to offer health coverage to employees.* Any payments or assessments imposed on an employer pursuant to 26 U.S.C. 4980H as a result of the employer's failure to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan are not allowable expenses under Federal awards from an HHS awarding agency.

[FR Doc. 2016–29752 Filed 12–9–16; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XF069

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; approval of quota transfer.

SUMMARY: NMFS announces its approval of a transfer of 2016 commercial bluefish quota from the State of Maryland to the State of New York. The approval of the transfer complies with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement also informs the public of the revised commercial quotas for Maryland and New York.

DATES: Effective December 9, 2016 through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281–9112.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can request approval of a transfer of bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfer based on the criteria in § 648.162(e).

Maryland and New York have requested the transfer of 50,000 lb (22,680 kg) of bluefish commercial quota from Maryland to New York. Both states have certified that the transfer meets all pertinent state requirements. This quota transfer was requested by New York to ensure that its 2016 quota would not be exceeded. The Regional Administrator has approved this quota transfer based on his determination that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: Maryland, 96,631 lb (43,831 kg); and New York, 927,289 lb (420,611 kg). These quota adjustments revise the quotas specified in the final rule implementing the 2016–2018 Atlantic Bluefish Specifications published on August 4, 2016 (81 FR 51370), and reflect all subsequent commercial bluefish quota transfers completed to date. For information of previous transfers for fishing year 2016 visit: *http://go.usa.gov/xZT8H.*

Classification

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

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

Dated: December 7, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–29720 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 238
Monday, December 12, 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–2016–9437; Directorate Identifier 2016–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model G–IV airplanes. This proposed AD was prompted by a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. This proposed AD would require modification of the gust lock system, and a revision of the maintenance or inspection program to incorporate functional tests. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 26, 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 Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. 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.

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–2016–9437; 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: Gideon Jose, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5569; fax: 404–474–5606; email: *Gideon.jose@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–2016–9437; Directorate Identifier 2016–NM–131–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. The intended function of the gust lock system is to restrict throttle lever movement to a maximum of 6 degrees of forward travel, which provides an unmistakable warning to the pilot that the gust lock system is still engaged, prohibiting the use of the primary flight control surfaces. This condition, if not corrected, could result in the aircraft reaching near take-off thrust and high velocities without primary flight controls (aileron, elevator, and rudder) that can cause a failure to rotate and high-speed runway overrun.

Related Service Information Under 1 CFR Part 51

We reviewed Gulfstream IV Customer Bulletin Number 236A, dated August 8, 2016; Gulfstream G300 Customer Bulletin Number 236A, dated August 8, 2016; and Gulfstream G400 Customer Bulletin Number 236A, dated August 8, 2016. The service information describes procedures for modifying the gust lock system by doing a retrofit of the gust lock throttle interlock. These documents are distinct since they apply to different airplane models.

We reviewed Gulfstream IV Maintenance Manual Temporary Revision (TR) 27–3, dated April 29, 2016; Gulfstream IV MSG–3 Maintenance Manual TR 27–3, dated April 29, 2016; Gulfstream G300 Maintenance Manual TR 27–3, dated April 29, 2016; and Gulfstream G400 Maintenance Manual TR 27–3, dated April 29, 2016. The service information describes procedures for a functional test of the throttle lever gust lock protection. These documents are distinct since they apply to different airplane models.

We reviewed Gulfstream IV Maintenance Manual TR 5–7, dated April 29, 2016; Gulfstream IV MSG–3 Maintenance Manual TR 5–6, dated April 29, 2016; Gulfstream G300 Maintenance Manual TR 5–3, dated April 29, 2016; and Gulfstream G400 Maintenance Manual TR 5–3, dated April 29, 2016. The service information describes an airworthiness limitation

(certification maintenance requirement) task to do functional tests of the throttle lever gust lock protection. These documents are distinct since they apply to different airplane models.

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 modification of the gust lock system, and a revision of the maintenance or inspection program to incorporate functional tests of the throttle level gust lock protection.

Costs of Compliance

We estimate that this proposed AD affects 425 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
Modification and Maintenance or Inspection Program Revision.	109 work-hours × $85 per hour = $9,265	$9,080	$18,345	$7,796,625

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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):

Gulfstream Aerospace Corporation: Docket No. FAA–2016–9437; Directorate Identifier 2016–NM–131–AD.

(a) Comments Due Date

We must receive comments by January 26, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace Corporation Model G–IV airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. The intended function of the gust lock system is to restrict throttle lever movement to a maximum of 6 degrees of forward travel, which provides an unmistakable warning to the pilot that the gust lock system is still engaged, prohibiting the use of the primary flight control surfaces. We are issuing this AD to prevent the throttle lever movement from advancing more than 6 degrees of forward travel, which could result in the aircraft reaching near take-off thrust and high velocities without primary flight controls (aileron, elevator, and rudder) that can cause a failure to rotate and high speed runway overrun.

(f) Compliance

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

(g) Modification

Within 36 months after the effective date of this AD, modify the gust lock system by doing a retrofit of the gust lock throttle interlock, in accordance with the applicable service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Gulfstream IV Customer Bulletin Number 236A, dated August 8, 2016.

(2) Gulfstream G300 Customer Bulletin Number 236A, dated August 8, 2016.

(3) Gulfstream G400 Customer Bulletin Number 236A, dated August 8, 2016.

(h) Maintenance or Inspection Program Revision To Include a Functional Test

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate a

functional test of the throttle lever gust lock protection specified in the applicable temporary revision (TR) identified in paragraphs (h)(1) through (h)(4) of this AD. The initial compliance time for the functional test is within the applicable time specified in paragraphs (h)(1) through (h)(4) of this AD, or within 90 days after the effective date of this AD, whichever occurs later. The functional test must be done in accordance with the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD.

(1) For Gulfstream IV Maintenance Manual TR 5–7, dated April 29, 2016: Within 12 months or 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(2) For Gulfstream IV MSG–3 Maintenance Manual TR 5–6, dated April 29, 2016: Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(3) For Gulfstream G300 Maintenance Manual TR 5–3, dated April 29, 2016: Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(4) For Gulfstream G400 Maintenance Manual TR 5–3, dated April 29, 2016: Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(i) Service Information for the Functional Test of the Throttle Lever Gust Lock Protection

The functional test of the throttle lever gust lock protection specified in paragraph (h) of this AD must be done in accordance with the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD.

(1) Gulfstream IV Maintenance Manual TR 27–3, dated April 29, 2016.

(2) Gulfstream IV MSG–3 Maintenance Manual TR 27–3, dated April 29, 2016.

(3) Gulfstream G300 Maintenance Manual TR 27–3, dated April 29, 2016.

(4) Gulfstream G400 Maintenance Manual TR 27–3, dated April 29, 2016.

(j) No Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraph (k)(1), (k)(2), or (k)(3) of this AD.

(1) Gulfstream IV Customer Bulletin Number 236, dated June 1, 2016.

(2) Gulfstream G300 Customer Bulletin Number 236, dated June 1, 2016.

(3) Gulfstream G400 Customer Bulletin Number 236, dated June 1, 2016.

(l) Exception for Reporting and Return of Parts

Although the service information identified in paragraph (g) of this AD specifies to submit certain information to the manufacturer and to return parts to the manufacturer, this AD does not include those requirements.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (n)(1) of this AD.

(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) Except as required by paragraph (l) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(3)(i) and (m)(3)(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. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. 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.

(n) Related Information

(1) For more information about this AD, contact Gideon Jose, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5569; fax: 404–474–5606; email: *Gideon.jose@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29257 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5]

Proposed Establishment of Class E Airspace; Kill Devil Hills, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Kill Devil Hills, NC, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving First Flight Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before January 26, 2017.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–647–9826. You must identify the Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA

Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Kill Devil Hills, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for First Flight Airport. Controlled airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

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

* * * * *

ASO NC E5 Kill Devil Hills, NC [New]

First Flight Airport, NC

(Lat. 36°1′3″ N., long. 75°40′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of First Flight Airport.

Issued in College Park, Georgia, on December 1, 2016.

Ryan W. Almasy,

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

[FR Doc. 2016–29630 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0581; Airspace Docket No. 15–ASO–4]

Proposed Establishment of Class E Airspace; Louisville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Louisville, GA, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Louisville Municipal Airport. Controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at the heliport.

DATES: Comments must be received on or before January 26, 2017.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–647–9826. You must identify the Docket No. FAA–2015–0581; Airspace Docket No. 15–ASO–4, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–0581; Airspace Docket No. 15–ASO–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Louisville, GA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Louisville Municipal Airport. Controlled airspace extending upward from 700 feet above the surface

within a 6.8-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

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

* * * * *

ASO GA E5 Louisville, GA [New]

Louisville Municipal Airport, GA
(Lat. 32°59′09″ N., long. 82°23′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Louisville Municipal Airport.

Issued in College Park, Georgia, on November 30, 2016.

Ryan W. Almasy,

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

[FR Doc. 2016–29631 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–379]

RIN 1117–ZA04

Designation of Alpha-Phenylacetoacetonitrile (APAAN), a Precursor Chemical Used in the Illicit Manufacture of Phenylacetone, Methamphetamine, and Amphetamine, as a List I Chemical

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration is proposing to designate the chemical alpha-phenylacetoacetonitrile (APAAN) and its salts, optical isomers, and salts of optical isomers, as a list I chemical under the Controlled Substances Act. APAAN is used in clandestine laboratories to illicitly manufacture the schedule II controlled substances phenylacetone (also known as phenyl-2-propanone or P2P), methamphetamine, and amphetamine and is important to the manufacture of these controlled substances. This action does not propose the establishment of a threshold for domestic and international transactions of APAAN. As such, all transactions involving APAAN, regardless of size, would be regulated. In addition, this action proposes that chemical mixtures containing APAAN would not be exempt from regulatory requirements at any concentration. Therefore, all transactions of chemical mixtures containing any quantity of APAAN would be regulated pursuant to the Controlled Substances Act.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before January 11, 2017. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–379'' on all correspondence, including any attachments.

The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov/* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to

submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this proposed rule is available at *http://www.regulations.gov* for easy reference.

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

The CSA gives the Attorney General the authority to specify, by regulation, chemicals as list I or list II chemicals. 21 U.S.C. 802(34) and (35). A ''list I chemical'' is a chemical that is used in manufacturing a controlled substance in violation of title II of the CSA and is important to the manufacture of the controlled substance. 21 U.S.C. 802(34). A ''list II chemical'' is a chemical (other than a list I chemical) that is used in manufacturing a controlled substance in violation of title II of the CSA. 21 U.S.C. 802(35). The current list of all listed chemicals is published at 21 CFR 1310.02. Pursuant to 28 CFR 0.100(b), the Attorney General has delegated her authority to designate list I and list II chemicals to the Administrator of the Drug Enforcement Administration.

In addition, the United States is a Party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention). When the United States receives notification that a chemical has been added to Table I or Table II of the 1988 Convention pursuant to article 12, the United States is required to take measures it deems appropriate to monitor the manufacture and distribution of that chemical within the United States and to prevent its diversion. In addition, the 1988 Convention requires the United States to take other specified measures related to that chemical, including measures related to its international trade.

Background

By a letter dated April 9, 2014, the Secretary-General of the United Nations informed the United States Government that the chemical alpha-phenylacetoacetonitrile (APAAN) was added to Table I of the 1988 Convention. This letter was prompted by a March 19, 2014, decision at the 57th Session of the United Nations Commission on Narcotic Drugs (CND) to add APAAN to Table I. As a Party to the 1988 Convention, the United States is obligated, pursuant to article 12, to take measures it deems appropriate to monitor the manufacture and distribution of APAAN within the United States and to prevent its diversion. Article 12 also obligates the United States to take other specified measures related to APAAN, including measures related to its international trade. By designating APAAN as a list I chemical, the United States will fulfill its obligations under the 1988 Convention.

APAAN is a primary precursor for the manufacture of phenylacetone (also known as phenyl-2-propanone (P2P) or benzyl methyl ketone), methamphetamine, and amphetamine. Throughout the 1970s, methamphetamine was illicitly produced in the United States, primarily with the precursor chemical P2P. In response to the illicit use of P2P, the DEA controlled P2P as a schedule II controlled substance in 1980 pursuant to the ''immediate precursor'' provisions of the CSA, specifically 21 U.S.C. 811(e). Clandestine laboratory operators responded by developing a variety of synthetic methods for producing P2P.

Congress and the DEA responded with the implementation of controls on P2P precursor chemicals such as phenylacetic acid (and its salts and esters), acetic anhydride, benzyl cyanide, benzaldehyde, and nitroethane, all of which are controlled as listed chemicals. 21 CFR 1310.02 (a)–(b). However, clandestine laboratory operators soon adjusted to these controls on P2P (and its precursors). As an alternative for methamphetamine production, clandestine laboratory operators used the precursors ephedrine and pseudoephedrine, and as an alternative for amphetamine production, they used the precursor phenylpropanolamine.

This led Congress and the DEA to implement stringent controls on the manufacture, distribution, importation, and exportation of ephedrine (its salts, optical isomers, and salts of optical isomers), pseudoephedrine, and phenylpropanolamine (controlled as list I chemicals), and pharmaceutical products containing these chemicals. The international community soon took similar measures.

With the growing problem of illicit drug production, the issue of precursor chemical control has gained global attention. International efforts to prevent the illicit production of amphetamine-type stimulants (including amphetamine and methamphetamine), and international control of precursors, have made significant progress. International controls on precursors were established under article 12 of the 1988 Convention.[1] The 1988 Convention established two categories of controlled illicit drug precursor substances: Table I and Table II.[2] Two international entities have played a crucial role in this effort: The United Nations Commission on Narcotic Drugs (CND)

[1] Dec. 20, 1988, 1582 U.N.T.S. 95.

[2] Table I and Table II are annexed to the Convention.

and the International Narcotics Control Board.

In response to domestic and international controls on amphetamine and methamphetamine precursors, clandestine laboratory operators have continued to explore alternate methods of making these illicit drugs, including developing techniques to manufacture their own precursors and diverting other precursors to produce these precursors. This has led clandestine laboratory operators to utilize the P2P precursor APAAN. Clandestine laboratory operators currently use APAAN to manufacture P2P, which they then convert to methamphetamine and amphetamine.

APAAN

APAAN also goes by the names: 1-cyano-1-phenylpropan-2-one; 2-phenylacetoacetonitrile; 2-acetyl-2-phenylacetonitrile; alpha-acetyl-benzene acetonitrile; phenyl aceto-acetonitrile; α-acetylphenylacetonitrile; 3-oxo-2-phenylbutanenitrile; CAS Number: 4468–48–8; and Identification Number: UN3439.

The DEA has long been aware of APAAN's potential illicit use as a primary precursor for the production of P2P. The synthesis of P2P from benzyl cyanide involves the manufacture of APAAN prior to the final synthesis of P2P. Therefore, benzyl cyanide and APAAN share the same synthetic pathway in the production of P2P. In the late 1980's the DEA advocated for the Congressional control of the P2P precursor benzyl cyanide as a list I chemical.

Due to the lack of industrial uses of APAAN, there has historically been a lack of available product for potential diversion. In recent years, however, large international seizures of APAAN have been made, primarily in Europe, which suggest there is a ready supply of APAAN from international chemical manufacturers.

While the DEA has encountered one clandestine laboratory in the United States utilizing this synthetic pathway in recent years, the DEA's European counterparts have made a large number of APAAN seizures. For calendar years 2009 through 2014, the European Commission has documented at least 113 seizures and stop shipments, involving over 80 metric tons of APAAN. Many of these seizures were associated with seizures of P2P and amphetamine. Many of these APAAN seizures originated from chemical suppliers based in Asia.

The DEA has determined that APAAN is now readily available from commercial chemical suppliers and has identified 34 potential suppliers in China, 6 potential suppliers in the United States, 2 in Russia, and 1 each in Bulgaria, Cameroon, the Czech Republic, France, and Germany.

The DEA is concerned about the ease with which APAAN serves as a precursor chemical for illicit controlled substance production and with the international trafficking in this chemical. The international community echoes this concern. As noted above, the CND has added APAAN to Table I of the 1988 Convention. Therefore, the DEA is proposing the designation of APAAN as a list I chemical.

Proposed Designation of APAAN and Its Salts, Optical Isomers, and Salts of Optical Isomers as a List I Chemical

The CSA, specifically 21 U.S.C. 802(34), and its implementing regulations at 21 CFR 1310.02(c), provides the Attorney General with the authority to specify, by regulation, a chemical as a ''list I chemical'' if the chemical is used in the manufacture of a controlled substance in violation of the CSA and is important to the manufacture of these controlled substances. Clandestine laboratory operators are using APAAN as the precursor material for the illicit manufacture of P2P, methamphetamine, and amphetamine. These three substances are all controlled substances under the CSA. APAAN is a primary precursor for P2P, for subsequent conversion to methamphetamine or amphetamine. Therefore, APAAN is important to the manufacture of a controlled substance. This action proposes the designation of APAAN as a list I chemical because the DEA finds that APAAN is used in the illicit manufacture of these controlled substances and is important to the illicit manufacture of these controlled substances.

If finalized, handlers of APAAN would become subject to the chemical regulatory provisions of the CSA, including 21 CFR parts 1309, 1310, 1313, and 1316. Since even a small amount of APAAN can make a significant amount of P2P, this action does not propose the establishment of a threshold for domestic and import transactions of APAAN in accordance with the provisions of 21 CFR 1310.04(g). Therefore, the DEA is proposing that all APAAN transactions, regardless of size, will be regulated transactions as defined in 21 CFR 1300.02(b). As such, if finalized, all APAAN transactions will be subject to recordkeeping, reporting, import and export controls, and other CSA chemical regulatory requirements. In addition, each regulated bulk manufacturer shall submit manufacturing, inventory, and use data on an annual basis.

Chemical Mixtures of APAAN

This rulemaking also proposes that chemical mixtures containing APAAN would not be exempt from regulatory requirements at any concentration unless an application for exemption of a chemical mixture is submitted by an APAAN manufacturer and the application is reviewed and accepted and the mixture exempted by the DEA under 21 CFR 1310.13 (Exemption by Application Process). Since even a small amount of APAAN yields a significant amount of P2P, the DEA believes that regulation of chemical mixtures containing any amount of APAAN is necessary to prevent the illicit extraction, isolation, and use of the APAAN. Therefore, all chemical mixtures containing any quantity of APAAN would be subject to CSA control, unless the APAAN manufacturer is granted an exemption by the application process in accordance with 21 CFR 1310.13. This rule proposes the modification of the ''Table of Concentration Limits'' in 21 CFR 1310.12(c) to reflect the fact that chemical mixtures containing any amount of APAAN are subject to CSA chemical control provisions.

Exemption by Application Process

The DEA has implemented an application process to exempt certain chemical mixtures from the requirements of the CSA and its implementing regulations. 21 CFR 1310.13. Manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status may be granted if the DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals cannot be readily recovered. 21 CFR 1310.13(a)(1)–(2).

Requirements for Handling List I Chemicals

If finalized as proposed, the designation of APAAN as a list I chemical will subject APAAN handlers (manufacturers, distributors, importers, and exporters), and proposed handlers, to all of the regulatory controls and administrative, civil, and criminal actions applicable to the manufacture, distribution, importing, and exporting of a list I chemical. Upon publication of a final rule, persons potentially handling APAAN, including regulated chemical mixtures containing APAAN, would be

required to comply with the following list I chemical regulations:

1. *Registration.* Any person who manufactures, distributes, imports, or exports APAAN, or proposes to engage in the manufacture, distribution, importation, or exportation of APAAN, must obtain a registration pursuant to 21 U.S.C. 822, 823, 957, 958. Regulations describing registration for list I chemical handlers are set forth in 21 CFR part 1309. Consistent with 21 CFR parts 1309 and 1310, separate registrations will be required for manufacturing, distribution, importing, and exporting of APAAN. Different locations operated by a single entity require separate registration if any location is involved with the manufacture, distribution, importation, or exportation of APAAN. Further, a separate registration is required for each principal place of business at one general physical location where list I chemicals are manufactured, distributed, imported, or exported by a person. 21 CFR 1309.23. Any person manufacturing, distributing, importing, or exporting an APAAN chemical mixture will be subject to the registration requirement under the CSA as well.

The DEA notes that warehouses are exempt from the requirement of registration and may lawfully possess list I chemicals, if the possession of those chemicals is in the usual course of business or employment. 21 U.S.C. 822(c)(2), 21 U.S.C. 957(b)(1)(B). For purposes of this exemption, the warehouse must receive the list I chemical from a DEA registrant and shall only distribute the list I chemical back to the DEA registrant and registered location from which it was received. All other activities conducted by a warehouse do not fall under this exemption; a warehouse that distributes list I chemicals to persons other than the registrant and registered location from which they were obtained is conducting distribution activities and is required to register as such. 21 CFR 1309.23(b)(1).

Upon publication of a final rule, any person manufacturing, distributing, importing, or exporting APAAN or a chemical mixture containing APAAN will become subject to the registration requirement under the CSA. The DEA recognizes, however, that it is not possible for persons who are subject to the registration requirement to immediately complete and submit an application for registration and for the DEA to immediately issue registrations for those activities. Therefore, to allow continued legitimate commerce in APAAN, the DEA is proposing to establish in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to engage in activities with APAAN, provided that the DEA receives a properly completed application for registration on or before 30 days after publication of a final rule implementing regulations regarding APAAN. The temporary exemption for such persons will remain in effect until the DEA takes final action on their application for registration or application for exemption of a chemical mixture.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, would become effective on the effective date of the final rule. Therefore, all transactions of APAAN and chemical mixtures containing APAAN will be regulated while an application for registration or exemption is pending. This is necessary because not regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption does not suspend applicable federal criminal laws relating to APAAN, nor does it supersede State or local laws or regulations. All handlers of APAAN must comply with applicable State and local requirements in addition to the CSA regulatory controls.

2. *Records and Reports.* Every DEA registrant would be required to maintain records and reports with respect to APAAN pursuant to 21 U.S.C. 830 and in accordance with 21 CFR part 1310. Pursuant to 21 CFR 1310.04, a record must be made and maintained for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a listed chemical will be required to submit manufacturing, inventory, and use data on an annual basis. 21 CFR 1310.05(d). Existing standard industry reports containing the required information will be acceptable, provided the information is separate or readily retrievable from the report.

21 CFR 1310.05(a) requires that each regulated person shall report to the DEA any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA and its corresponding regulations. Regulated persons are also required to report any proposed regulated transaction with a person whose description or other identifying characteristics the Administration has previously furnished to the regulated person; any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person; any in-transit loss in which the regulated person is the supplier; and any domestic regulated transaction in a tableting or encapsulating machine.

3. *Importation and Exportation.* All importation and exportation of APAAN would need to be in compliance with 21 U.S.C. 957, 958, and 971 and in accordance with 21 CFR part 1313.

4. *Security.* All applicants and registrants would be required to provide effective controls against theft and diversion in accordance with 21 CFR 1309.71–1309.73.

5. *Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where registrants or other regulated persons may lawfully hold, manufacture, distribute, or otherwise dispose of a list I chemical or where records relating to those activities are maintained, are controlled premises as defined in 21 U.S.C. 880(a) and 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316, subpart A.

6. *Liability.* Any activity involving APAAN not authorized by, or in violation of, the CSA, would be unlawful, and may subject the person to administrative, civil, and/or criminal action.

Regulatory Analyses

Executive Orders 12866 and 13563

This notice of proposed rulemaking, which proposes the designation of APAAN as a list I chemical, has been developed in accordance with the principles of Executive Orders 12866 and 13563. The DEA followed the principles of these Executive Orders, even though it has been determined that this action is not a significant regulatory action.

To determine whether this action is a significant regulatory action, the DEA utilized a least cost option analysis. At the outset, the DEA determined that the primary costs of this rule would come from complying with the registration, recordkeeping, reporting, and export and import requirements set forth in the CSA. Therefore, under the least cost option, an entity would choose to discontinue the sale of APAAN if proceeds from the sale are less than the cost of complying with the rule.

The DEA has not identified any industrial uses of APAAN by domestic entities and its potential usage appears to be limited to research. Based on

independent research following a 2013 United Nations Questionnaire/Survey on APAAN, the DEA identified three entities that have each imported APAAN. Two of the three entities had average annual sales of APAAN totaling $13 during the analysis period. The third entity had average annual sales of APAAN totaling $1,440 during the same period. Other chemical distributors list APAAN in their chemical catalogs. However, these entities do not manufacture APAAN, instead opting to purchase APAAN from international sources to fill special orders. These entities do not stock APAAN in inventory and the vast majority had no previous sales of APAAN.

The registration fee to import a list I chemical is $1,523 per year. Based on the least cost option, these three entities would choose to discontinue the sale of APAAN because complying with the rule is more costly. Thus, the annual economic impact of the rule is $1,467 (total annual sales of APAAN from the three affected entities). Therefore, this is evidence that this proposed rule would not have an annual effect on the economy of $100 million or more and is not a significant regulatory action.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this proposed rule is to designate APAAN as a list I chemical under the CSA. No less restrictive measures (*i.e.,* non-control or control in list II) would enable the DEA to meet its statutory obligation under the CSA and its international obligations of the 1988 Convention. The DEA estimates that this rule affects three small entities. As discussed above, the DEA compared the dollar value of APAAN sales to the cost of registration. Further, the DEA assumed that if the cost of registration is more than the dollar value of APAAN sales, then each entity would discontinue the sale of APAAN.

Two entities earned $13 in annual sales of APAAN while the third entity earned $1,440 in annual sales of APAAN. The cost of registration alone is $1,523 for each entity. Therefore, the DEA anticipates that each entity will discontinue the sale of APAAN because the cost of compliance is greater than the annual sales. As a result, the annual economic impact of the rule is $1,467.

Using 1% of annual revenue as the criteria for significant economic impact, the DEA estimates that none of the three small entities will experience a significant economic impact if the proposed rule is finalized. The cost of the rule as a percentage of annual revenue for the three entities is, 0.00044%, 0.00036%, and 0.038%, respectively, which is less than 1% of the entities' annual income. Therefore, the proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* that this action would not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Paperwork Reduction Act

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. The DEA does not anticipate that it will receive new registration applications for the purpose of engaging in transactions involving this chemical. The transactions in this chemical of which the DEA is aware are very small, and it does not appear to the DEA that it would be economically justifiable because DEA believes there is no legitimate market for manufacturing or engaging in commercial transactions in this chemical. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 1310 of title 21 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Amend § 1310.02 by redesignating paragraphs (a)(1) through (a)(30) as paragraphs (a)(2) through (a)(31), respectively, and adding a new paragraph (a)(1) in the table ''List I chemicals'' to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(1) Alpha-phenylacetoacetonitrile and its salts, optical isomers, and salts of optical isomers (APAAN)	8512

* * * * *

■ 3. Amend § 1310.04 by redesignating paragraphs (g)(1)(i) through (g)(1)(x) as paragraphs (g)(1)(ii) through (g)(1)(xi),

respectively, and adding a new paragraph (g)(1)(i) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(i) Alpha-phenylacetoacetonitrile and its salts, optical isomers, and salts of optical isomers (APAAN)

* * * * *

■ 4. Amend § 1310.09 by adding new paragraph (n) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(n)(1) Each person required under Sections 302 and 1007 of the Act (21 U.S.C. 822, 957) to obtain a registration to manufacture, distribute, import, or export regulated alpha-phenylacetoacetonitrile (APAAN) and its salts, optical isomers, and salts of optical isomers, including regulated chemical mixtures pursuant to Section 1310.12 of this part, is temporarily exempted from the registration requirement, provided that the DEA receives a properly completed application for registration or application for exemption for a chemical mixture containing alpha-phenylacetoacetonitrile (APAAN) and its salts, optical isomers, and salts of optical isomers, pursuant to Section 1310.13 of this part on or before (30 days after publication of a Final Rule implementing regulations regarding APAAN). The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports or exports a chemical mixture containing alpha-phenylacetoacetonitrile (APAAN) and its salts, optical isomers, and salts of optical isomers whose application for exemption is subsequently denied by the DEA must obtain a registration with the DEA. A temporary exemption from the registration requirement will also be provided for those persons whose applications for exemption are denied, provided that the DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons will remain in effect until the DEA takes final action on their registration application.

■ 5. Amend § 1310.12 paragraph (c) by adding in alphabetical order an entry ''Alpha-phenylacetoacetonitrile, and its salts, optical isomers, and salts of optical isomers. (APAAN)'' in the table ''Table of Concentration Limits'' to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code No.	Concentration	Special conditions
*	*	*	*
Alpha-phenylacetoacetonitrile, and its salts, optical isomers, and salts of optical isomers. (APAAN).	8512	Not exempt at any concentration.	Chemical mixtures containing any amount of APAAN are not exempt.
*	*	*	*

* * * * *

Dated: December 2, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–29523 Filed 12–9–16; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0660; FRL–9956–27–Region 9]

Approval of California Air Plan; Owens Valley Serious Area Plan for the 1987 24-Hour PM_{10} Standard

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 California and Great Basin Unified Air Pollution Control District (GBUAPCD or ''District'') to meet Clean Air Act (CAA or ''Act'') requirements applicable to the Owens Valley PM_{10} nonattainment area (NA). The Owens Valley PM_{10} NA is located in the southern portion of the Owens Valley in Inyo County, California. It is classified as a Serious nonattainment area for the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM_{10}). The submitted SIP revision is the ''Great Basin Unified Air Pollution Control District 2016 Owens Valley Planning Area PM_{10} State Implementation Plan'' (''2016 PM_{10} Plan'' or ''Plan''). The GBUAPCD's obligation to submit the 2016 PM_{10} Plan was triggered by the EPA's 2007 finding that the Owens Valley PM_{10} NA had failed to meet its December 31, 2006, deadline to attain the PM_{10} NAAQS. The CAA requires a Serious PM_{10} nonattainment area that fails to meet its attainment deadline to submit a plan providing for attainment of the PM_{10} NAAQS and for an annual emission reduction in PM_{10} of not less than five percent until attainment of the PM_{10} NAAQS. The EPA is proposing to approve the 2016 PM_{10} Plan as meeting all relevant statutory and regulatory requirements.

DATES: Any comments on this proposal must arrive by January 11, 2017.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2016–0660, at *http://www.regualtions.gov,* or via email to *Vagenas.Ginger@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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the EPA's full 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: Ginger Vagenas, EPA Region IX, 415–972–3964, *Vagenas.Ginger@epa.gov.*

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

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I. Background: PM_{10} Air Quality Planning in the Owens Valley PM_{10} Nonattainment Area

A. Planning History

The NAAQS are standards for certain ambient air pollutants set by the EPA to protect public health and welfare. PM_{10} is among the ambient air pollutants for which the EPA has established health-based standards. By penetrating deep in the lungs, PM_{10} causes adverse health effects including lung damage, increased respiratory disease, and premature death. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987, the EPA revised the health-based national ambient air quality standards, replacing the standards for total suspended particulates with new standards applying only to PM_{10}.[1] At that time, the EPA established two PM_{10} standards, annual and 24-hour. Effective December 18, 2006, the EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard.[2] The 24-hour PM_{10} standard of 150 micrograms per cubic meter ($\mu g/m^3$) is attained when the expected number of days with a 24-hour average concentration above 150 $\mu g/m^3$ per calendar year averaged over a three-year period, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one.[3]

On the date of enactment of the 1990 CAA Amendments, the Owens Valley (along with many other areas meeting the qualifications of section 107(d)(4)(B) of the amended Act) was designated nonattainment by operation of law.[4] The Owens Valley PM_{10} NA is located in Inyo County in east-central California. The EPA codified the boundaries of the Owens Valley PM_{10} NA at 40 CFR 81.305.

Once an area is designated nonattainment for PM_{10}, section 188 of the CAA outlines the process for classifying the area as Moderate or Serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM_{10} nonattainment areas, including the Owens Valley PM_{10} NA, were initially classified as Moderate. A Moderate PM_{10} nonattainment area can subsequently be reclassified as Serious either before the applicable attainment date if the EPA determines the area cannot practicably attain the PM_{10} NAAQS by this attainment date, or after the passage of the applicable Moderate area PM_{10} attainment date if the EPA determines that the area has failed to attain the standard. In accordance with section 188(b)(1) of the CAA, on February 8, 1993, the EPA determined the Owens Valley PM_{10} NA could not practicably attain the PM_{10} NAAQS by December 31, 1994 and reclassified the area as Serious.[5]

As a Serious area, the Owens Valley PM_{10} NA acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However, CAA section 188(e) authorizes the EPA to grant up to a 5-year extension of that attainment deadline if certain conditions are met by the state. In order to obtain the extension, the state must make a SIP submission showing that: (1) Attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state and can feasibly be implemented in the specific area.

In its 1998 Owens Valley PM_{10} Plan (submitted to the EPA on September 10, 1998), California requested an attainment date extension under CAA section 188(e) for the Owens Valley PM_{10} NA from December 31, 2001 to December 31, 2006. On September 3, 1999, the EPA approved the Serious area 1998 PM_{10} Plan for the Owens Valley PM_{10} NA as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section 189(b)(1)(B) and MSM in section 188(e). In the same action, the EPA approved the submission with respect to the requirements of section 188(e) and granted California's request to extend the attainment date for the area to December 31, 2006. This final action and the proposal preceding it provide a more detailed discussion of the history of PM_{10} planning in the Owens Valley PM_{10} NA.[6]

On June 6, 2007, the EPA found that the Owens Valley PM_{10} NA failed to attain the 24-hour PM_{10} NAAQS by the applicable attainment date of December 31, 2006.[7] Accordingly, the State was required to submit a new plan meeting the requirements of section 189(d) by December 31, 2007.

The Governing Board of the GBUAPCD adopted the ''2008 Owens Valley PM_{10} Planning Area Demonstration of Attainment State Implementation Plan'' (''2008 Plan'') on February 1, 2008. The 2008 Plan, which included a request for an attainment date extension, was submitted by the State to the EPA on June 11, 2009. The 2008 Plan was subsequently updated and superseded by the submittal of the 2016 PM_{10} Plan, which reiterates the request for an attainment date extension and incorporates agreements reached between the GBUAPCD and the City of

[1] 52 FR 24672.
[2] 71 FR 61144 (October 17, 2006).
[3] 40 CFR 50.6 and 40 CFR part 50, appendix K.
[4] 56 FR 11101 (March 15, 1991).
[5] 58 FR 3334 (January 8, 1993).
[6] *See* 64 FR 34173 (June 25, 1999) and 64 FR 48305 (September 3, 1999).
[7] 72 FR 31183.

Los Angeles, and is the subject of this action.[8]

B. Description of the Owens Valley PM_{10} Nonattainment Area

Owens Lake is located in Inyo County in east central California in the southern portion of the Owens Valley. It is part of a chain of lakes formed over 140,000 thousand years ago.[9] In 1913, the Los Angeles Department of Water and Power (LADWP) completed an aqueduct system and began diverting the waters of the Owens River to the City of Los Angeles. By 1930, these diversions from the Owens River had drained the Owens Lake almost completely dry.[10]

Strong winds blowing over the surface of the dry, alkaline bed of the Owens Lake have produced among the highest measured concentrations of PM_{10} ever recorded, including a monitored reading that exceeded 12,000 μg/m^3—more than 80 times over the federal 24-hour standard.[11] Past data from the EPA's approval of the 1998 PM_{10} Plan indicated that during days when violations were recorded, 94 percent of the PM_{10} concentrations came from the Owens Lake bed and another five percent came from re-entrained Owens Lake dust already deposited in the area.[12] Since our approval of the 1998 PM_{10} Plan, PM_{10} emissions occurring directly from the Owens Lake bed and those attributable to re-entrained Owens Lake dust deposited in the two-kilometer area surrounding the Owens Lake bed, particularly the Keeler and Olancha Dunes, have declined. Despite this reduction, the predominant source of PM_{10} emissions contributing to nonattainment in the Owens Valley PM_{10} NA continues to be the dry Owens Lake bed and the two-kilometer perimeter surrounding it.[13]

Approximately 40,000 permanent residents live in the area affected by the Owens Lake PM_{10} emissions.[14] Some of these residents are members of four Tribes: The Lone Pine Paiute/Shoshone Tribe, the Fort Independence Tribe, the Big Pine Tribe, and the Bishop Tribe. Residents and visitors to the area suffer the adverse health effects from high PM_{10} concentrations.[15]

As noted previously, the State of California and the GBUAPCD submitted a PM_{10} Plan in 1998 that the EPA approved in 1999.[16] The EPA recognized in approving the 1998 PM_{10} Plan that the Owens Valley PM_{10} NA presented one of the most challenging air quality problems nationally, requiring a reduction of PM_{10} concentrations from almost 4000 μg/m^3 to the 24-hour NAAQS of 150 μg/m^3. The EPA also recognized that while the origin of the PM_{10} problem was well understood—the draining of Owens Lake by the City of Los Angeles in the early part of this century and continued LADWP withdrawals from the Owens River—the solution to the problem remained controversial.[17] The EPA's evaluation of the 1998 PM_{10} Plan noted the unique complexities of the Owens Valley PM_{10} planning process, including the competing authorities and responsibilities of the GBUAPCD to protect Owens Valley residents from the harmful effects of air pollution and those of the City of Los Angeles to provide its residents with an adequate water supply.[18]

Historically, there have been significant disputes between the GBUAPCD and the City of Los Angeles concerning the appropriateness, location, and extent of control measures to reduce PM_{10} emissions from the Owens Lake bed and surrounding areas, which interfered with the adoption of a fully approvable plan. The legal history between the GBUAPCD and the City of Los Angeles is described in some detail in the EPA's proposed approval of the 1998 PM_{10} Plan and in the 2016 PM_{10} Plan.[19] In summary, California legislation followed by litigation in state and federal courts resulted in a series of agreements requiring the City of Los Angeles to implement a variety of control measures to mitigate PM_{10} emissions from the dry Owens Lake bed. The most recent iteration of these agreements, reached after extensive negotiations, is the 2014 Stipulated Judgment between the City of Los Angeles and the GBUAPCD.[20] It is our understanding that the 2014 Stipulated Judgment resolves all disputes between the District and the City of Los Angeles and it appears to clearly articulate the responsibilities of both parties, providing certainty and eliminating the risk of further litigation regarding the Owens Lake bed controls required for attainment and contingency measures. The 2014 Stipulated Judgment adds to and incorporates prior agreements between the parties and constitutes the foundation for the 2016 PM_{10} Plan that we are proposing to approve in this action.[21]

The EPA is proposing to approve the 2016 PM_{10} Plan because it meets the CAA requirements for Serious area plans. As was true of the 1998 PM_{10} Plan, this 2016 PM_{10} Plan is an important blueprint for clean air in one of the most unique and challenging PM_{10} nonattainment areas in the United States.[22] Successful implementation will require continued joint efforts by the GBUAPCD and the City of Los Angeles.[23]

The establishment of controls on the lake bed has resulted in significant improvements to air quality in the Owens Valley. Between 1993 and 2014, the number of NAAQS exceedances decreased substantially at monitors located in the Owens Valley PM_{10} NA. For example, the peak three-year average number of exceedances at the Dirty Socks monitor declined from 41 to 9 in 2014, at the Keeler monitor from 20 to 8, and at the Shell Cut monitor from 19 to 5.[24] As shown in Table 1, the 2016 PM_{10} Plan demonstrates that PM_{10} design concentrations are predicted to be below the NAAQS when all required controls are implemented by the City of Los Angeles and the GBUAPCD.[25] Through the continued efforts of the GBUAPCD and the City of Los Angeles, the 2016 PM_{10} Plan demonstrates attainment of the 24-hour PM_{10} NAAQS within the attainment year of 2017.

[8] *See* Chapter 8 of the 2016 PM_{10} Plan and letter from Phillip L. Kiddoo, Air Pollution Control Officer, GBUAPCD to Elizabeth Adams, Acting Air Division Director, U.S. EPA, Region 9, dated October 26, 2016.

[9] 2016 PM_{10} Plan, p. 7.

[10] *Id.,* p. 8.

[11] *Id.,* p. S–2.

[12] 64 FR 34173 at 34174.

[13] 2016 PM_{10} Plan, page S–4, Table S–2, and Chapter 8.

[14] *Id.* at S–2.

[15] *Id.*

[16] 64 FR 48305.

[17] 64 FR 34173 at 34174.

[18] *Id.*

[19] 2016 PM_{10} Plan, pp. 9–12.

[20] *Id.,* Appendix II–1.

[21] *Id.,* p.12 (''The judgment requires the City of Los Angeles to implement the dust control measures ordered in 2011 and 2012 and provides for additional dust control measures up to 53.4 square miles in total for all ordered dust control areas.'')

[22] In 2016, the EPA bestowed its Clean Air Excellence Award for Regulatory and Policy Innovations on the GBUAPCD in recognition of the District's development of leading methods to identify pollution source areas, analyze particulate emissions, and determine suitable pollution control measures. The EPA noted the Owens Lake project constitutes the world's largest PM_{10} emission control project and has led to annual air pollution reductions of 75,000 tons. *See* the EPA's Web site: *https://www.epa.gov/caaac/clean-air-excellence-awards.*

[23] In 2016, the EPA bestowed its Clean Air Excellence Award for Regulatory and Policy Innovations on the GBUAPCD in recognition of the District's development of leading methods to identify pollution source areas, analyze particulate emissions, and determine suitable pollution control measures. The EPA noted the Owens Lake project constitutes the world's largest PM_{10} emission control project and has led to annual air pollution reductions of 75,000 tons. *See* the EPA's Web site: *https://www.epa.gov/caaac/clean-air-excellence-awards.*

[24] 2016 PM_{10} Plan, Appendix III–2, Table 1.

[25] *Id.,* Table 7–5.

TABLE 1—DECLINE IN OWENS VALLEY PM_{10} CONCENTRATIONS

[μg/m³]

Monitoring site	July 2009–June 2014 maximum PM_{10}	Hybrid model 2017 design concentration predictions
Dirty Socks	1,437	93
Flat Rock	871	94
Keeler	2,994	67
Lizard Tail	4,571	142
Mill Site	754	125
North Beach	1,536	67
Olancha	779	41
Shell Cut	2,149	105
Stanley	286	39

Source: 2016 PM_{10} Plan, Tables 7–1 and 7–5.

C. Public Notice, Public Hearing, and Completeness Requirements for SIP Submittals

CAA section 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the GBUAPCD and the California Air Resources Board (CARB) satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the 2016 PM_{10} Plan. The District provided a public comment period and conducted a public hearing on April 13, 2016, before its Board adopted the 2016 PM_{10} Plan.[26] CARB provided the required public notice and opportunity for public comment prior to its May 19, 2016 public hearing.[27] The submission provides proof of publication of notices for the respective public hearings. We find, therefore, that the 2016 PM_{10} Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section of the CAA also provides that any plan that the EPA has not affirmatively determined to be complete will become complete by operation of law six months after the date of submission. The EPA's completeness criteria are found in 40 CFR part 51, Appendix V. The EPA determined the SIP submission dated June 9, 2016, to be complete on November 21, 2016.[28]

D. CAA Requirements for PM_{10} Serious Area Plans

As a Serious PM_{10} nonattainment area that failed to meet its applicable attainment date of December 31, 2006, the Owens Valley PM_{10} NA is subject to CAA sections 188 and 189. Section 188 establishes attainment dates for Serious PM_{10} nonattainment areas. However, when an area such as the Owens Valley PM_{10} NA fails to attain the PM_{10} NAAQS within the time prescribed in section 188, a new attainment date may be approved. The new attainment date is established by section 179(d)(3), which establishes that the attainment date applicable to the revision required under paragraph (1) of section 179(d) shall be the same as provided in the provisions of section 172 of the CAA. That section of the statute requires the area attain as expeditiously as practicable, but no later than five years from the date of designation.[29] It also includes a provision that allows the EPA to extend the attainment date for up to an additional five years (*i.e.,* a period of no greater than 10 years) to the extent the Administrator determines appropriate, considering the severity of nonattainment and the availability and feasibility of pollution control measures.[30]

Section 189(d) provides that the state shall submit within 12 months after the applicable attainment date, plan revisions that provide for attainment of the PM_{10} air quality standard and, from the date of such submission until attainment, for an annual reduction of PM_{10} or PM_{10} precursor emissions within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory prepared for the area.

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. More specific planning and control requirements relevant to the PM_{10} NAAQS are found in Part D, Subpart 4, in CAA sections 188 and 189, as noted above. The EPA has issued a General Preamble[31] and Addendum to the General Preamble[32] to provide guidance to states for meeting the CAA's requirements for the PM_{10} NAAQS. The General Preamble mainly addresses the requirements for moderate nonattainment areas and the Addendum addresses requirements for Serious nonattainment areas. The EPA has also issued other guidance documents related to PM_{10} plans that are discussed and cited below. The specific PM_{10} plan requirements addressed by this proposed action are summarized below.

[26] *Id.,* Chapter 13—Declaration of Clerk of the Board and Resolutions Certifying the EIR and Approving the SIP.

[27] State of California Air Resources Board Resolution 16–3, May 19, 2016.

[28] *See* letter from Elizabeth Adams, Acting Air Division Director, U.S. EPA Region 9 to Richard Corey, Executive Officer, California Air Resource Board.

[29] In accordance with CAA section 179(d)(3) and 172(a)(2)(A), the attainment deadline applicable to an area that misses the Serious area attainment date is as soon as practicable, but no later than five years from the publication date of the nonattainment finding notice. The EPA's finding that the Owens Valley PM_{10} NA failed to attain by the Serious area nonattainment date was published on June 6, 2007.

[30] 42 U.S.C. 7502(a)(2)(A). See also *Ass'n of Irritated Residents* v. *United States EPA,* 423 F.3d 989, 993–94 (9th Cir. 2015).

[31] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

[32] ''State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994) (Addendum).

1. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

2. Attainment Demonstration and Five Percent Requirement

For Serious PM_{10} nonattainment areas that do not attain the PM_{10} NAAQS by the applicable attainment date, CAA section 189(d) requires the state to submit plan revisions that provide for attainment of the NAAQS and provide for an annual five percent reduction in PM_{10} or PM_{10} precursor emissions for each year from the date of submission until attainment.[33] Section 189(d) specifies that the state must submit these plan revisions within 12 months of the applicable attainment date that the area failed to meet.

3. Best Available Control Measures for Sources of PM_{10}

CAA section 189(b)(1)(B) requires provisions to assure that BACM, including the best available control technology (BACT) for stationary sources, for the control of PM_{10} shall be implemented no later than four years after the date a nonattainment area is reclassified as Serious.

When a Moderate area is reclassified to Serious, the requirements to implement reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), in CAA sections 172(c)(1) and 189(a)(1)(C) remain applicable. Thus, a Serious area PM_{10} plan must also provide for the implementation of RACM and RACT to the extent that the RACM and RACT requirements have not been satisfied in the area's Moderate area plan.

CAA section 189(e) requires that control requirements applicable to major stationary sources of PM_{10} shall also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standards in the area.

[33] The EPA has previously determined that PM_{10} precursors are not significant contributors to PM_{10} levels in the Owens Valley PM_{10} NA. See 64 FR 34173 at 34716 (June 25, 1999). In that rulemaking notice, the EPA noted that the contribution from secondary aerosols is insignificant. Inventory information submitted by the GBUAPCD in association with the 2016 PM_{10} Plan also demonstrates that precursors do not contribute significantly to PM_{10} levels that exceed the standard. See section II.D.2.b of this notice.

4. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D of title I or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date. The general RFP requirement of section 172(c)(2) applies to SIP submissions necessary to meet CAA section 189(d) for the PM_{10} NAAQS.

In addition, CAA section 189(c)(1), which is specifically applicable to the PM_{10} NAAQS, requires that an implementation plan contain quantitative milestones that will be achieved every three years and that will demonstrate that RFP is being met.

5. Contingency Measures

CAA section 172(c)(9) requires that implementation plans provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the NAAQS by the attainment date applicable under part D of title I. Such measures are to take effect in any such case without further action by the State or the Administrator. The contingency measure requirement of CAA section 179(c)(9) applies to the SIP submissions necessary to meet CAA section 189(d) for the PM_{10} NAAQS.

6. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets has been submitted to the EPA, and the EPA has found them adequate, these budgets are used for determining conformity (*i.e.,* emissions from planned transportation activities must be less than or equal to the budgets).

II. Evaluation of the Owens Valley PM_{10} Plan's Compliance With CAA Requirements

A. Review of the Owens Valley PM_{10} Nonattainment Area Emissions Inventories

The 2016 PM_{10} Plan includes PM_{10} emissions inventories for the Owens Valley PM_{10} NA for the years 1999 through 2019. For the most part, the emissions data presented in the Plan were derived from the CARB 2012 and 2015 emission inventories for Inyo County and apportioned to the Owens Valley PM_{10} NA using factors such as population, roadway miles, and land area.[34] The GBUAPCD calculated fugitive windblown dust emissions using a combination of modeling and data collected at monitors located around the Owens Lake bed. The unpaved road dust emissions were calculated using the GBUAPCD's emission factors. These calculations are included in Tables 3 and 4 of Appendix IV–1 of the 2016 PM_{10} Plan.

The District has also provided an inventory of emissions of PM_{10} precursors (*i.e.,* sulfur oxides, nitrogen oxides, volatile organic compounds, and ammonia) for a 2015 exceedance day.[35] In this inventory, ammonia emission estimates ''were derived from Inyo County emissions that were queried from the USEPA's 2014 National Emissions Inventory.'' Estimates for the other precursors ''were derived from Inyo County emissions that were queried from the CARB CEPAM Standard Emissions Tool (2013 Almanac).'' In all cases, emissions were apportioned to the Owens Valley PM_{10} NA using various factors.[36] The EPA previously determined that PM_{10} precursors are not significant contributors to PM_{10} levels in the Owens Valley PM_{10} NA.[37] At that time, the EPA noted that the contribution from secondary aerosols is insignificant. The EPA proposes to find again that precursors do not play a significant part in the PM_{10} problem in the Owens

[34] An overview of the 2016 PM_{10} Plan emissions inventory is provided here. For detailed results and a complete discussion of the methodologies used to produce the emissions inventories, see the following sections of the 2016 PM_{10} Plan: Summary, S.1; Chapter 4, ''PM_{10} Emissions Inventory and Determination of Significant Sources;'' and Appendix IV–1, ''2016 SIP Inventory.''

[35] See attachment to letter from Phillip L. Kiddoo, Air Pollution Control Officer, GBUAPCD to Elizabeth Adams, Acting Air Division Director, U.S. EPA, Region 9, dated October 26, 2016.

[36] *Id.* The metrics used to ratio emissions from Inyo County to the Owens Valley PM_{10} NA are specified in the attachment.

[37] *See* 64 FR 34173 at 34716 (June 25, 1999).

Valley PM_{10} NA. We discuss this in more detail in Section II.D., below.

The emissions inventories provided in the Plan show that fugitive dust emissions resulting from wind erosion on the exposed Owens Lake bed, off-lake deposits of lake bed dust such as the Keeler Dunes, and open desert are by far the largest sources of PM_{10} in the Owens Valley PM_{10} NA. Other, much smaller sources of windblown dust include small mining facilities and the Lone Pine Landfill. The remaining sources of PM_{10} within the Owens Valley PM_{10} NA include wood stoves, fireplaces, unpaved and paved road dust, and vehicle tailpipe emissions. The District also notes that prescribed burning is a source of PM_{10} in the nonattainment area. There are no large industrial sources of PM_{10} in the Owens Valley PM_{10} NA.

The GBUAPCD also grouped emissions into three location-based categories: ''lake bed emissions,'' ''near-lake emissions,'' and ''remaining Owens Valley NA emissions.'' Emissions originating from the lake bed are included in the lake bed category. The near-lake category consists of emissions generated within a two-kilometer zone surrounding the lake bed and includes fugitive windblown dust emissions from paved and unpaved roads and open desert, emissions from other sources within two kilometers of the lake bed such as the Lone Pine Dump, and the Keeler and Olancha dunes. Emissions generated outside the two-kilometer zone are grouped in the remaining Owens Lake NA emissions category. The ''Owens Lake Subarea'' encompasses the lake bed and the near-lake emissions. Emissions from unpaved roads and open desert areas generated within the two-kilometer zone surrounding the lake were used in the District's analysis of which sources contribute significantly to nonattainment, thereby allowing the District to factor in the impact of the distance between emission sources and affected monitors.

Table 2 provides a summary of the annual emissions forecast for all PM_{10} emission source categories in the Owens Valley PM_{10} NA for 2006, 2007, and for 2016 through 2019 (tons per year).

TABLE 2—SUMMARY OF PM_{10} ANNUAL EMISSIONS IN THE OVPA

Year end [38]	Lake bed emissions	Near-lake emissions			Remaining Owens Valley NA emissions			Total
		Keeler Dunes	Olancha Dunes	2-km buffer (excluding dunes) [39]	Windblown dust unpaved roads	Windblown dust open desert [40]	Misc. sources [41]	
2006	789	5,324	6,395	4,217	416	19,617	854	37,613
2007	7,448	4,476	5,011	3,143	416	19,617	854	40,964
2016	1,222	172	1,506	1,358	416	19,617	747	25,038
2017	355	41	1,093	1,180	416	19,617	747	23,450
2018	355	41	798	1,053	416	19,617	747	23,027
2019	355	41	586	962	416	19,617	750	22,726

Source: 2016 PM_{10} Plan, Table 4–3.

The EPA is proposing to find that the 2016 PM_{10} Plan's emissions inventories for 2006 through 2019 are comprehensive, accurate, and current inventories of actual emissions from all sources in the Owens Valley PM_{10} NA and that these emissions inventories meet the requirements of section 172(c)(3) of the CAA and EPA guidance.[42] The GBUAPCD has provided a 2006 base year and future year emissions inventories to 2019, comprehensively addressing all source categories in the Owens Valley PM_{10} NA. Consequently, we are proposing to find that the emissions inventories provided by the GBUAPCD meet the requirements of section 172(c)(3) and provide an adequate basis for the attainment demonstration as well as for the BACM and RFP demonstrations.

B. Demonstration of Attainment

The 2016 PM_{10} Plan must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM_{10} emissions so that the 24-hour NAAQS will be attained as soon as practicable but no later than June 6, 2017, assuming final approval of the attainment deadline extension discussed above. CAA section 189(b)(1)(A).

1. Attainment Deadline

In 2007, the EPA notified the GBUAPCD that it had failed to attain the PM_{10} NAAQS by the attainment date at the end of 2006.[43] The GBUAPCD has requested that the EPA extend the attainment date for the Owens Valley PM_{10} NA for an additional 10 years.[44] The EPA is proposing to approve the requested attainment date extension because, considering the severity of nonattainment and the availability and feasibility of pollution control measures, the EPA believes such an extension to June 6, 2017 is warranted based on various factors, including the following.

First, the EPA acknowledges the severity of the PM_{10} problem. As discussed above, prior to the application of controls, the Owens Valley PM_{10} NA experienced dust storms of unprecedented magnitude that originated from the dry Owens Lake bed under certain meteorological conditions. The magnitude of these dust storms from the dry lake bed were unique within California and the United States.

Second, the factors creating the dry Owens Lake bed, specifically the diversion of water in the early 20th century to the City of Los Angeles, resulted in complex legal and technical

[38] Values presented represent the emissions at the end of the calendar year, after all scheduled controls are in place.

[39] Includes PM_{10} emissions from Lone Pine Landfill, which equal on average approximately 60 tons per year.

[40] Emissions assumed constant over time.

[41] Miscellaneous sources include: Manufacturing and industrial, service and commercial, mineral processes, metal processes, residential fuel combustion, construction and demolition, paved and unpaved road dust (activity related), windblown dust from agricultural lands, managed burning and disposal, on-road mobile, and wildfires.

[42] Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations. U.S. EPA, September 29, 2016 (draft).

[43] *See* 72 FR 31183 (June 6, 2007).

[44] As discussed above, CAA section 188 and 179 allow up to a 10-year extension of the attainment date after the EPA issues a finding that a Serious PM_{10} nonattainment area has failed to attain the NAAQS. CAA section 172(a) authorizes the EPA to extend the attainment deadline to the extent it deems appropriate for a period of no greater than 10 years from the publication of the nonattainment finding, considering the severity of nonattainment and the availability and feasibility of pollution control measure.

agreements for installation of control measures that were untested in kind and scope. Since approval of the 1998 PM_{10} Plan, the GBUAPCD and City of Los Angeles have worked consistently to refine and optimize the complex set of control measures leading to substantial reductions of PM_{10} from the dry Owens Lake bed and surrounding near-lake sources. The culmination of decades of work on this problem by the GBUAPCD and the City of Los Angeles is the Stipulated Judgment leading to the District's adoption and the EPA's approval of Rule 433 into the SIP in 2016.[45] Rule 433 will ensure that the mitigation measures leading to the final reductions in PM_{10} will occur and lead to attainment of the NAAQS.

For these reasons, the EPA concurs that an extension of the attainment deadline to June 6, 2017 is warranted.

2. PM_{10} Attainment Demonstration Approaches

A key part of a PM_{10} attainment plan is the attainment demonstration. This is a demonstration by the state that the existing and planned emission control measures, in this case, the controls that have been incorporated into Rule 433 and the Keeler Dunes Project, are sufficient to result in attainment of the PM_{10} NAAQS by the required attainment date (*i.e.,* 2017). Under CAA section 189(b)(1)(A), the attainment demonstration for a Serious nonattainment area must include air quality modeling. Please see the EPA's accompanying Technical Support Document (TSD), located in the docket for this action, for our detailed analysis of the air quality modeling supporting the District's demonstration of attainment. In summary, the EPA's preferred PM_{10} attainment demonstration approach is dispersion modeling, with receptor modeling or emissions inventory approaches as adjuncts. However, emissions from fugitive dust sources such as the dry Owens Lake bed are uncertain and variable in comparison with the typical industrial point sources to which dispersion modeling is usually applied. Also, in a fugitive dust-dominated area there are few if any chemical differences between the various emitting source regions within the area, so receptor modeling is of limited use. Therefore, emissions inventory-based modeling approaches have been used in fugitive dust and other PM_{10} nonattainment areas. These include the ''rollback'' of monitored concentrations in proportion to emissions, sometimes in conjunction with a dispersion model in order to account for the spatial and temporal variation of emissions and their various distances from the monitor(s). In all of the approaches, projected emissions reductions due to control measures are applied to the emission source contributions, and attainment is demonstrated if the resulting concentrations are below the NAAQS.[46]

3. Modeling in Submittal

The District used a hybrid modeling approach combining the CALPUFF (''California Puff'') dispersion model[47] with a monitored component. CALPUFF is used to model the effect of emissions from sources on the Owens Lake bed and the Keeler Dunes. The monitored component is used to represent the effect of other sources off the lake bed (''out-of-network''), which are not otherwise included in the CALPUFF modeling; it is a time-varying background concentration that declines over time as lake bed emissions are controlled. The District's hybrid model and its inputs are discussed in more detail in our TSD.

The District's model performance evaluation[48] of the hybrid model, which checked model predictions against monitored observations during the five-year period of July 2009 to June 2014, showed a high correlation between them and acceptable model performance.

The attainment demonstration also examined the effect of the controls through implementation of Rule 433 and controls on the Keeler Dunes that would be in place by the end of 2017, the attainment year. Each of the five meteorology years was modeled, and for a given receptor the highest sixth-high concentration taken as the design concentration. The design concentration results for each monitor site for 2014 through 2019 are shown in Table 7–5 of the 2016 PM_{10} Plan. For 2017, the highest design concentration is 142 μg/m^3 and all concentrations are less than 150 μg/m^3, demonstrating attainment of the PM_{10} NAAQS.

4. Evaluation of Modeled Attainment Demonstration

The dry Owens Lake bed presents a unique situation for which unconventional modeling approaches may be appropriate. The EPA has consulted with the District and CARB on the modeling approach numerous times over the past decade, including during the year prior to the current Plan submittal. As discussed in detail in our TSD and in the summary below, the District's air quality modeling analysis is appropriate for this area.

a. Model Emissions Input

The District's Dust Identification (ID) Program, described in detail in the TSD, provides estimates of PM_{10} emissions based on real-time measurements at numerous locations. It provides a level of detail and accuracy that is unique, and is a considerable refinement over standard emission factors, and even over locale-specific emission factors that account for soil type and wind speed. It provides a strong foundation for the emission estimates needed for a modeled attainment demonstration.

b. Model Choice

The District's method for estimating PM_{10} emission factors (*i.e.,* back-calculation from monitored concentrations, also discussed in detail in the TSD), depends on good characterization of source-receptor relationships (emitting source square and monitor receptor) to determine which particular emitting areas are contributing to a given monitored concentration. A Lagrangian puff model like CALPUFF, which allows PM_{10} emissions to follow a realistic curved trajectory between the source area and the monitor and allows different wind direction to vary by location at any given time, is appropriate for this demonstration. CALPUFF is preferable to a steady-state Gaussian model like AERMOD, which has ''straight-line'' trajectories along a single wind direction within any given hour for all sources.

[45] Because some of the controls required in the 2016 PM_{10} Plan are required to be installed prior the end of 2017, this leaves open the possibility that some of the required controls will not be completed by June of 2017. We do not believe this will be an impediment to reaching attainment due to the seasonal nature of PM_{10} emissions in the Owens Lake NA, which are generally elevated in the winter and spring months.

[46] Monitored concentrations meet the 24-hour PM_{10} NAAQS when the ''design value,'' the expected number of daily exceedances of the NAAQS level of 150 μg/m^3, is no more than one per year, 40 CFR 50.6. However, for a modeled attainment demonstration, when five years of meteorology are modeled, the 6th highest concentration is used as the ''design concentration'' to compare to the NAAQS level; at most five exceedances of that level are acceptable for attainment, one per modeled year. *Guideline on Air Quality Models,* 40 CFR 51 Appendix W, section 7.2.1.1, ''Design Concentrations for SO_2, PM_{10}, CO, Pb, and NO_2'' The design concentration is sometimes referred to as the ''design value,'' but strictly speaking, the PM_{10} design value is the expected number of exceedances per year.

[47] Model code and documentation are available at no cost for download from *http://www.src.com/calpuff/calpuff1.htm.*

[48] 2016 PM_{10} Plan, Appendix VII–1: Air Quality Modeling Report, sec. 5.

c. Modeling Domain and Background Concentration

The District's monitoring and modeling network is focused on the lake bed and the immediately surrounding area. In order for the attainment demonstration to account for all the PM_{10} emission sources contributing to NAAQS violations, off-lake sources must be adequately represented in the background concentration that is added to the model prediction. The District's procedure for determining background concentration is discussed in detail in the TSD. The EPA finds the District's reasoning and supporting documentation for the assumptions convincing.

d. Modeling Receptors

By default, a grid of model receptors is used to cover much of a nonattainment area, to ensure that the NAAQS is attained everywhere in the area. In the 2016 PM_{10} Plan, receptors are placed only along the lake bed shoreline, and further, only at monitor locations. As stated in the 2016 PM_{10} Plan, the monitoring sites were chosen to be downwind of the largest PM_{10} source areas, *i.e.* the lake bed, and so are representative of the highest expected impacts.[49] Because concentrations necessarily decline with distance from a non-buoyant source like fugitive dust, the EPA agrees that the highest PM_{10} concentrations would be expected at the shoreline.

5. The EPA's Proposed Action

In summary, the attainment demonstration is based on a unique modeling approach that incorporates real-world measurements and is well-suited to the special conditions at Owens Lake. The EPA is proposing to find that the attainment demonstration in the 2016 PM_{10} Plan is approvable.

C. Five Percent Requirement

Section 189(d) of the CAA requires a state with a Serious PM_{10} nonattainment area that fails to attain the PM_{10} NAAQS by the applicable attainment deadlines to submit within 12 months after the attainment applicable attainment date, a plan showing an annual five percent reduction in emissions of PM_{10} in the area from the date of the submission until attainment, based on the most recent inventory.

Table 4–3 in the 2016 PM_{10} Plan provides a summary of the annual emissions forecast for sources of emissions in the nonattainment area for the years 1999 through 2019. The inventory values are derived using a combination of modeling data, monitoring results, CARB emissions inventories and control measure efficiencies.[50]

The 2016 PM_{10} Plan includes a demonstration of annual five percent reductions in Chapter 8. As noted, fugitive windblown emissions, ''which are tied to meteorology and are highly irregular year-to-year,'' [51] account for most of the emissions in the Owens Valley PM_{10} NA.[52] To accommodate this variability for a more stable and realistic assessment of reductions, the District used a three-year rolling average to calculate the annual reductions. Using average annual emissions from 2005–2007 (62,734 tpy) as the starting point for the required five percent per year reductions, the District is required to reduce emissions by 31,367 tons per year by the attainment year (2017) to 32,367 tons per year. The GBUAPCD projects three-year annual average emissions in 2017 to be 24,783 tons per year, which *exceeds* the required amount of required reductions by 7,584 tons per year. Figure 8–1 in the 2016 PM_{10} Plan illustrates emissions trends for various sources in the nonattainment area from 1999 through 2019 along with the three-year average total, and compares these values with a five percent reduction line.[53]

Although annual emissions increase in the first few years of the planning period, a steady decline begins in 2009.[54] The average emissions reductions catch up with the five percent per year reduction target in 2013, and subsequently exceed the required reductions beyond the projected attainment year. The EPA recognizes the unprecedented challenges faced by the District in achieving this target. In light of the unique nature of the source of emissions in the Owens Valley PM_{10} NA, the groundbreaking technical efforts needed to characterize and control emissions from the lake bed, and the unavoidable delays in implementing controls on the lake bed caused by litigation, and in recognition of the achievement of reductions beyond those required under CAA section 189(d) after 2013, we are proposing to approve the five percent demonstration in the 2016 PM_{10} Plan.

D. BACM/BACT and Adopted Control Strategy

1. Background

Section 189(b)(1)(B) of the CAA requires areas designated as Serious nonattainment for PM_{10} to implement BACM and BACT [55] on all significant sources of direct PM_{10} and PM_{10} precursors. The CAA does not define a BACM-level of control for specific sources. In our guidance for Serious PM_{10} nonattainment area plans, the EPA defined BACM to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts.[56] Consistent with the General Preamble Addendum, a BACM analysis should include the following elements for the Owens Valley PM_{10} NA:

- Preparation of an inventory of PM_{10} sources;
- Identification of source categories having a greater than *de minimis* impact on ambient PM_{10} concentrations;
- Comparative analysis of the controls implemented in the Owens Valley PM_{10} NA and BACM in other Serious nonattainment areas for significant source categories; and
- Evaluation of reducing emissions from a particular source category and costs associated with controls.

2. Analysis

The GBUAPCD BACM analysis, which addresses the four elements described in the General Preamble Addendum,[57] is summarized below. The GBUAPCD's Rule 433 contains the BACM control measures for the Owens

[49] *Id.,* p. 62 sec.7.1.

[50] *Id.,* at 34–35.

[51] For example, emissions totaled 109,635 tons in 2005, dropped to 37,613 tons in 2006, then rose to 73,999 tons in 2009 before beginning to consistently decline. Emissions in 2010 totaled 70,343 tons and by 2017 when attainment will be reached, emissions are projected to be 23,450 tons per year. 2016 PM_{10} Plan, Table 4–3.

[52] *Id.,* p. 81.

[53] The EPA believes the use of 2007 as the baseline for five percent reductions is reasonable and consistent with Congress' intent. Section 189(d) states that plans are due *within 12 months of the missed attainment deadline* and that the plans should provide for annual five percent reductions *from the date of the submission until attainment.* The attainment deadline for the Owens Valley PM_{10} NA was December 31, 2006. 64 FR 48305 (September 3, 1999). Accordingly, a submittal to fulfill section 189(d) was due by December 31, 2007. Arguably, some of the reductions in the RFP demonstration occurred outside the literal time frame specified by Congress (*i.e.,* ''the date of the submission'' of the Plan) because the 2016 PM_{10} Plan was not submitted until June 9, 2016. The EPA believes that it is appropriate and consistent with Congress's intent for expeditious attainment of the NAAQS that we consider reductions that occurred prior to the submittal of the 2016 PM_{10} Plan.

[54] The District notes that a substantial portion of the total reductions achieved beginning in 2006 and forecast through 2017 occur from 2010 to 2014 with the implementation of the 2008 SIP Control Areas and Phase 8 Control Area, which are described in Sections 6.2.1.4 and 6.2.1.5 of the Plan. 2016 PM_{10} Plan, p. 85.

[55] BACT, which applies to stationary sources, is a subset of BACM.

[56] *See* 59 FR 41998, 42010 (August 16, 1994).

[57] 2016 PM_{10} Plan, page 38.

Lake bed. The EPA approved Rule 433 into the SIP on November 10, 2016.[58] In addition, the GBUAPCD is directly implementing controls at the Keeler Dunes as discussed further below.

a. Inventory

The emissions inventories included in the 2016 PM_{10} Plan and in additional information submitted on October 26, 2016 are summarized and evaluated in section II.A, above. As noted previously, the EPA is proposing to find that the 2016 PM_{10} Plan's emissions inventories for 2006 through 2019 are comprehensive, accurate, and current inventories of actual emissions from all sources in the Owens Valley PM_{10} NA and that these emissions inventories meet the requirements of Section 172(c)(3) of the CAA and the EPA.

b. Identification of Source Categories

The General Preamble Addendum provides that BACM are required for all categories of sources in Serious areas unless the State adequately demonstrates a particular source category does not contribute significantly to nonattainment of the NAAQS. A source category is presumed to contribute significantly to a violation of the 24-hour PM_{10} NAAQS if its PM_{10} impact at the location of expected violation would exceed 5 μg/m^3.[59]

To determine which sources contribute significantly to PM_{10} violations and are therefore subject to BACM level controls, the GBUAPCD selected a day on which measured levels of particulate approached the level of the standard and the predominant source of emissions was characterized as ''non-lake.'' The District noted that its choice is conservative because it ''produces a small *de minimis* emissions level and makes it feasible for non-lake sources to be considered significant.''[60] By dividing the threshold value for a significant contribution (*i.e.,* 5 μg/m^3) by ambient level of PM_{10} on the chosen day (150.1 μg/m^3), Great Basin calculated a *de minimis* factor of 3.33 percent.

The GBUAPCD provided an inventory of sources of precursor emissions that we used to determine if sources of precursors contribute significantly to ambient levels of PM_{10} exceeding the standard in the Owens Valley PM_{10} NA. Because of the gaseous nature of precursor emissions, these compounds would have the potential for long distance transport, so emissions from the entire nonattainment area are considered. Adding together emissions of PM_{10} from within the near-lake area on a near exceedance day and precursor emissions from throughout the nonattainment area results in a total of 535.37 tons per day of emissions. Multiplying this number by 3.33 percent yields a *de minimis* threshold of 17.8 tons per day.

In determining whether sources of precursors contribute significantly to PM_{10} levels, we made two conservative assumptions. First, we assumed that all precursor emissions would result in the formation of PM_{10}. Second, we compared the total emissions for all precursors (*i.e.,* 4.7 tons per day), rather than emissions of each precursor from each source category, to the *de minimis* threshold of 17.8 tons per day. Given total precursor emissions are far below the *de minimis* threshold, we conclude precursors do not contribute significantly to PM_{10} levels in the Owens Valley.

To determine which sources of direct PM_{10} are significant, the District multiplied the near-exceedance day PM_{10} emissions inventory (530.65 tons per day[61]) by the *de minimis* factor, yielding a *de minimis* emissions threshold of 17.7 tons per day.[62]

Table 3 below summarizes the sources of PM_{10} emissions in the Owens Lake subarea, on the analyzed day.[63]

TABLE 3—PM_{10} EXCEEDANCE DAY INVENTORY FOR OWENS LAKE SUBAREA

[2 km buffer]

Category	2015 (tons per day)[64]
Fugitive Windblown Dust from Exposed Lake Beds	45.30
Fugitive Windblown Dust from Keeler Dunes	169.20
Fugitive Windblown Dust from Olancha Dunes	312.00
Other sources within the Owens Lake Subarea, including mineral processing, paved and unpaved road dust, and the Lone Pine Landfill[65]	4.15
Total	530.65

Using the 17.7 tons per day threshold, the GBUAPCD identified three significant PM_{10} source categories in the OVPA:

- Fugitive windblown dust from exposed lake bed.
- Fugitive windblown dust from Keeler Dunes.
- Fugitive windblown dust from Olancha Dunes.

Based on this analysis, the District focused its BACM demonstration on the controls required on the lake bed and on the Keeler Dunes.[66] According to the GBUAPCD, the Olancha dunes are primarily natural. If PM_{10} violations are attributed to these dunes, the violations will be treated as natural events and a Natural Events Action Plan will be developed and implemented in accordance with the EPA's guidance and rules on Exceptional Events.[67] Further, emissions from the Olancha Dunes are expected to be reduced by

[58] Acting Regional Administrator Alexis Strauss signed the EPA's final action approving Rule 433 on November 10, 2016. It will be published in the **Federal Register** in the near future.

[59] 59 FR 41998, 42011.

[60] 2016 PM_{10} Plan, page S–3.

[61] This number does not include precursor emissions, which is acceptable because precursors do not significantly contribute and excluding precursor emissions results in a slightly lower (more conservative) threshold for significance.

[62] 2016 PM_{10} Plan, p. 4.

[63] The GBUAPCD notes that ''monitoring and modeling analyses indicate that emissions from off-lake sources more than two kilometers away do not have an impact on achieving attainment'' and cites a similar approach taken in the ''Five Percent Plan for PM_{10} for the Maricopa County Nonattainment Area.'' *Id.* Page 56.

[64] *Id.* Table S–2.

[65] BACT, which applies to stationary sources, is generally not applicable within the Owens Valley PM_{10} NA where all PM_{10} sources except for wind erosion from the dry Owens Lake bed and the dune systems are *de minimis.*

[66] The GBUAPCD has investigated the history and morphology of the Keeler Dunes and determined that the drying of the Owens Lake bed resulted in the expansion of the pre-existing, natural dune area. 2016 PM_{10} Plan, page 61.

[67] *Id. See* Appendix V–1, ''OVPA 2016 SIP BACM Assessment,'' Appendix E, ''2013 GBUAPCD Board Order No. 130916–01,'' p. 7.

about 2090 tons per year as the result of lake bed controls, which will reduce sand migration from nearby areas and allow redeposited lake bed particulate to winnow away until emissions are those of a natural dune system.[68]

c. Comparative Analysis

To fulfill the requirement for a comparative analysis, the GBUAPCD searched for requirements for analogous lake bed and dune sources in other PM_{10} nonattainment areas including Imperial County, the San Joaquin Valley, Maricopa County (Phoenix area), the South Coast, and Clark County (Las Vegas area). However, the District was unable to identify any analogous active controls for these kinds of sources in other areas. The District concludes that ''these measures are unique in the US and are, by definition, the most stringent requirements for these sources.'' [69] A description of the lake bed and dune controls follows.

i. Lake Bed Controls

Lake bed controls are set forth in the GBUAPCD's Rule 433, which is included in the 2016 PM_{10} Plan. The EPA has approved Rule 433 into the SIP in a separate action.[70] Rule 433 requires the control measures described in Chapter 6 of the 2016 PM_{10} Plan and summarized in our TSD to be implemented by the City of Los Angeles on various portions of the dry Owens Lake bed.[71] In brief, Rule 433 requires the City of Los Angeles to conduct shallow flooding through application of water, install managed vegetation or a gravel blanket, or in some cases use tillage with a brine back-up. These control measures typically result in a 99 to 100 percent control efficiency. Beginning in 2001, lake bed controls have been constructed in phases as modeling and empirical evidence have demonstrated the need for additional controls. Rule 433 requires ongoing implementation of previously established control requirements and includes an enforceable implementation schedule for the most recent phase of controls, with all controls in place in the attainment year of 2017.

ii. Dune Controls

The District is in the process of implementing a dust control project on Keeler Dunes that involves the placement of approximately 82,000 straw bales and planting of approximately 246,000 native shrubs.[72] The goal of the project is to create a stable, non-emissive, low-impact vegetated dune system that requires minimal resources to maintain. The placement of the straw bales was completed in 2015 and plantings are scheduled to be complete by the end of 2016. At full build-out, the GBUACPD projects the project will reduce PM_{10} emissions by approximately 95 percent and bring the community of Keeler into compliance with state and federal PM_{10} standards.[73] Implementation of this project is made federally enforceable by approval of the 2016 PM_{10} Plan, which includes Resolution 2016–03 wherein the Governing Board of the GBUAPCD authorizes and commits the District to complete the Keeler Dunes Project as set forth in the Plan.

In the context of its environmental review of the Keeler Dunes Project, the District considered alternatives for reducing the windblown dust from the Keeler Dunes, such as covering with geotextile fabric and gravel or excavation and removal of the dunes, but found them to be infeasible.[74]

d. Evaluation of Reducing Emissions From Windblown Dust and Associated Costs

The GBUAPCD estimated cost and emission impacts of the exposed lake bed and Keeler Dune controls as shown in Table 4 below:

TABLE 4—IMPACT ANALYSIS: CONTROL EFFECTIVENESS, COST INFORMATION, AND COST EFFECTIVENESS [75]

Source category (and windblown dust controls)	Average annual emissions (tons)	Control effectiveness	Costs	Cost effectiveness (tons)
Dry Lake Bed (varied controls, including shallow flooding, gravel blanket, and managed vegetation. See Rule 433.).	2006: 73,174; 2010: 43,325; 2014: 1,936	Up to 99 percent depending on control and location.	$145.8M (annualized) for 2016 SIP.	$2,390
Off-Lake Dunes (straw bales and re-vegetation).	3,309	95 percent based on straw bales with future shrub establishment.	$700,000 (annualized) for straw bales and revegetation with watering.	222

3. EPA Evaluation and Proposed Action

In the 2016 PM_{10} Plan, the GBUAPCD has provided documentation on Rule 433 and on the Keeler Dunes Project, quantifying the cost of construction, materials, operation, and maintenance, and examining other factors such as energy and environmental impacts. The EPA agrees that adequate time must be allowed to fully implement Rule 433 successfully because the control measures in the Rule are uniquely vast in scale, materials, and required construction activity. Rule 433 establishes an aggressive, phased, implementation schedule that we are proposing to find is as expeditious as practicable. We also find that the implementation schedule for the Keeler Dunes project is as expeditious as practicable.

The EPA concludes that the 2016 PM_{10} Plan demonstrates:

(1) Wind erosion from the dry Owens Lake bed (and secondarily, from the Keeler Dunes, which have expanded as a result of redeposited particles transported from the dry lake bed [76]), is the predominant source of PM_{10} emissions that cause or contribute to PM_{10} violations in the Owens Valley PM_{10} NA and that applying BACM to

[68] *Id.,* pp. 34 and 56.

[69] *Id. See* Appendix V–1, ''OVPA 2016 SIP BACM Assessment,'' p. 22.

[70] 81 FR 62849 (September 13, 2016); final approval signed November 10, 2016.

[71] For more detail on the Owens Lake bed controls, see Chapter 6 of the 2016 PM_{10} Plan and our TSD. Some of these control measures are also described in our proposed approval of the 1998 Plan (64 FR 34173, June 25, 1999).

[72] As noted above, no additional active controls are anticipated for the Olancha Dunes.

[73] 2016 PM_{10} Plan, pp. 19 and 50–53

[74] *Id. See* Appendix V–1, ''OVPA 2016 SIP BACM Assessment,'' pp. 16–17.

[75] *Id. See* Appendix V–1, ''OVPA 2016 SIP BACM Assessment,'' p. 21.

[76] *Id.,* page 61.

other source categories would not contribute significantly to achieving the NAAQS as expeditiously as practicable;

(2) Rule 433's control measures to reduce windblown dust from the dry Owens Lake bed and area immediately surrounding the bed of Owens Lake are unique and satisfy the requirement for BACM.

(3) The goal of the Keeler Dunes Project is to create a stable self-sustaining low-impact vegetated dune system to reduce wind erosion. Implementation of these controls represents BACM since there are no analogous dust control projects or alternative controls for this type of source; and

(4) No analogous source has been identified to support the economic and technological feasibility of any alternative or additional measures for the control of significant sources of wind erosion emissions in the Owens Valley PM_{10} NA.

E. Reasonable Further Progress/ Quantitative Milestones

CAA section 189(c) requires that PM_{10} nonattainment areas must include quantitative milestones that are to be achieved every three years and that show RFP toward attainment by the applicable attainment deadline. Quantitative milestones may be met in a variety of ways, including by establishing a percent implementation of various control strategies, by percent compliance with implemented control measures, or adherence to a compliance schedule.[77] Prior to submittal of the 2016 PM_{10} Plan, lake bed controls were established that yielded significant emissions reductions, as reflected in the annual emissions inventory[78] and illustrated in Figure 8–1 of the Plan. Unsurprisingly, given the variable nature of the emissions sources and the periodic delays due to disputed control measures, the decline is not linear; however, as noted previously, reductions sufficient to provide for attainment will be achieved within the required timeframe. Under the circumstances, we find that the progress achieved prior to the 2016 adoption of the Plan is reasonable.

The GBUAPCD's Rule 433 and the Keeler Dunes Project establish requirements for additional controls that will be completed in 2017 and that provide for additional emissions reductions. Under Rule 433, the City of Los Angeles must continue to implement all control measures that are already in place,[79] and must implement Phase 9/10, which requires the control of an additional 3.62 square miles of the Owens Lake bed by December 31, 2017. These control requirements include enforceable schedules for implementation of the specified control measures, and the Plan includes quantification of the emissions reductions that will be achieved by implementation of the control measures.

In its discussion of the requirement for quantitative milestone reports, the District noted that the remaining milestone for the 2016 PM_{10} Plan is the completion of the Phase 9/10 dust controls, which are enforceable through Rule 433. In other words, the final quantitative milestone for the 2016 PM_{10} Plan is 100 percent implementation of the required controls. The GBUAPCD commits to submitting a report to the EPA by April 1, 2018, as required by Section 189(c)(2) of the Act, that demonstrates RFP thorough the achievement of the December 31, 2017 quantitative milestone.

The EPA proposes to approve the enforceable schedule in Rule 433 and commitment for completion of the Keeler Dunes Project in 2016 as meeting the RFP requirements of CAA section 189(c).

F. Contingency Measures

The CAA requires that the 2016 PM_{10} Plan include contingency measures to be implemented if the area fails to meet progress requirements or fails to attain the NAAQS by the applicable deadline. These contingency measures should take effect without requiring further action by the state or the EPA and should be fully implemented as expeditiously as practicable.[80] Contingency measures should also provide for emissions reductions equivalent to one year's average increment of RFP.[81]

Because it is not possible to predict which areas of the lake bed may become emissive and cause a failure to meet progress requirements or to attain the NAAQS, Rule 433 requires the District to evaluate at least once per calendar year whether additional areas of the lake bed require controls. If the GBUAPCD determines that the Owens Valley PM_{10} NA has not met progress requirements or will not timely attain, Rule 433 requires the implementation of BACM control measures on up to an additional 4.78 square miles of the Owens Lake bed as expeditiously as practicable. The implementation of the contingency measure in Rule 433 does not require additional rulemaking actions or public hearings. The EPA has concluded, therefore, that the contingency measure included in the 2016 PM_{10} Plan through adopted Rule 433 provides for the implementation of contingency measures as expeditiously as practicable.

The GBUAPCD has demonstrated that the dry lake bed is the overwhelming contributor the exceedances of the PM_{10} NAAQS, both through PM_{10} originating directly from the lake bed, or from lake bed particles that have been deposited nearby, which then become a secondary source of particulate (*e.g.,* the Keeler Dunes).[82] Therefore, we have focused our analysis on the control of emissions emanating from the lake bed in assessing whether the contingency measure in the 2016 PM_{10} Plan provides a year's worth of average RFP increment.

Determining the amount of emissions reductions needed for contingency measures (*i.e.,* a year's worth of reductions) presents a unique challenge in the Owens Valley PM_{10} NA due to the nature of the lake bed and the meteorological influence on emissions, which leads to a degree of variability in annual emissions that is somewhat independent of the application of controls. For this reason, we have used the annual average area of the lake bed on which controls are required for the period of 2007 (the year the EPA made a finding of failure to attain) through 2017 (the attainment year) as a surrogate for the annual amount (tons) of emissions reductions required. This results in an annual average area of 1.8 square miles.[83] Rule 433 provides for the implementation of controls on an additional 4.78 square miles of lake bed, which is more than double the annual average. We therefore conclude the contingency measure provisions in Rule 433 satisfy the contingency measure requirements under CAA section 172(c)(9).

G. Transportation Conformity

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and

[77] 59 FR 41998 at 42016.

[78] 2016 PM_{10} Plan, Table 4–3.

[79] These areas consist of the 2003 Dust Control Area (29.8 square miles), the 2006 Dust Control Area and Channel Area (13.2 square miles), and the Phase 8 area (2.0 square miles).

[80] 59 FR 41998 at 42015.

[81] *Id.*

[82] For additional discussion, see Chapter 7 of the 2016 PM_{10} Plan and the attainment demonstration analysis in the TSD for this action.

[83] A total of 18.2 square miles will be controlled in 10-year period of 2007 through 2017 (the 2006 Dust Control and Channel Area encompasses 13.2 square miles; the Phase 8 Area encompasses 2.0 square miles; the Phase 9/10 Area encompasses 3.62—the provisionally excluded Cultural Resource Areas encompass approximately 0.6 square miles).

projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones. However, if the EPA determines that a SIP demonstrates that motor vehicle emissions are an insignificant contributor to the air quality problem, states are not required to establish motor vehicle emissions budgets or perform a regional emissions analysis for transportation conformity purposes.[84]

In section 6.1.2 of the Plan, the GBUAPCD provides its argument for why motor vehicle emissions are insignificant contributors to the PM_{10} problem in the Owens Valley PM_{10} NA. First, the District noted that motor vehicle tailpipe emissions and re-entrained roadway dust contribute just 1.4 percent of the 2016 PM_{10} emissions. The District also observed that the State estimates the annual population growth (about 0.7 percent) and increase in vehicle miles traveled (about 1.2 percent annually) and argued that it is unlikely that ''these emissions would grow to such an extent as to cause a NAAQS violation in the future.'' Finally, the District pointed out the absence of measures in the SIP that control motor vehicle emissions. In light of these factors, the EPA concurs with the District's conclusion that motor vehicle emissions are insignificant contributors to the PM_{10} problem in the Owens Valley. Accordingly, the GBUAPCD is not required to establish motor vehicle budgets in this plan or to perform regional emissions analyses for transportation conformity.

III. Summary of the EPA's Proposed Action

The EPA is proposing to approve the Serious area 2016 PM_{10} Plan submitted by the State of California for the Owens Valley PM_{10} nonattainment area. Specifically, the EPA is proposing to approve the 2016 PM_{10} Plan with respect to the CAA requirements for public notice and involvement under section 110(a)(1); emissions inventories under section 172(c)(3); the control measures in Rule 433 under section 110(k)(3), as meeting the requirements of sections 110(a) and 189(b)(1)(B); RFP and quantitative milestones under section 189(c); the contingency measure in Rule 433 under section 172(c)(9); and demonstration of attainment under section 189(b)(1)(A). The EPA is also proposing to approve the State's request for an extension of the attainment date to June 6, 2017 pursuant to CAA sections 188 and 179.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). We intend to offer to consult with local tribes during the comment period.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 1, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–29758 Filed 12–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–9956–07–Region 9]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update portions of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (''Santa Barbara County APCD'') and Ventura County Air Pollution Control District (''Ventura County APCD'') are the designated COAs. The intended effect of approving the OCS requirements for the Santa Barbara County APCD and Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to

[84] 40 CFR 93.109(f).

the existing requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by January 11, 2017.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background Information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements by the Ventura County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). EPA has excluded administrative and procedural rules[2] that regulate toxics, which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What requirements were submitted to update 40 CFR part 55?

1. After review of the requirements submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following Santa Barbara County APCD requirements applicable to OCS sources. Earlier versions of the District rules with a revised date are currently implemented on the OCS. The District rules with an adopted date are newly implemented on the OCS. The District rule with a repealed date is no longer implemented on the OCS.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Rule No.	Name	Revised date
102	Definition	08/25/16
105	Applicability	08/25/16
202	Exemption to Rule 201	08/25/16
204	Applications	08/25/16
323.1	Architectural Coatings	08/25/16
801	New Source Review—Definitions and General Requirements	08/25/16
802	New Source Review	08/25/16
804	Offsets	08/25/16
805	Air Quality Impact Analysis, Modeling, Monitoring, and Air Quality Increment Consumption	08/25/16
806	Emission Reduction Credits	08/25/16
1301	Part 70 Operating Permits—General Information	08/25/16
		Adopted date
323.1	Architectural Coatings	06/19/14
809	Federal Minor Source New Source Review	08/25/16
		Repealed date
803	Prevention of Significant Deterioration	08/25/16

2. After review of the requirements submitted by the Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following Ventura County APCD requirements applicable to OCS sources. Earlier versions of the District rules with a revised date are currently implemented on the OCS. The District rules with an adopted date are newly implemented on the OCS. The District rule with a repealed date is no longer implemented on the OCS.

Rule No.	Name	Revised date
23	Exemptions from Permit	11/12/13
42	Permit Fees	04/12/16
54	Sulfur Compounds	01/14/14
74.11.1	Large Water Heaters and Small Boilers	09/11/12
74.20	Adhesives and Sealants	09/11/12
74/24	Marine Coating Operations	09/11/12
		Adopted date
74.31	Metal Working Fluids and Direct-Contact Lubricants	11/12/13
		Repealed date
67	Vacuum Producing Devices	06/12/12

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Santa Barbara County APCD and Ventura County APCD rules described in Tables 1 and 2, respectively, of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Administration Requirements

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* 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. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2013. 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 55

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 14, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F) and (H) to read as follows:

§ 55.14. Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraphs (b)(6) and (8) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(6) The following requirements are contained in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 102	Definitions (Revised 08/25/16).
Rule 103	Severability (Adopted 10/23/78).
Rule 105	Applicability (Revised 08/25/16).
Rule 107	Emergencies (Adopted 04/19/01).
Rule 201	Permits Required (Revised 06/19/08).
Rule 202	Exemptions to Rule 201 (Revised 08/25/16).
Rule 203	Transfer (Revised 04/17/97).
Rule 204	Applications (Revised 08/25/16).
Rule 205	Standards for Granting Permits (Revised 04/17/97).
Rule 206	Conditional Approval of Authority to Construct or Permit to Operate (Revised 10/15/91).
Rule 207	Denial of Application (Adopted 10/23/78).
Rule 210	Fees (Revised 03/17/05).
Rule 212	Emission Statements (Adopted 10/20/92).
Rule 301	Circumvention (Adopted 10/23/78).
Rule 302	Visible Emissions (Revised 6/1981).
Rule 303	Nuisance (Adopted 10/23/78).
Rule 304	Particulate Matter-Northern Zone (Adopted 10/23/78).

Rule 305	Particulate Matter Concentration-Southern Zone (Adopted 10/23/78).
Rule 306	Dust and Fumes-Northern Zone (Adopted 10/23/78).
Rule 307	Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78).
Rule 308	Incinerator Burning (Adopted 10/23/78).
Rule 309	Specific Contaminants (Adopted 10/23/78).
Rule 310	Odorous Organic Sulfides (Adopted 10/23/78).
Rule 311	Sulfur Content of Fuels (Adopted 10/23/78).
Rule 312	Open Fires (Adopted 10/02/90).
Rule 316	Storage and Transfer of Gasoline (Revised 01/15/09).
Rule 317	Organic Solvents (Adopted 10/23/78).
Rule 318	Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78).
Rule 321	Solvent Cleaning Operations (Revised 06/21/12).
Rule 322	Metal Surface Coating Thinner and Reducer (Adopted 10/23/78).
Rule 323	Architectural Coatings (Revised 11/15/01).
Rule 323.1	Architectural Coatings (Adopted 06/19/14, Effective 01/01/15).
Rule 324	Disposal and Evaporation of Solvents (Adopted 10/23/78).
Rule 325	Crude Oil Production and Separation (Revised 07/19/01).
Rule 326	Storage of Reactive Organic Compound Liquids (Revised 01/18/01).
Rule 327	Organic Liquid Cargo Tank Vessel Loading (Revised 12/16/85).
Rule 328	Continuous Emission Monitoring (Adopted 10/23/78).
Rule 330	Surface Coating of Metal Parts and Products (Revised 06/21/12).
Rule 331	Fugitive Emissions Inspection and Maintenance (Revised 12/10/91).
Rule 332	Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79).
Rule 333	Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08).
Rule 342	Control of Oxides of Nitrogen (NOx) from Boilers, Steam Generators and Process Heaters) (Revised 04/17/97).
Rule 343	Petroleum Storage Tank Degassing (Adopted 12/14/93).
Rule 344	Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94).
Rule 346	Loading of Organic Liquid Cargo Vessels (Revised 01/18/01).
Rule 349	Polyester Resin Operations (Revised 06/21/12).
Rule 352	Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Revised 10/20/11).
Rule 353	Adhesives and Sealants (Revised 06/21/12).
Rule 359	Flares and Thermal Oxidizers (Adopted 06/28/94).
Rule 360	Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02).
Rule 361	Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08).
Rule 370	Potential to Emit—Limitations for Part 70 Sources (Revised 01/20/11).
Rule 505	Breakdown Conditions Sections A.,B.1, and D. only (Adopted 10/23/78).
Rule 603	Emergency Episode Plans (Adopted 06/15/81).
Rule 702	General Conformity (Adopted 10/20/94).
Rule 801	New Source Review—Definitions and General Requirements (Revised 08/25/16).
Rule 802	New Source Review (Revised 08/25/16).
Rule 804	Emission Offsets (Revised 08/25/16).
Rule 805	Air Quality Impact Analysis, Modeling, Monitoring, and Air Quality Increment Consumption (Revised 08/25/16).
Rule 806	Emission Reduction Credits (Revised 08/25/16).
Rule 808	New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99).
Rule 809	Federal Minor Source New Source Review (Revised 08/25/16).
Rule 810	Federal Prevention of Significant Deterioration (PSD) (Revised 06/20/13).
Rule 1301	Part 70 Operating Permits—General Information (Revised 08/25/16).
Rule 1302	Part 70 Operating Permits—Permit Application (Adopted 11/09/93).
Rule 1303	Part 70 Operating Permits—Permits (Revised 01/18/01).
Rule 1304	Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Revised 01/18/01).
Rule 1305	Part 70 Operating Permits—Enforcement (Adopted 11/09/93).

* * * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2	Definitions (Revised 04/12/11).
Rule 5	Effective Date (Revised 04/13/04).
Rule 6	Severability (Revised 11/21/78).
Rule 7	Boundaries (Adopted 06/14/77).
Rule 10	Permits Required (Revised 04/13/04).
Rule 11	Definition for Regulation II (Amended 03/14/06).
Rule 12	Applications for Permits (Adopted 06/13/95).
Rule 13	Action on Applications for an Authority To Construct (Adopted 06/13/95).
Rule 14	Action on Applications for a Permit To Operate (Adopted 06/13/95).
Rule 15.1	Sampling and Testing Facilities (Adopted 10/12/93).
Rule 16	BACT Certification (Adopted 06/13/95).
Rule 19	Posting of Permits (Revised 05/23/72).
Rule 20	Transfer of Permit (Revised 05/23/72).
Rule 23	Exemptions From Permits (Revised 11/12/13).
Rule 24	Source Recordkeeping, Reporting, and Emission Statements (Revised 09/15/92).
Rule 26	New Source Review—General (Amended 03/14/06).

Rule 26.1	New Source Review—Definitions (Revised 11/14/06).
Rule 26.2	New Source Review—Requirements (Revised 03/14/06).
Rule 26.3	New Source Review—Exemptions (Revised 3/14/06).
Rule 26.6	New Source Review—Calculations (Revised 3/14/06).
Rule 26.8	New Source Review—Permit To Operate (Adopted 10/22/91).
Rule 26.11	New Source Review—ERC Evaluation at Time of Use (Adopted 05/14/02).
Rule 26.12	Federal Major Modifications (Adopted 06/27/06).
Rule 26.13	New Source Review-Prevention of Significant Deterioration (PSD) (Revised 11/10/15).
Rule 28	Revocation of Permits (Revised 07/18/72).
Rule 29	Conditions on Permits (Revised 03/14/06).
Rule 30	Permit Renewal (Revised 04/13/04).
Rule 32	Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Revised 02/20/79).
Rule 33	Part 70 Permits—General (Revised 04/12/11).
Rule 33.1	Part 70 Permits—Definitions (Revised 04/12/11).
Rule 33.2	Part 70 Permits—Application Contents (Revised 04/10/01).
Rule 33.3	Part 70 Permits—Permit Content (Revised 09/12/06).
Rule 33.4	Part 70 Permits—Operational Flexibility (Revised 04/10/01).
Rule 33.5	Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93).
Rule 33.6	Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93.
Rule 33.7	Part 70 Permits—Notification (Revised 04/10/01).
Rule 33.8	Part 70 Permits—Reopening of Permits (Adopted 10/12/93).
Rule 33.9	Part 70 Permits—Compliance Provisions (Revised 04/10/01).
Rule 33.10	Part 70 Permits—General Part 70 Permits (Adopted 10/12/93).
Rule 34	Acid Deposition Control (Adopted 03/14/95).
Rule 35	Elective Emission Limits (Revised 04/12/11).
Rule 36	New Source Review—Hazardous Air Pollutants (Adopted 10/06/98).
Rule 42	Permit Fees (Revised 04/12/16).
Rule 44	Exemption Evaluation Fee (Revised 04/08/08).
Rule 45	Plan Fees (Adopted 06/19/90).
Rule 45.2	Asbestos Removal Fees (Revised 08/04/92).
Rule 47	Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99).
Rule 50	Opacity (Revised 04/13/04).
Rule 52	Particulate Matter—Concentration (Grain Loading) (Revised 04/13/04).
Rule 53	Particulate Matter-Process Weight (Revised 04/13/04).
Rule 54	Sulfur Compounds (Revised 01/14/14).
Rule 56	Open Burning (Revised 11/11/03).
Rule 57	Incinerators (Revised 01/11/05).
Rule 57.1	Particulate Matter Emissions From Fuel Burning Equipment (Adopted 01/11/05).
Rule 62.7	Asbestos-Demolition and Renovation (Adopted 06/16/92, Effective 09/01/92).
Rule 63	Separation and Combination of Emissions (Revised 11/21/78).
Rule 64	Sulfur Content of Fuels (Revised 04/13/99).
Rule 68	Carbon Monoxide (Revised 04/13/04).
Rule 71	Crude Oil and Reactive Organic Compound Liquids (Revised 12/13/94).
Rule 71.1	Crude Oil Production and Separation (Revised 06/16/92).
Rule 71.2	Storage of Reactive Organic Compound Liquids (Revised 09/26/89).
Rule 71.3	Transfer of Reactive Organic Compound Liquids (Revised 06/16/92).
Rule 71.4	Petroleum Sumps, Pits, Ponds, and Well Cellars (Revised 06/08/93).
Rule 71.5	Glycol Dehydrators (Adopted 12/13/94).
Rule 72	New Source Performance Standards (NSPS) (Revised 09/9/08).
Rule 73	National Emission Standards for Hazardous Air Pollutants (NESHAPS (Revised 09/9/08).
Rule 74	Specific Source Standards (Adopted 07/06/76).
Rule 74.1	Abrasive Blasting (Revised 11/12/91).
Rule 74.2	Architectural Coatings (Revised 01/12/10).
Rule 74.6	Surface Cleaning and Degreasing (Revised 11/11/03—effective 07/01/04).
Rule 74.6.1	Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04).
Rule 74.7	Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Revised 10/10/95).
Rule 74.8	Refinery Vacuum Producing Systems, Waste-Water Separators and Process Turnarounds (Revised 07/05/83).
Rule 74.9	Stationary Internal Combustion Engines (Revised 11/08/05).
Rule 74.10	Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Revised 03/10/98).
Rule 74.11	Natural Gas-Fired Residential Water Heaters-Control of NO_X (Revised 05/11/10).
Rule 74.11.1	Large Water Heaters and Small Boilers (Revised 09/11/12).
Rule 74.12	Surface Coating of Metal Parts and Products (Revised 04/08/08).
Rule 74.15	Boilers, Steam Generators and Process Heaters (5MMBTUs and greater) (Revised 11/08/94).
Rule 74.15.1	Boilers, Steam Generators and Process Heaters (1 to 5 MMBTUs) (Revised 06/23/15).
Rule 74.16	Oil Field Drilling Operations (Adopted 01/08/91).
Rule 74.20	Adhesives and Sealants (Revised 09/11/12).
Rule 74.23	Stationary Gas Turbines (Revised 1/08/02).
Rule 74.24	Marine Coating Operations (Revised 09/11/12).
Rule 74.24.1	Pleasure Craft Coating and Commercial Boatyard Operations (Revised 01/08/02).
Rule 74.26	Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94).
Rule 74.27	Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94).
Rule 74.28	Asphalt Roofing Operations (Adopted 05/10/94).
Rule 74.30	Wood Products Coatings (Revised 06/27/06).

Rule 74.31	Metal Working Fluids and Direct-Contact Lubricants (Adopted 11/12/13).
Rule 75	Circumvention (Revised 11/27/78).
Rule 101	Sampling and Testing Facilities (Revised 05/23/72).
Rule 102	Source Tests (Revised 04/13/04).
Rule 103	Continuous Monitoring Systems (Revised 02/09/99).
Rule 154	Stage 1 Episode Actions (Adopted 09/17/91).
Rule 155	Stage 2 Episode Actions (Adopted 09/17/91).
Rule 156	Stage 3 Episode Actions (Adopted 09/17/91).
Rule 158	Source Abatement Plans (Adopted 09/17/91).
Rule 159	Traffic Abatement Procedures (Adopted 09/17/91).
Rule 220	General Conformity (Adopted 05/09/95).
Rule 230	Notice To Comply (Revised 9/9/08)

* * * * *

[FR Doc. 2016–29258 Filed 12–9–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–236; Report No. 3057]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding by John R. Feore, on behalf of ION MEDIA NETWORKS, INC., and Colby M. May, on behalf of TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.

DATES: Oppositions to the Petition must be filed on or before December 27, 2016. Replies to an opposition must be filed on or before January 6, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brendan Holland, Media Bureau, phone: (202) 418–2757, email: *Brendan.Holland@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3057, released December 1, 2016. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at *https://www.fcc.gov/ecfs/filing/1123447502233/document/1123447502233fbd7.* The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this document does not have an impact on any rules of particular applicability.

Subject: National Television Multiple Ownership Rule, FCC 16–116, Report and Order, published at 81 FR 73035, October 24, 2016, in MB Docket No. 13–236. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–29611 Filed 12–9–16; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 81, No. 238

Monday, December 12, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. 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.

Comments regarding these information collections are best assured of having their full effect if received by January 11, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Agricultural Marketing Service

Title: National Organic Program.

OMB Control Number: 0581–0191.

Summary of Collection: The Organic Foods Production Act (OFPA) of 1990, Title XXI of the Food, Agriculture, Conservation and Trade Act of 1990 (Farm Bill), U.S.C. Title 7 Section 6503(a) mandates that the Secretary of Agriculture develop a national organic program. The purposes of the regulation mandated by OFPA are: (1) To establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced. The National Organic Program (NOP) regulation fulfills the requirements of the OFPA. It includes comprehensive production and handling standards, labeling provisions, requirements for the certification of producers and handlers, accreditation of certifying agents by USDA and an administrative subpart for fees, State Programs, National List, appeals, compliance and pesticide residue testing. Agricultural Marketing Service will approve programs for State governments wishing to establish State Organic Programs.

Need and Use of the Information: The information collected is used by USDA, State program governing State officials, and certifying agents. The information is used to evaluate compliance with OFPA and NOP for administering the program, for management decisions and planning, for establishing the cost of the program and to support any administrative and regulatory actions in response to non-compliance with OFPA. Certifying agents will have to submit an application to USDA to become accredited to certify organic production and handling operations. Auditors will review the application, perform site evaluation and submit reports to USDA, who will make a decision to grant or deny accreditation. Producers, handlers and certifying agents whose operations are not approved have the right to mediation and appeal the decision. Reporting and recordkeeping are essential to the integrity of the organic certification system.

In this renewal submission, AMS has removed the record-keeping burden attributed to the implementation of two organic certification cost-share programs: The National Organic Certification Cost-Share Program and the Agricultural Management Assistance Organic Certification Cost-Share Program. Responsibility for the Organic Cost-Share Programs is being transferred to the Farm Services Agency (FSA).

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 33,254.

Frequency of Responses: Reporting: Annually; Recordkeeping.

Total Burden Hours: 7,239,709.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–29694 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 7, 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 January 11, 2017 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.

Animal Plant and Health Inspection Service

Title: Irradiation Phytosanitary Treatment for Fresh Fruits and Vegetables.

OMB Control Number: 0579–0155.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States. The regulations in 7 CFR 319 include specific requirements for the importation of fruits and vegetables. The regulations in 7 CFR 305 provide for the use of irradiation as a phytosanitary treatment for certain fruits and vegetables imported in the United States. The irradiation treatment provides protection against all inspect pest including fruit flies, the mango seed weevil, and others.

Need and Use of the Information: APHIS will collect information using a compliance agreement, 30-day notification, labeling packaging, dosimetry recordings, requests for dosimetry device approval, recordkeeping, requests for facility approval, work plan, trust fund agreement, phytosanitary certificate, and denial and withdrawal certification. Without the collection of this information, APHIS would have no practical way of determining that any given commodity had actually been irradiated. Irradiation leaves no residue and usually causes no discernible change to the commodity's color or texture.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 63.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 347.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–29714 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, January 4, 2017, at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 Mount Rushmore Road, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Board Coordinator, by phone at 605–440–1409 or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 *et. seq.*), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447).

The purpose of the meeting is to provide:

(1) Orientation Topic—Special Uses;

(2) 2016 Aerial Photo Results/Update;

(3) Black Hills Resilient Landscapes (BHRL) Project update;

(4) Pile Burning on the Forest;

(5) Over Snow Use; and

(6) Non-Motorized Trails Working Group update.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by December 26, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 6, 2016.

Mark Van Every,

Forest Supervisor.

[FR Doc. 2016–29673 Filed 12–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee (RAC) will meet in Corvallis, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/siuslaw/workingtogether/advisorycommittees.*

DATES: The meeting will be held on January 23, 2017, from 9:00 a.m. to 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Corvallis Forestry Sciences Lab and Siuslaw National Forest Supervisor's Office, 3200 Southwest Jefferson Way, Corvallis, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Siuslaw National Forest Supervisor's Office. Please call ahead at 541–750–7075 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Romano, RAC Coordinator by phone at 541–750–7075, or via email at *lmromano@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To conduct RAC business,
2. Elect a RAC chairperson,
3. Share information,
4. Provide a public forum, and
5. Review Siuslaw National Forest's recreation fee proposal.

The meeting is open to the public. Individuals wishing to make an oral statement should request to do so in writing by January 3, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lisa Romano, RAC Coordinator, 3200 Southwest Jefferson Way, Corvallis, Oregon 97331; or by email to *lmromano@fs.fed.us.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: December 5, 2016.

Jeremiah Ingersoll,

Forest Supervisor, Siuslaw National Forest.

[FR Doc. 2016–29687 Filed 12–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet in Sedro-Woolley, WA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwIAAS.*

DATES: The meeting will be held January 19, 2017 from 8:00 a.m.–5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at 810 State Route 20, Sedro-Woolley, WA 98284.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 810 State Route 20, Sedro-Woolley, WA 98284. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Erin Uloth, District Ranger by phone at 360–854–2601 or via email at *euloth@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. For the committee to review project proposals put forward by proponents for Secure Rural Schools Title II funding.

2. The committee will also put forward its recommendation to the Deciding Official for what projects to fund at what levels.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 6, 2017 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Erin Uloth, Mt. Baker District Ranger, 810 State Route 20, Sedro-Woolley, WA 98284; or by email to *euloth@fs.fed.us,* or via facsimile to 360–856–1934.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: November 3, 2016.

Erin Uloth,

Mt. Baker District Ranger.

[FR Doc. 2016–29660 Filed 12–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Decatur, IN; Request for Comments on the Official Agency Servicing These Areas.

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The designation of the official agency listed below will end on December 31, 2016. We are asking persons or governmental agencies interested in providing official services in the areas presently served by this agency to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agency: Northeast Indiana Grain Inspection, Inc. (Northeast Indiana).

DATES: Applications and comments must be received by January 11, 2017.

ADDRESSES: Submit applications and comments concerning this Notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to *Regulations.gov* (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Sharon Lathrop, Compliance Officer, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Sharon Lathrop, 816–872–1258.
- *Email: FGIS.QACD@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Sharon Lathrop, 816–891–0415 or *FGIS.QACD@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Northeast Indiana

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the State of Indiana, is assigned to this official agency.

In Indiana

Bounded on the North by the northern Lagrange and Steuben County lines; Bounded on the East by the eastern Steuben, De Kalb, Allen, and Adams County lines; Bounded on the South by the southern Adams and Wells County lines; and Bounded on the West by the western Wells County line; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

The following grain elevator is part of this geographic area's assignment. In Michigan Grain Inspection Services, Inc.'s area: Trupointe Elevator, Payne, Paulding County, Ohio.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic area in the State of Indiana is for the period beginning January 1, 2017, to December 31, 2021. To apply for designation or to request more information, contact Sharon Lathrop at the address listed above.

Request for Comments

We are publishing this Notice to provide interested persons the opportunity to comment on the quality of services provided by the Northeast Indiana official agency. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicant. Submit all comments to Sharon Lathrop at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–29706 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Amarillo, TX; Cairo, IL; State of Louisiana; State of North Carolina and Belmond, IA; Minnesota; New Jersey and New York Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designations of Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina) and D.R. Schaal Agency, Inc. (Schaal) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* October 1, 2016.

ADDRESSES: Sharon Lathrop, Compliance Officer, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Sharon Lathrop, 816–891–0415, *Sharon.L.Lathrop@usda.gov* or *FGIS.QACD@usda.gov.*

Read Applications: All applications and comments are available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the August 24, 2016, and August 30, 2016, **Federal Register** (81 FR 57882 through 57885 and 59598), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Amarillo, Cairo, Louisiana, North Carolina, and Schaal. Applications were due by September 23, 2016, for the areas presently serviced by Amarillo, Cairo, Louisiana, and North Carolina, and September 29, 2016, for the area presently serviced by Schaal.

The current official agencies: Amarillo, Cairo, Louisiana, North

Carolina, and Schaal were the only applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Amarillo, Cairo, Louisiana, North Carolina, and Schaal are qualified to provide official services in the geographic areas specified in the **Federal Register** on August 24 and 30, 2016. This designation to provide official services in the specified areas of Amarillo, Cairo, Louisiana, North Carolina, and Schaal is effective October 1, 2016, to September 30, 2021.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Amarillo	Amarillo, TX; 806–372–8511	10/1/2016	9/30/2021
Cairo	Cairo, IL; 618–734–0689	10/1/2016	9/30/2021
Louisiana	Baton Rouge, LA; 225–922–1341	10/1/2016	9/30/2021
North Carolina	Raleigh, NC; 919–202–5774	10/1/2016	9/30/2021
Schaal	Belmond, IA; 641–444–3122	10/1/2016	9/30/2021

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)).

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–29705 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Confidentiality Pledge Revision Notice

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of Revision of Confidentiality Pledge under the Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) and Title 7, Chapter 55, Section 2276 (Confidentiality of Information).

SUMMARY: Under 44 U.S.C. 3506(e), and 44 U.S.C. 3501, the National Agricultural Statistics Service (NASS) is announcing a revision to the confidentiality pledge it provides to its respondents under CIPSEA and Title 7, Chapter 55, Section 2276. The revision is required by the passage and implementation of provisions of the Federal Cybersecurity Enhancement Act of 2015 (H.R. 2029, Division N, Title II, Subtitle B, Sec. 223), which permit and require the Secretary of Homeland Security to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. More details on this announcement are presented in the **SUPPLEMENTARY INFORMATION** section below.

DATES: This revision becomes effective upon publication of this notice in the **Federal Register**. In a parallel **Federal Register** notice, NASS is seeking public comment on this confidentiality pledge revision.

ADDRESSES: Questions about this notice may be submitted by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include the title ''Confidentiality Pledge Revision Notice'' in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail or Hand Delivery/Courier:* 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, or email *HQOA@nass.usda.gov.* Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use phone or electronic communications.

SUPPLEMENTARY INFORMATION: Under CIPSEA; Title 7, Chapter 55, Section 2276; and similar statistical confidentiality protection statutes, many federal statistical agencies, including NASS, make statutory pledges that the information respondents provide will be seen only by statistical agency personnel or their sworn agents, and will be used only for statistical purposes. CIPSEA and Title 7, Chapter 55, Section 2276 protect such statistical information from administrative, law enforcement, taxation, regulatory, or any other non-statistical use and immunize the information submitted to statistical agencies from legal process. Moreover, many of these statutes carry criminal penalties of a Class E felony (fines up to $250,000, or up to five years in prison, or both) for conviction of a knowing and willful unauthorized disclosure of covered information.

As part of the Consolidated Appropriations Act for Fiscal Year 2016 signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (H.R. 2029, Division N, Title II, Subtitle B, Sec. 223). This Act, among other provisions, permits and requires the Secretary of Homeland Security to provide federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. The technology currently used to provide this protection against cyber malware is known as ''Einstein 3A''. It electronically searches Internet traffic in and out of federal civilian agencies in real time for malware signatures.

When such a signature is found, the Internet packets that contain the malware signature are shunted aside for further inspection by Department of Homeland Security (DHS) personnel. Because it is possible that such packets entering or leaving a statistical agency's information technology system may contain confidential statistical data, statistical agencies can no longer promise their respondents that their responses will be seen only by statistical agency personnel or their sworn agents. However, they can promise, in accordance with provisions of the Federal Cybersecurity Enhancement Act of 2015, that such monitoring can be used only to protect information and information systems from cybersecurity risks, thereby, in effect, providing stronger protection to the integrity of the respondents' submissions.

Consequently, with the passage of the Federal Cybersecurity Enhancement Act of 2015, the federal statistical community has an opportunity to welcome the further protection of its confidential data offered by DHS' Einstein 3A cybersecurity protection program. The DHS cybersecurity

program's objective is to protect federal civilian information systems from malicious malware attacks. The federal statistical system's objective is to ensure that the DHS Secretary performs those essential duties in a manner that honors the Government's statutory promises to the public to protect their confidential data. Given that the Department of Homeland Security is not a federal statistical agency, both DHS and the federal statistical agencies have been engaged in finding a way to balance both objectives and achieve these mutually reinforcing objectives.

Accordingly, DHS and federal statistical agencies (including NASS), in cooperation with their parent departments, have developed a Memorandum of Agreement for the installation of Einstein 3A cybersecurity protection technology to monitor their Internet traffic and have incorporated an associated Addendum on Highly Sensitive Agency Information that provides additional protection and enhanced security handling of confidential statistical data. However, CIPSEA; Title 7, Chapter 55, Section 2276; and similar statistical confidentiality pledges promise that respondents' data will be seen only by statistical agency personnel or their sworn agents. Since it is possible that DHS personnel could see some portion of those confidential data in the course of examining the suspicious Internet packets identified by the Einstein 3A technology, statistical agencies need to revise their confidentiality pledges to reflect this process change.

Therefore, NASS is providing this notice to alert the public to this confidentiality pledge revision in an efficient and coordinated fashion. Below is the revised confidentiality pledge as it will appear on NASS survey questionnaires, as well as the revision to NASS's confidentiality Web page. A list of the NASS OMB numbers and information collection titles that will be affected by this revision is also included below.

The revised confidentiality pledge to appear on NASS questionnaires is below:

The information you provide will be used for statistical purposes only. Your responses will be kept confidential and any person who willfully discloses ANY identifiable information about you or your operation is subject to a jail term, a fine, or both.

This survey is conducted in accordance with the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107–347 and other applicable Federal laws. For more information on how we protect your information please visit: *https://www.nass.usda.gov/About_NASS/Confidentiality_Pledge/index.php.*

For voluntary surveys the statement, ''Response to this survey is voluntary.'' Will follow this pledge. For mandatory surveys the statement, ''Response to this survey is mandatory.'' will follow.

The NASS confidentiality pledge Web page (*https://www.nass.usda.gov/About_NASS/Confidentiality_Pledge/index.php*) will be revised to include a fifth item explaining that DHS will monitor the transmission of data for cybersecurity threats. Item 5 is below:

5. Data are protected from cybersecurity threats

Per the Cybersecurity Enhancement Act of 2015, your data are further protected by the Department of Homeland Security (DHS) through cybersecurity monitoring of the systems that transmit your data. DHS will be monitoring these systems to look for viruses, malware and other threats. In the event of a cybersecurity incident, and pursuant to any required legal process, information from these sources may be used to help identify and mitigate the incident.

Affected information collections:

OMB No.	Expiration date	Information collection title
0535–0001	04/30/2019	Cold Storage.
0535–0002	10/31/2018	Field Crops Production.
0535–0003	07/31/2019	Agricultural Prices.
0535–0004	01/31/2019	Egg, Chicken, and Turkey Surveys.
0535–0005	11/30/2017	Livestock Slaughter.
0535–0007	01/31/2019	Stocks Reports.
0535–0020	07/31/2018	Milk and Milk Products.
0535–0037	08/31/2019	Vegetable Surveys.
0535–0039	10/31/2019	Fruit, Nuts, and Specialty Crops.
0535–0088	07/31/2018	Field Crops Objective Yield.
0535–0093	11/30/2018	Floriculture Survey.
0535–0109	03/31/2018	Agricultural Labor.
0535–0140	01/31/2019	List Sampling Frame Survey.
0535–0150	06/30/2017	Aquaculture.
0535–0153	12/31/2018	Honey Survey.
0535–0212	11/30/2018	Mink Survey.
0535–0213	06/30/2017	Agricultural Surveys Program.
0535–0218	07/31/2018	Agricultural Resource Management and Chemical Use Surveys (ARMS).
0535–0220	03/31/2017	Cotton Ginnings.
0535–0226	10/31/2019	Census of Agriculture.
0535–0243	08/31/2018	Census of Agriculture Content Test.
0535–0244	11/30/2019	Nursery Production Survey and Nursery and Floriculture Chemical Use Survey.
0535–0245	09/30/2017	CEAP—NRI Conservation Tillage and Nutrient Management Survey.
0535–0248	04/30/2019	Generic Clearance of Survey Improvement Projects.
0535–0249	12/31/2017	Organic Production Survey.
0535–0251	05/30/2019	Residue and Biomass Field Survey.
0535–0254	07/31/2017	Current Agricultural Industrial Reports (CAIR).
0535–0255	04/30/2018	Colony Loss.
0535–0256	06/30/2018	Feral Swine Survey.
0535–0257	610/31/2018	Organic Certifier Census.
0535–0258	611/30/2018	Cost of Pollination Survey.
0535–0259	603/31/2019	Local Foods Survey.

Signed at Washington, DC, November 30, 2016.

Hubert Hamer,

Administrator.

[FR Doc. 2016–29750 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Food Safety Outreach Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of Stakeholder Listening Session and request for stakeholder input.

SUMMARY: As part of the National Institute of Food and Agriculture's (NIFA) strategy to successfully expand the Food Safety Outreach Program, NIFA will host a virtual listening session. The focus of the listening session is to gather stakeholder input to develop the priorities for the Request for Applications (RFA) in Fiscal Year (FY) 2018. NIFA is particularly interested in reaching the intended audience, achieving the most impact, and identifying suggested priorities in the third year of the Food Safety Outreach Program.

DATES: The listening session will be held on Tuesday, January 31, 2017 from 1:00 p.m. to 3:00 p.m., Eastern Standard Time (EST). All written comments must be received by 5 p.m. EST on January 31, 2017 to be considered in the initial drafting of the FY 2018 Food Safety Outreach Program request for applications.

ADDRESSES: The listening session will be hosted using Adobe Connect. On January 31, 2017, please access the following Web site, *http://nifa-connect.nifa.usda.gov/r271ozhv661/.* In addition, audio conference call capabilities are accessible at 1–888–844–9904, participant code 4715738#.

Please submit comments, identified as NIFA–2017–0002, by any of the following methods:

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

Email: FSOP@nifa.usda.gov. Include NIFA–2017–0002 in the subject line of the message.

Fax: 202–401–4888.

Mail: Paper, disk or CD–ROM submissions should be submitted to FSOP; Institute of Food Safety and Nutrition (IFSN), National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 2225, 1400 Independence Avenue SW., Washington, DC 20250–2225.

Hand Delivery/Courier: FSOP, IFSN, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 2458, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and reference to NIFA–2017–0002. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. Dawanna James-Holly, (202) 401–1950 (phone), (202) 401–4888 (fax), or *dholly@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Webinars and Comment Procedures

Persons wishing to present during the web-based listening session on Tuesday, January 31, 2017, are requested to pre-register by contacting Dr. Dawanna James-Holly. Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation. Reservations will be confirmed on a first-come, first-served basis. All other participants may provide comments during the listening session if time permits, or by previous listed means.

Background and Purpose

On January 4, 2011, the Food Safety Modernization Act (FSMA) was signed into legislation. The Act amended the Food and Drug Cosmetic Act, 21 U.S.C. 391 *et seq.* Section 209 of FSMA added section 1011, Subsection (d) entitled ''National Food Safety Training, Education, Extension, Outreach and Technical Assistance Program''. In 2015 NIFA and FDA formed a collaboration to establish the National Food Safety Training, Education, Extension, Outreach and Technical Assistance Competitive Grant Program. In 2016, the Food Safety Outreach Program at NIFA expanded the National Food Safety Training, Education, Extension, Outreach, and Technical Assistance Competitive Grant Program. Both programs award competitive grants to eligible recipients for projects that develop and implement FSMA-related food safety training, education, extension, outreach, and technical assistance to owners and operators of small and medium-sized farms, beginning farmers, socially disadvantaged farmers, small processors or small fresh fruit and vegetable merchant wholesalers.

In FY 2016, the Food Safety Outreach Program at NIFA built upon the national infrastructure, with a focus on delivery of customized training to very specific target audiences. Grant applications were solicited directly from those in local communities—to include those from community-based organizations, non-governmental organizations, food hubs, farm cooperatives, extension, and other local groups. Proposals were solicited for three project types: (1) Pilot Projects; (2) Community Outreach Projects; and (3) Multistate Education and Training Projects. Pilot Projects support the development of potentially high-risk and high-impact food safety education and outreach programs in local communities, addressing the needs of small, specialized audiences from among the various target groups. Pilot projects focus on building the capacity of local groups to identify very specific needs within their communities, and implementing appropriately-customized food safety education and outreach programs to meet those specific needs.

Community Outreach Projects support the growth and expansion of already existing food safety education and outreach programs currently offered in local communities. In addition, these projects enable existing programs to reach a broader target audience. These projects enable existing education and training curricula to be modified to ensure that they are consistent with new FSMA rules and to ensure that they meet the needs of expanded audiences.

Multistate Education and Training Projects support the development of multi-county, state-wide or multi-state programs. These projects support collaborations among states not necessarily located within the same regions, but having common food safety concerns, or addressing common commodities.

Since its inception in FY 2015, the program has awarded over $7 million to Community Based Organizations, Cooperative Extension at 1890 and 1862 land-grant institutions, and local food hubs and established 27 new Food Safety Education and Outreach Projects. Many of these projects will work at the local level to provide training and technical assistance to small, mid-sized and hard to reach producers and processors to address the new requirements associated with FSMA.

Implementation Plans

All comments and the official transcript of the listening session, once available, may be reviewed on the NIFA Web page, *https://nifa.usda.gov/food-*

safety-outreach-program, for six months. NIFA plans to consider stakeholder input received from this listening session as well as other written comments in developing the Fiscal Year 2018 solicitations for this program.

Dated: December 2, 2016.

Sonny Ramaswamy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2016–29655 Filed 12–9–16; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee for a Meeting To Discuss Approval and Publication of a Report Regarding Civil Rights and Hate Crime in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting on Tuesday, December 20, 2016, at 10:30 a.m. EST for the purpose of discussing a draft report regarding civil rights and human trafficking in the state.

DATES: The meeting will be held on Tuesday, December 20, 2016, at 10:30 a.m. EST

ADDRESSES: Public call information: Dial: 888–726–2413, Conference ID: 7752037

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–726–2413, conference ID: 7752037. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=268*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda:

Welcome and Introductions

Discussion of Draft Report: Human Trafficking in Ohio

Public Comment

Future Plans and Actions: Civil Rights in Ohio

Adjournment

Exceptional Circumstance: Pursuant to the Federal Advisory Committee Management Regulations (41 CFR 102–3.150), the notice for this meeting cancelation is given less than 15 calendar days prior to the meeting due to exceptional circumstance of the Committee's recent reappointment.

Dated: December 6, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–29644 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2016]

Foreign-Trade Zone (FTZ) 281—Miami, Florida; Authorization of Production Activity; Carrier InterAmerica Corporation (Heating, Ventilating and Air Conditioning Systems); Miami, Florida

On August 5, 2016, Miami-Dade County, grantee of FTZ 281, submitted a notification of proposed production activity to the FTZ Board on behalf of Carrier InterAmerica Corporation, within Site 3, in Miami, 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 58472, August 25, 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: December 5, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–29615 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–139–2016]

Approval of Subzone Status; Romark Global Pharma, LLC Manatí, Puerto Rico

On September 29, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting subzone status subject to the existing activation limit of FTZ 7 on behalf of Romark Global Pharma, LLC, in Manatí, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 69039, October 5, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 7P is approved, subject to the FTZ Act and the Board's

regulations, including Section 400.13, and further subject to FTZ 7's 2,000-acre activation limit.

Dated: December 6, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–29616 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee: Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Wednesday, December 21, 2016, from 10:30 a.m. to 11:30 a.m. Eastern Standard Time (EST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on December 16, 2016.

ADDRESSES: The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Wednesday, December 21, 2016 CINTAC meeting is as follows: Administrative meeting of the newly re-chartered Committee.

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, December 16, 2016 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant 5:00 p.m. EST on Friday, December 16, 2016. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, December 16, 2016. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: December 5, 2016.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–29703 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before January 3, 2017. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 16–017. Applicant: California Institute of Technology, 1200 E. California Blvd., Pasadena, CA 91125. Instrument: Photonic Professional GT 3D laser Lithography System. Manufacturer: Nanoscribe GmbH, Germany. Intended Use: The instrument will be used to develop structural meta-materials that are mechanically robust and multi-functional. The instrument allows the fabrication of 3-dimensional architectures out of polymer, with dimensions on the order of nanometers. There is no other instrument capable of resolving features down to that size because to attain such resolution it is necessary to have the two-photon laser capability. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: October 28, 2016.

Docket Number: 16–018. Applicant: UChicago Argonne, 9700 S. Cass Avenue, Lemont, IL 60439. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended

Use: The instrument will be used for research including studies of the morphology, grain structure and defect structure in modern structural materials. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: October 31, 2016.

Docket Number: 16–019. Applicant: University of Nebraska—Lincoln, 1700 Y St., Lincoln, NE 68588. Instrument: Electron Microscope. Manufacturer: Elmitec, Germany. Intended Use: The instrument will be used to research the synthesis and properties of novel nanomaterials, using the interaction of an electron beam with the surface of materials to image the surface with very high (nanometer scale) resolution, independent of temperature (in the range from ~ − 100 C to well over 1000 C) and in the presence of different gases and vapors. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 4, 2016.

Docket Number: 16–020. Applicant: Lafayette College, 730 High Street, Easton, PA 18042. Instrument: High Power Q-Switched Diode-Pumped Solid State Laser. Manufacturer: EdgeWave GMBH, Germany. Intended Use: The instrument will be used to study time-dependent finite chemical rate and mixing effects in turbulent combustion and the investigation of coherent structures in turbulent boundary layers. The instrument is approximately 10 times more powerful than any other high-repetition diode-pumped solid state available from a U.S. manufacturer. Techniques to be performed include Planar Laser Induced Fluorescence imaging, exploiting the high-repetition rate and tenability features of the instrument. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 4, 2016.

Docket Number: 16–022. Applicant: Regents of the University of Colorado, 1800 Grant St., Denver, CO 80203. Instrument: Electron Microscope. Manufacturer: FEI Company, Brno Czech Republic. Intended Use: The instrument will be used to research the structural basis for macromolecular function in both healthy and diseased cells. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 4, 2016.

Dated: December 5, 2016.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2016–29614 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 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 seamless refined copper pipe and tube from Mexico. The review covers three producers/exporters of the subject merchandise, GD Affiliates S. de R.L. de C.V. (Golden Dragon), Nacional de Cobre, S.A. de C.V. (Nacobre), and IUSA, S.A. de C.V. (IUSA). The period of review (POR) is November 1, 2014, through October 31, 2015. We have preliminarily found that sales of subject merchandise have been made at prices below normal value. Interested parties are invited to comment on these preliminary results.

DATES: Effective December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the *Order* [1] is seamless refined copper pipe and tube. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7411.10.1030 and 7411.10.1090, and also may enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the *Order* is dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 it is available to all parties in the Central Records Unit, room B0824 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Determination of No Shipments

Among the companies under review, IUSA properly filed a statement reporting that it made no shipments of subject merchandise to the United States during the POR.[3] Because U.S. Customs and Border Protection (CBP) did not provide any information contradicting IUSA's claim to have made no shipments, the Department

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico,* 75 FR 71070 (November 22, 2010) (the *Order*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Seamless Refined Copper Pipe and Tube from Mexico: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum), for a complete description of the Scope of the *Order.*

[3] For a full explanation of the Department's analysis, *see* the Preliminary Decision Memorandum.

preliminarily determines that IUSA did not have any reviewable transactions during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to IUSA but, rather, we will complete the review with respect to this company and issue appropriate instructions to CBP based on the final results of this review.[4]

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
GD Affiliates S. de R.L. de C.V [5]	1.93
Nacional de Cobre, S.A. de C.V	6.50

Disclosure and Public Comment

The Department intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[10] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[11]

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[12] Golden Dragon and Nacobre reported the names of the importers of record and the entered value for all of their sales to the United States during the POR. If Golden Dragon's and Nacobre's weighted-average dumping margins are not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1), and we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with the Department's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Golden Dragon and Nacobre for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction.[13] Further, if we continue to find in the final results that IUSA had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under its antidumping duty case number at the all-others rate.

We intend to issue instructions to CBP 41 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of seamless refined copper pipe and tube from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for Golden Dragon and Nacobre will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 26.03 percent, the all-others rate established in the *Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

[4] *See e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR at 51306 (August 28, 2014).

[5] The Department previously treated GD Affiliates S. de R.L. de C.V. as part of a single entity including: GD Copper Cooperatief U.A./Hong Kong GD Trading Co. Ltd./Golden Dragon Holding (Hong Kong) International, Ltd./GD Copper U.S.A. Inc./GD Affiliates Servicios S. de R.L. de C.V./GD Affiliates S. de R.L. de C.V., which is collectively referred to as Golden Dragon. *See, e.g., Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty New Shipper Review,* 77 FR 59178 (September 26, 2012), and accompanying Issues and Decision Memorandum.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.310(c).

[11] *Id.*

[12] *See* 19 CFR 351.212(b).

[13] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: December 5, 2016.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Discussion of the Methodology
   i. Normal Value Comparisons
   ii. Determination of Comparison Method
   iii. Product Comparisons
   iv. Date of Sale
   v. Constructed Export Price
   vi. Normal Value
   vii. Currency Conversion
6. Recommendation

[FR Doc. 2016–29710 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee; Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC) will hold a conference call on Thursday, December 22, 2016 at 11:00 a.m. The conference call is open to the public with registration instructions provided below.

DATES: December 22, 2016, from approximately 11:00 a.m. to 12:00 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with Victoria Gunderson at the contact information below by 5:00 p.m. EST on Tuesday, December 20, 2016, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

FOR FURTHER INFORMATION CONTACT: Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered on June 18, 2012, June 12, 2014, and June 9, 2016. The REEEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the export competitiveness of the U.S. renewable energy and energy efficiency industries.

During the December 22 conference call of the REEEAC, committee members will recommend/approve the Sub-Committee structure, select their recommendations for Sub-Committee leadership, and potentially approve recommendations and/or a letter for input to the Secretary of Commerce.

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for pertinent oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on the number of public participants). Individuals wishing to reserve speaking time during the meeting must contact Ms. Gunderson and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant by 5:00 p.m. EST on Tuesday, December 20, 2016. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Ms. Gunderson for distribution to the participants in advance of the meeting.

Any member of the public may submit pertinent written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries, U.S. Department of Commerce; 1401 Constitution Avenue NW.; Mail Stop: 4053; Washington, DC 20230. To be considered during the meeting, written comments must be received no later than 5:00 p.m. EST on Tuesday, December 20, 2016, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Dated: December 6, 2016.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–29701 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE395

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port of Kalama Expansion Project on the Lower Columbia River

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

ACTION: Notice; issuance of an Incidental Harassment Authorization (IHA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an IHA to the Port of Kalama (POK) for an IHA to take small numbers of marine mammals, by Level B harassment, incidental to in-water construction activities associated with the Port of Kalama Expansion Project.

DATES: Effective September 1, 2017, through August 31, 2018.

ADDRESSES: An electronic copy of the final Authorization, POK's application and the environmental assessment (EA) may be obtained by writing to the address specified below, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.NOAA Fisheries.noaa.gov/pr/permits/incidental.html.* Documents cited in this notice may also be

requested by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NOAA Fisheries, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NOAA Fisheries finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NOAA Fisheries has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 28, 2015, NOAA Fisheries received an application from the Port of Kalama (POK) for the taking of marine mammals incidental to the construction of a new pier. On December 10, 2015, a final revised version of the application was submitted and NOAA Fisheries determined that the application was adequate and complete. NMFS published a notice making preliminary determinations and proposing an IHA on March 21, 2016 (81 FR 15064). The notice initiated a 30-day comment period. At the end of the 30-day comment period, POK notified NMFS that work would be postponed until the 2017 season. NMFS reviewed the initial application and EA and has determined that there are no substantial changes to the specified activities that would require reinitiating the process.

The POK proposes to construct the Kalama Marine Manufacturing and Export Facility, including a new marine terminal and dredging of a berth extension, for the export of methanol. The proposed action also includes the installation of engineered log jams, restoration of riparian wetlands, and the removal of existing wood piles in a side channel as mitigation activities. The proposed activity is expected to occur during the 2017–2018 in-water work season for ESA listed fish species (September 1 through January 31). This IHA covers from September 1, 2017 to August 31, 2018, to allow for adjustments to the schedule in-water work based on logistics, weather, and contractor needs. It is possible that the work would require a second season, at which time the applicant will seek another IHA covering the second season. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Impact pile driving and vibratory pile driving. Take, by Level B Harassment only, of individuals of harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*), and California sea lions (*Zalophus californianus*) is anticipated to result from the specified activity.

Description of the Specified Activity

A detailed description of the project construction activities is provided in the **Federal Register** notice for the proposed IHA (81 FR 15064, March 21, 2016). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to the referenced **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of preliminary determinations and proposed IHA for POK's in-water construction activities was published in the **Federal Register** on March 21, 2016 (81 FR 15064). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The comments are posted online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.html.* Following are the substantive comments and NMFS's responses:

Comment 1: The Commission concurs with NMFS's preliminary findings and recommends that NMFS issue the requested IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Response: NMFS concurs with the Commission's recommendation and has issued the IHA to the Port of Kalama.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammal species that have been observed within the region of activity consist of the harbor seal, California sea lion, and Steller sea lion. Pinnipeds follow prey species into freshwater up to, primarily, the Bonneville Dam (RM 146) in the Columbia River, but also to Willamette Falls in the Willamette River (RM 26). None of the species of marine mammal that occur in the project area are listed under the ESA or is considered depleted or strategic under the MMPA. See Table 1, below.

TABLE 1—MARINE MAMMAL SPECIES ADDRESSED IN THIS IHA REQUEST

Species		ESA listing status	Stock
Common name	Scientific name		
Harbor Seal	*Phoca vitulina;* ssp. *richardsi*	Not Listed	OR/WA Coast Stock.
California Sea Lion	*Zalophus californianus*	Not Listed	US Stock.
Steller Sea Lion	*Eumatopius jubatus*	Not Listed	Eastern DPS.

The sea lion species use this portion of the river primarily for transiting to and from Bonneville Dam, which concentrates adult salmonids and sturgeon returning to natal streams, providing for increased foraging efficiency. The U.S. Army Corps of Engineers (USACE) has conducted surface observations to evaluate the seasonal presence, abundance, and predation activities of pinnipeds in the Bonneville Dam tailrace each year since 2002. This monitoring program was initiated in response to concerns over the potential impact of pinniped predation on adult salmonids passing Bonneville Dam in the spring. An active sea lion hazing, trapping, and permanent removal program was in place below the dam from 2008 through 2013.

Pinnipeds remain in upstream locations for a couple of days or longer, feeding heavily on salmon, steelhead, and sturgeon, although the occurrence of harbor seals near Bonneville Dam is much lower than sea lions (Stansell *et al.,* 2013). Sea lions congregate at Bonneville Dam during the peaks of salmon return, from March through May each year, and a few California sea lions have been observed feeding on salmonids in the area below Willamette Falls during the spring adult fish migration.

There are no pinniped haul-out sites in the area of potential effects from the proposed project. The nearest haul-out sites, shared by harbor seals and California sea lions, are near the Cowlitz River/Carroll Slough confluence with the Columbia River, approximately 3.5 miles downriver from the proposed project (Jeffries *et al.,* 2000). The nearest known haul-out for Steller sea lions is a rock formation (Phoca Rock) near RM 132 and the jetty (RM 0) near the mouth of the Columbia River. There are no pinniped rookeries located in or near the region of activity.

A detailed description of the species likely to be affected by the project's in-water construction activities were provided in the **Federal Register** notice for the proposed IHA (81 FR 15064, March 21, 2016). Since that time, we are not aware of any changes in the status of these species/stocks. Therefore, detailed descriptions are not provided here. Please refer to the referenced **Federal Register** notice for these descriptions. Please also refer to NMFS's Web site (*www.nmfs.noaa.gov/species/mammals*) for generalized species accounts.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

In-water construction activities associated with the POK project such as impact and vibratory pile driving components of the specified activity have the potential to result in impacts to marine mammals and their habitat in the project area. The **Federal Register** notice for the proposed IHA (81 FR 15064, March 21, 2016) included a detailed discussion of the behavioral and acoustic effects on marine mammals. Therefore, that information is not repeated here. Please refer to the referenced **Federal Register** notice for that information. No take by injury, serious injury, or death is anticipated as a result of the construction activities.

Mitigation Measures

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, 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 (where relevant).

On August 4, 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 **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 guidance and have constraints that preclude the recalculation of take estimates, as well as 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, POK submitted an adequate and complete application in a timely manner and indicated that they would need to receive an IHA (if issued) by September 1, 2016. After the close of the public comment period for the Proposed IHA, POK informed NMFS that they would postpone construction activities until September, 2017. Therefore, although the action had substantially progressed through the decision-making pipeline, there was enough time to allow for re-evaluation under the new Guidance prior to when the IHA was needed. POK's original analysis considered the potential for Level A take (auditory injury (PTS)), but ultimately concluded that no Level A takes would occur due to mitigation monitoring and the implementation of shut down procedures if any marine mammals entered or approached the Level A harassment zone. POK utilized the alternative methodology provided by NMFS in the new Guidance to evaluate how it may affect the analysis. Based on the new Guidance, likely injury zones would increase in size for the two hearing groups that may be present in the project area. POK provided NMFS with an updated Monitoring Plan (available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.html*), which increased the mitigation monitoring thresholds to avoid Level A harassment. More detail on the previously identified and updated mitigation monitoring zones is provided below.

Mitigation Monitoring

Initial monitoring zones were based on a practical spreading loss model and data found in Illingworth and Rodkin (2007). A minimum distance of 10 m was used for all shutdown zones, even if actual or initial calculated distances are less. A maximum distance of in-water line of sight is used for all disturbance zones for vibratory pile driving, even if actual or calculated values are greater. To provide the best estimate of transmission loss at a specific range, the data were estimated using a practical spreading loss model.

TABLE 2—DISTANCE TO INITIAL SHUTDOWN AND DISTURBANCE MONITORING ZONES FOR IN-WATER SOUND IN THE COLUMBIA RIVER FROM PROPOSED RULE

Pile type	Hammer type	Distance to monitoring zones (m) [1]		
		190 dB [2]	160 dB [2]	120 dB [2]
24in Concrete pile	Impact	10	117	N/A.
18in Steel pipe pile	Vibratory	10	N/A	Line of Sight, (max 5.7km).
18in Steel pipe pile	Impact	18	1,848	NA.

[1] Monitoring zones based on a practical spreading loss model and data from Illingworth and Rodkin (2007). A minimum distance of 10 m is used for all shutdown zones, even if actual or initial calculated distances are less.
[2] All values unweighted and relative to 1 μPa.

Among other changes, the new Guidance established a dual metric for analysis: A peak (PK) sound pressure level (SPL) for impulsive sounds (*e.g.,* impact pile driving) and a cumulative sound exposure level (SEL_{cum}) for both impulsive and non-impulsive (*e.g.,* vibratory pile driving). Table 3 provides a summary of the thresholds established in the new Guidance for phocids and otariids (pinnipeds), which are anticipated to be located in the action area. As shown in Table 3, the thresholds established for phocids are lower than those established for otariids, so the updated analysis was based on the phocid pinniped thresholds.

TABLE 3—NEW ACOUSTIC THRESHOLDS

[From NMFS 2016]

Hearing group	Acoustic thresholds (received levels)	
	Impulsive sounds	Non-impulsive sounds
Phocid pinnipeds (underwater)	$L_{pk,\ flat}$: 218 dB; $LE_{PW,\ 24hr}$: 185 dB	$LE_{PW,\ 24hr}$: 201 dB.
Otariid pinnipeds (underwater)	$L_{pk,\ flat}$: 232 dB; $LE_{OW,\ 24hr}$: 203 dB	$LE_{OW,\ 24hr}$: 219 dB.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1 μPa^2s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (PW and OW pinnipeds) and that the recommended accumulation period is 24 hours (NMFS 2016).

The new guidance does not affect the thresholds for behavioral disturbance (Level B harassment), and would not affect the extent of Level B harassment requested by POK. Therefore, the analysis of Level B harassment in the original application and Proposed Rule remains valid and is not discussed further. In addition, the peak sound pressure thresholds (218 dB for phocids and 232 dB for otariids) would not be exceeded during any project activities. The greatest single strike peak sound pressure levels would be generated during impact installation of steel piles and these sound levels would not exceed 207 dB (CALTRANS 2012). As noted in POK's application and Proposed Rule, it is anticipated that all steel piles will be driven with a vibratory hammer, and that it will not be necessary to impact drive or impact proof any of the steel piles. However, impact driving of steel piles is analyzed as a precaution in the event that this is required. As peak sound pressure thresholds would not be exceeded for either phocids or otariids, there is no further discussion of peak sound pressure levels.

Distances for which the Level A (PTS) threshold for cumulative sound pressure exposure could be exceeded are provided in Table 4, below.

TABLE 4—NEW LEVEL A ISOPLETHS (DISTANCES) USING NMFS NEW TECHNICAL GUIDANCE

Activity	Level A (PTS) threshold	Isopleth (distance)
Impact-driving concrete piles	185 dB SEL_{cum}	40 m (131 ft).
Impact-driving steel piles	185 dB SEL_{cum}	252 m (828 ft).
Vibratory-driving steel piles	201 dB SEL_{cum}	16.5 m (54 ft).

POK has updated the marine mammal monitoring plan to revise the Level A injury protection zone to fully cover the Level A isopleths for potential injury from cumulative sound pressure exposure, as established under the new Guidance. This modification to the monitoring plan would ensure that Level A takes of marine mammals would be avoided in a similar manner as presented in the Proposed Rule (*i.e.,* shut down procedures would be implemented if any marine mammals approach or enter the Level A harassment zone). Therefore, our analysis remains the same as presented in the Proposed Rule.

In order to accomplish appropriate monitoring for mitigation purposes, POK will have an observer stationed on each active impact pile driving location to closely monitor the shutdown zone as well as the surrounding area. In

addition, POK will post two shore-based observers (one upstream of the project, and another downstream of the project area; see application), whose primary responsibility would be to record pinnipeds in the disturbance zone and to alert barge-based observers to the presence of pinnipeds in the disturbance zone, thus creating a redundant alert system for prevention of injurious interaction as well as increasing the probability of detecting pinnipeds in the disturbance zone. POK estimates that shore-based observers would be able to scan approximately 800 m (upstream and downstream) from the available observation posts; therefore, shore-based observers would be capable of monitoring the agreed-upon disturbance zone.

As described, at least three observers will be on duty during pile vibratory driving activity for the first two days, and thereafter on every third day to allow for estimation of Level B takes. The first observer will be positioned on a work platform or barge where the entire 10 m shutdown zone is clearly visible, with the shore-based observers positioned to observe the disturbance zone from the bank of the river. Protocols will be implemented to ensure that coordinated communication of sightings occurs between observers in a timely manner.

In summary:

- POK will implement shutdown zones around all pile driving that encompasses the Level A harassment zones as defined in Table 4, above to avoid Level A take of marine mammals. These shutdown zones provides a buffer for the Level A harassment threshold but would also further avoid the risk of direct interaction between marine mammals and the equipment.
- POK will have a redundant monitoring system, in which one observer would be stationed at the area of active pile driving, while two observers would be shore-based, as required to provide complete observational coverage of the reduced disturbance zone for each pile driving site. The former will be capable of providing comprehensive monitoring of the proposed shutdown zones. This observer's first priority will be shutdown zone monitoring in prevention of injurious interaction, with a secondary priority of counting takes by Level B harassment in the disturbance zone. The additional shore-based observers will be able to monitor the same distances, but their primary responsibility will be counting of takes in the disturbance zone and communication with barge-based observers to alert them to pinniped presence in the action area.
- The shutdown and disturbance zones will be monitored throughout the time required to drive a pile. If a marine mammal is observed within the disturbance zone, a take will be recorded and behaviors documented. However, that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted.
- Soft start procedures shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start procedures require that the contractor provides an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets.
- If steel piles require impact installation or proofing, a bubble curtain will be used for sound attenuation

The following measures will apply to visual monitoring:

- If the shutdown zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the entire shutdown zone is visible. Work that has been initiated appropriately in conditions of good visibility may continue during poor visibility.
- The shutdown zone will be monitored for the presence of pinnipeds before, during, and after any pile driving activity. The shutdown zone will be monitored for 30 minutes prior to initiating the start of pile driving, during the activity, and for 30 minutes after activities have ceased. If pinnipeds are present within the shutdown zone prior to pile driving, the start of pile driving will be delayed until the animals leave the shutdown zone of their own volition, or until 15 minutes elapse without re-sighting the animal(s).
- Monitoring will be conducted using binoculars. When possible, digital video or still cameras will also be used to document the behavior and response of pinnipeds to construction activities or other disturbances.
- Each observer will have a radio or cell phone for contact with other monitors or work crews. Observers will implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.
- A GPS unit or electric range finder will be used for determining the observation location and distance to pinnipeds, boats, and construction equipment.

Monitoring will be conducted by qualified observers. In order to be considered qualified, observers must meet the following criteria:

- 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. Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required).
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Experience or training in the field identification of pinnipeds, including the identification of behaviors.
- 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 pinnipeds 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 pinnipeds observed within a defined shutdown zone; and pinniped behavior.
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on pinnipeds observed in the area as necessary.

Other Mitigation and Best Management Practices

In addition, NOAA Fisheries and POK, together with other relevant regulatory agencies, have developed a number of mitigation measures designed to protect fish through prevention or minimization of turbidity and disturbance and introduction of contaminants, among other things. These measures have been prescribed under the authority of statutes other than the MMPA, and are not a part of this proposed rulemaking. However, because these measures minimize impacts to pinniped prey species (either directly or indirectly, by minimizing impacts to prey species' habitat), they are summarized briefly here. Additional detail about these measures may be found in POK's application. Timing restrictions will be used to avoid in-water work when ESA-listed fish are most likely to be present.

POK will work to ensure minimum degradation of water quality in the

project area, and requires compliance with Surface Water Quality Standards for Washington. In addition, the contractor will prepare a Spill Prevention, Control, and Countermeasures (SPCC) Plan prior to beginning construction. The SPCC Plan will identify the appropriate spill containment materials; as well as the method of implementation. All equipment to be used for construction activities will be cleaned and inspected prior to arriving at the project site, to ensure no potentially hazardous materials are exposed, no leaks are present, and the equipment is functioning properly. Equipment that will be used below OHW will be identified; daily inspection and cleanup procedures will insure that identified equipment is free of all external petroleum-based products. Should a leak be detected on heavy equipment used for the project, the equipment must be immediately removed from the area and not used again until adequately repaired.

The contractor will also be required to prepare and implement a Temporary Erosion and Sediment Control (TESC) Plan and a Source Control Plan for project activities requiring clearing, vegetation removal, grading, ditching, filling, embankment compaction, or excavation. The BMPs in the plans would be used to control sediments from all vegetation removal or ground-disturbing activities.

Conclusions for Effectiveness of Mitigation

NOAA Fisheries has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NOAA Fisheries prescribes the means of affecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

While the Level A harassment zone for impact hammering of steel piers would be fairly large (252 m), we feel confident that all Level A zones would be able to be monitored to effectively implement shut down procedures to avoid Level A takes for the following reasons:

- The applicant has past experience with monitoring much larger areas from previous projects in other areas on the same river;
- The largest Level A harassment zone (252 m) is associated with impact hammering of steel piers; however, steel piers are anticipated to be driven with a vibratory hammer and impact hammering is only included as a precaution in the event that vibratory hammering is unable to be completed. Therefore, if impact hammering of steel piers were to be conducted, it would be for a very short duration and on a very few occasions. Additionally, if impact hammering of steel piers were to be conducted, bubble curtains would be utilized to attenuate sound and reduce the Level A harassment zone;
- Level A harassment zones associated with impact hammering of concrete piers and vibratory hammering of steel piers (40 m and 16.5 m, respectively) would be easily monitored for shut down procedures/avoidance of Level A takes;
- Even without the use of bubble curtains, the Level A harassment zone for impact hammering of steel piers would encompass approximately half of the width of the river in the action area, which allows for approximately half of the width of the river in the action area for marine mammals to avoid the Level A harassment zone, which we would expect them to do;
- Other mitigation measures (*e.g.,* monitoring prior to starting, or restarting, construction activities and the use of soft-start procedures for impact pile driving) would ensure that marine mammals are able to avoid injury; therefore, only temporary short-term Level B harassment of marine mammals is anticipated.

Based on our evaluation, NOAA Fisheries has determined that the mitigation measures proposed from both NOAA Fisheries and POK provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Reporting

Discussion of reporting requirements were unintentionally omitted from the **Federal Register** notice for the proposed IHA. Therefore, the following sections on reporting requirements include language that was not part of the proposed IHA notification, but represents standard reporting requirements for NMFS IHAs.

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(A) of the MMPA states that NOAA Fisheries must, where applicable, 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.

POK will submit a draft summary report of marine mammal observations and construction activities to the NMFS West Coast Regional Office and the Headquarters Office of Protected Resources 90 days after expiration of the current Authorization. A final report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS within 30 days after submittal of the draft report, the draft report would be considered the final report. This report will summarize the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations and all marine mammal sightings (dates, times, locations, species, behavior observations [activity, and any changes in activity observed including causes if known], associated construction activities, and weather conditions.

While the IHA does not authorize injury (*i.e.,* Level A harassment), serious injury, or mortality, should anyone associated with the project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of the animal, condition of the animal, location, time first found, observed behaviors (if alive) and photo or video footage, if available.

Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited in this IHA, such as an injury (Level A harassment), serious injury, or mortality, POK shall immediately cease the specified activity and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov.* The report must contain the following information: (i) Time, date, and location (latitude/

longitude) of the incident; (ii) The type of activity involved; (iii) Description of the circumstances during and leading up to the incident; (iv) Description of marine mammal observations (including species identification/descriptions of animal(s) involved) and construction activities/status of all sound sources used in the 24 hours preceding the incident; (v) The fate of the animal(s), and photographic or video footage of the animal, if available.

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with POK to determine the action necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. POK may not resume its activities until notified by NMFS via letter, email, or telephone.

Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Injury/Death

In the event that POK discovers an injured or dead marine mammal during its in-water construction activities in this IHA, and the cause of the injury or death is unknown and/or the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described below), POK will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov,* and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator at (206) 526–6550. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with POK to determine whether modification of the construction activities is appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to Construction Activities

In the event that POK discovers an injured or dead marine mammal and it is determined that the injury or death is not associated with or related to the activities authorized in this IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), POK shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov,* and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator at (206) 526–6550 within 24 hours of the discovery. POK shall provide photographs or video footage, if available, or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Take by Level B harassment only is anticipated as a result of POK's proposed project. Take of marine mammals is anticipated to be associated with the installation of piles via impact and vibratory methods (including installation and removal of temporary piles). The following activities are not anticipated to result in takes of marine mammals: Dredging; Removal of 157 wood piles from a former trestle in the freshwater intertidal backwater area; and ELJ construction. No take by injury, serious injury, or death is anticipated, nor is any such take authorized.

TABLE 5—CURRENT ACOUSTIC EXPOSURE CRITERIA

Non-explosive sound criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS)	see Table 3 above.
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous, noise)	120 dB re 1 microPa-m (rms).

The area of potential Level B harassment varies with the activity being conducted. For impact pile driving that will be used for the concrete piles, the area of potential harassment extends 117m from the pile driving activity. For vibratory pile driving associated with the installation of steel pipe piles, the zone of potential harassment extends in a line of sight from the pile driving activities to the nearest shoreline, covering an area of approximately 1800 acres of riverine habitat (Figure 1). Because there are no haul outs, feeding areas, or other important habitat areas for marine mammals in the action area, it is anticipated that take exposures will result primarily from animals transiting from downstream areas to upstream feeding areas.

Assumptions regarding numbers of pinnipeds and number of round trips per individual per year in the Region of Activity are based on information from ongoing pinniped research and management activities conducted in response to concern over California sea lion predation on fish populations concentrated below Bonneville Dam. An intensive monitoring program has been conducted in the Bonneville Dam tailrace since 2002, using surface observations to evaluate seasonal presence, abundance, and predation activities of pinnipeds. Minimum estimates of the number of pinnipeds present in the tailrace from 2002 through 2014 are presented in Table 4.

TABLE 3—MINIMUM ESTIMATED TOTAL NUMBERS OF PINNIPEDS PRESENT AT BONNEVILLE DAM ON AN ANNUAL BASIS FROM 2002 THROUGH 2013

[Stansell *et al.,* 2013]

Species	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Harbor seals	1	2	2	1	3	2	2	2	2	1	0	0
California sea lions	30	104	99	81	72	71	82	54	89	54	39	56
Steller sea lions	0	3	3	4	11	9	39	26	75	89	73	80

Harbor Seals

There is no documented breeding or pupping activity in the action area (Jeffries 1985), and only adult males and females are anticipated to be present in the action area. There is no current data estimating abundance of harbor seals either locally or for the Oregon-Washington coastal stock (Carretta *et al.,* 2014). In this case, we must rely on estimates provided in the application that are believed to provide a conservative estimate of the number of harbor seals potentially affected by the proposed action. The conservative estimate of harbor seals likely to be present in the action area when construction activities are occurring is up to 10 animals per day based on local anecdotal reports (lacking local observational data), with the animals primarily transiting between the mouth of the Columbia River and the Cowlitz or Kalama Rivers. Because harbor seals occur in the action area throughout the year, and in-water construction activities are expected to take up to 153 days, it is possible that harbor seals could be exposed above the Level B harassment threshold up to 1,530 times, although some of these exposures would likely be exposures of the same individual across multiple days so the number of individual harbor seals taken is likely lower. We believe that this estimate is doubly conservative, because the majority of pile driving work will be impact pile driving of concrete piles. Impact pile driving of concrete piles has a much smaller area of potential harassment (a radius of 117m from pile driving) than vibratory pile driving, and this area covers only approximately 1/6th of the channel width of the Columbia River, indicating a large portion of the river will be passable by pinnipeds without experiencing take in the form of harassment during most pile driving activities.

California Sea Lions

California sea lions are the most frequently observed pinnipeds upstream of the project site. California sea lions do not breed or bear their young near the Columbia River watershed, with the nearest breeding grounds off the coast of southern California (Caretta *et al.,* 2014). There are no documented haulouts within the action area, so the only California sea lions expected to be present in the action area are adult males and females traveling to and from dams upstream of the project location.

Historically (prior to 2008), California sea lions were the most frequently observed pinniped species at Bonneville Dam (Stansell *et al.,* 2013). However, between 2008 and 2014, the number of California sea lions observed at the dam declined. Then, in 2015, an estimated 190 individually branded California sea lions were recorded, which was in contrast to the 56 unique individuals identified in 2013. Typically the run time for California sea lions has begun later in the year than the run for Steller sea lions. The first California sea lion observed at the dam in 2015 was observed on February 9. For this reason, the bulk of the California sea lion run would be expected to occur outside of the pile driving window. However, a number of factors could cause the run to appear earlier or later. In addition, any estimate of anticipated run size must take into account the increased California sea lion presence at the dam in 2015. For this reason, to make a conservative assessment, the anticipated take estimate is based on the average daily abundance of up to 12 pinnipeds per day reported at the dam in 2015. Using this number, it is estimated that up to 372 California sea lions could be exposed to Level B harassment in the 2016–2017 work window. However, this is a very conservative estimate and the actual number could be less. Additionally, the majority of pile driving work will be impact pile driving of concrete piles. Impact pile driving of concrete piles has a much smaller area of potential harassment (a radius of 117m from pile driving) than vibratory pile driving, and this area covers only approximately 1/6th of the channel width of the Columbia River, indicating a large portion of the river will be passable by pinnipeds without experiencing take in the form of harassment during most pile driving activities. Thus we would expect that less than ⅓ of the transits would occur during the project's in-water work window based on avoiding peak transit periods, and that some proportion of those transits would occur in unaffected areas of the Columbia River during impact pile driving activities.

Steller Sea Lions

Steller sea lions do not breed or bear their young near the Columbia River watershed, with the nearest breeding grounds on the marine coast of Oregon (Stansell *et al.,* 2013). There are no documented haulouts within the action area, so the only Steller sea lions expected to be present in the action area are adult males and females traveling to and from dams upstream of the project location.

Prior to 2002, Steller sea lions were sighted infrequently at Bonneville Dam, with fewer than 10 individuals recorded in most years. However, since 2008, the number of Steller sea lions documented at the dam has increased steadily. In 2010, 75 individual Steller sea lions were identified, at an average rate of less than 12.6 individuals per day (between January 1 and May 31). In 2015 an average of 12 pinnipeds were observed at the dam per day in January (van der Leeuw, 2015). While no specific data exists regarding the number of trips up and down the river each individual sea lion makes, it is assumed that on average each individual makes one round trip during the spring migration. All pile driving will occur between September 1, 2016 and January 31, 2017, which will avoid the April and May peak of the run. Steller sea lion presence at the dam in January and February represents approximately one third of the total run in a given year (Stansell *et al.,* 2013). Using these numbers, it has been estimated that up to 12 individual Steller sea lions per day could be exposed to Level B harassment. This represents up to 372 individual takes of Steller sea lions in the 2016–2017 work window. However, this is a conservative estimate, and the actual number of takes could be less. Additionally, the majority of pile driving work will be impact pile driving of concrete piles. Impact pile driving of concrete piles has a much smaller area of potential harassment (a radius of 117m from pile driving) than vibratory pile driving, and this area covers only approximately 1/6th of the channel width of the Columbia River, indicating a large portion of the river will be passable by pinnipeds without experiencing take in the form of harassment during most pile driving activities. Thus we would expect that less than ⅓ of the transits would occur during the project's in-water work window based on avoiding peak transit periods, and that some proportion of those transits would occur in unaffected areas of the Columbia River during impact pile driving activities.

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 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'', NOAA Fisheries must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and the status of the species. To avoid repetition, the discussion of our analyses applies to all three species of pinnipeds (harbor seals, California sea lions, and Steller sea lions), given that the anticipated effects of this project on these species are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis for any species, else species-specific factors would be identified and analyzed.

Incidental take, in the form of Level B harassment only, is likely to occur primarily as a result of pinniped exposure to elevated levels of sound caused by impact and vibratory installation and removal of pipe and sheet pile and steel casings. No take by injury, serious injury, or death is anticipated and is not authorized. By incorporating the proposed mitigation measures, including pinniped monitoring and shut-down procedures described previously, harassment to individual pinnipeds from the proposed activities is expected to be limited to temporary behavioral impacts. POK assumes that all individuals travelling past the project area would be exposed each time they pass the area and that all exposures would cause disturbance. NOAA Fisheries agrees that this represents a worst-case scenario and is therefore sufficiently precautionary. There are no pinniped haul-outs or rookeries located within or near the Region of Activity.

The shutdown zone monitoring proposed as mitigation, and the small size of the zones in which injury may occur, makes any potential injury of pinnipeds extremely unlikely, and therefore discountable. Because pinniped exposures would be limited to the period they are transiting the disturbance zone, with potential repeat exposures (on return to the mouth of the Columbia River) separated by days to weeks, the probability of experiencing TTS is also considered unlikely.

In addition, it is unlikely that pinnipeds exposed to elevated sound levels would temporarily avoid traveling through the affected area, as they are highly motivated to travel through the action area in pursuit of foraging opportunities upriver. Sea lions have shown increasing habituation in recent years to various hazing techniques used to deter the animals from foraging in the Bonneville tailrace area, including acoustic deterrent devices, boat chasing, and above-water pyrotechnics (Stansell *et al.,* 2013). Many of the individuals that travel to the tailrace area return in subsequent years (Stansell *et al.,* 2013). Therefore, it is likely that pinnipeds would continue to pass through the action area even when sound levels are above disturbance thresholds.

Although pinnipeds are unlikely to be deterred from passing through the area, even temporarily, they may respond to the underwater sound by passing through the area more quickly, or they may experience stress as they pass through the area. Sea lions already move quickly through the lower river on their way to foraging grounds below Bonneville Dam (transit speeds of 4.6 km/hr in the upstream direction and 8.8 km/hr in the downstream direction (Brown *et al.,* 2010). Any increase in transit speed is therefore likely to be slight. Another possible effect is that the underwater sound would evoke a stress response in the exposed individuals, regardless of transit speed. However, the period of time during which an individual would be exposed to sound levels that might cause stress is short given their likely speed of travel through the affected areas. In addition, there would be few repeat exposures for individual animals. Thus, it is unlikely that the potential increased stress would have a significant effect on individuals or any effect on the population as a whole.

Therefore, NOAA Fisheries finds it unlikely that the amount of anticipated disturbance would significantly change pinnipeds' use of the lower Columbia River or significantly change the amount of time they would otherwise spend in the foraging areas below Bonneville Dam. Pinniped usage of the Bonneville Dam foraging area, which results in transit of the action area, is a relatively recent learned behavior resulting from human modification (*i.e.* fish accumulation at the base of the dam). Even in the unanticipated event that either change was significant and animals were displaced from foraging areas in the lower Columbia River, there are alternative foraging areas available to the affected individuals. NOAA Fisheries does not anticipate any effects on haul-out behavior because there are no proximate haul-outs within the areas affected by elevated sound levels. All other effects of the proposed action are at most expected to have a discountable or insignificant effect on pinnipeds, including an insignificant reduction in the quantity and quality of prey otherwise available.

Any adverse effects to prey species would occur on a temporary basis during project construction. Given the large numbers of fish in the Columbia River, the short-term nature of effects to fish populations, and extensive BMPs and minimization measures to protect fish during construction, as well as conservation and habitat mitigation measures that would continue into the future, the project is not expected to have significant effects on the distribution or abundance of potential prey species in the long term. Therefore, these temporary impacts are expected to have a negligible impact on habitat for pinniped prey species.

A detailed description of potential impacts to individual pinnipeds was provided previously in the **Federal Register** notice for the proposed IHA (81 FR 15064, March 21, 2016). The following sections put into context what those effects mean to the respective populations or stocks of each of the pinniped species potentially affected.

Harbor Seal

The Oregon/Washington coastal stock of harbor seals consisted of about 24,732 animals in 1999 (Carretta *et al.,* 2014). As described previously, both the Washington and Oregon portions of this stock have reached carrying capacity and are no longer increasing, and the stock is believed to be within its optimum sustained population level (Jeffries *et al.,* 2003; Brown *et al.,* 2005). The estimated take of up to 1,530 individuals (though likely somewhat fewer, as the estimate really indicates instances of take and some individuals are likely taken more than once across the 153-day period) by Level B harassment is small relative to a stable population of approximately 24.732 (6.2 percent), and is not expected to impact annual rates of recruitment or survival of the stock.

California Sea Lion

The U.S. stock of California sea lions had a minimum estimated population of 153,337 in the 2013 Stock Assessment Report (Carretta *et al.,* 2014). The estimated take of 372 individuals by Level B harassment is small relative to a population of approximately 153,337 (0.2 percent), and is not expected to impact annual rates of recruitment or survival of the stock.

Steller Sea Lion

The total population of the eastern DPS of Steller sea lions had a minimum estimated population of 59,968 animals with an overall annual rate of increase of 4 percent throughout most of the range (Oregon to southeastern Alaska) since the 1970s (Allen and Angliss, 2015). In 2006, the NOAA Fisheries Steller sea lion recovery team proposed removal of the eastern stock from listing under the ESA based on its annual rate of increase, and the population was delisted in 2013 (though still considered depleted under the MMPA). The total estimated take of 372 individuals per year is small compared to a population of approximately 59,968 (0.6 percent) and is not expected to impact annual rates of recruitment or survival of the stock.

Summary

The anticipated behavioral harassment is not expected to impact recruitment or survival of the any affected pinniped species. The Level B harassment experienced is expected to be of short duration, with 1–2 exposures per individual separated by days to weeks, with each exposure resulting in minimal behavioral effects (increased transit speed or avoidance). For all species, because the type of incidental harassment is not expected to actually remove individuals from the population or decrease significantly their ability to feed or breed, this amount of incidental harassment is anticipated to have a negligible impact on the stock.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NOAA Fisheries finds that POK's proposed activities would have a negligible impact on the affected species or stocks.

Small Numbers

Using the estimated take described previously, the species with the greatest proportion of affected population is harbor seals (Table 5), with an estimated 6.2% of the population potentially experiencing take from the proposed action. California sea lions population will experience 0.2% exposure, and Steller sea lions an approximate exposure rate of 0.6%. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NOAA Fisheries finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

TABLE 4—ESTIMATED TAKE TO BE AUTHORIZED AND PROPORTION OF POPULATION POTENTIALLY AFFECTED

	Estimated take by Level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
Harbor Seal	1,530	24,732	6.2	Stable/Carrying Capacity.
California Sea Lion	372	153,337	0.2	Stable.
Steller Sea Lion	372	59,968	0.6	Increasing.

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, NOAA Fisheries has determined that the total taking of affected species or stocks would 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 of marine mammal listed under the ESA are expected to be affected by these activities. Therefore, NOAA Fisheries has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NOAA Fisheries prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) considered comments submitted in response to this notice as part of that process. NMFS prepared and signed a Finding of No Significant Impact (FONSI) determining that preparation of an Environmental Impact Statement was not required. The FONSI was signed on October 24, 2016, prior to the issuance of the IHA for POK's construction activities. The EA and Finding of No Significant Impact (FONSI) have been posted at the foregoing internet site.

Authorization

NOAA Fisheries has issued an IHA to Port of Kalama for constructing the Kalama Marine Manufacturing and Export Facility on the Columbia River during the 2016–2017 in-water work season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 7, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

Figure 1. Project Region.

[FR Doc. 2016–29748 Filed 12–9–16; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Region Vessel Monitoring System and Pre-Trip Reporting Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 10, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shannon Penna, National Marine Fisheries Service (NMFS), West Coast Region (WCR) Long Beach Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, (562) 980–4238 or *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection. The title will change from *West Coast Region Longline Monitoring System and Pre-Trip Reporting Requirements* to *West Coast Region Vessel Monitoring System and Pre-trip Reporting Requirements.* In addition, this collection will merge OMB Control

Number 0648–0690 (*Vessel Monitoring System Requirements in the Eastern Pacific Highly Migratory Species Fisheries*) into this information collection.

This collection applies to owners and operators of U.S. commercial fishing vessels that fish in the West Coast exclusive economic zone and the eastern Pacific Ocean waters of the Inter-American Tropical Tuna Commission (IATTC) Convention Area for highly migratory species (HMS) as defined by the Fishery Management Plan (FMP) for United States (U.S.) West Coast Fisheries for Highly Migratory Species, as well as a broader group of tuna and tuna-like species covered by the IATTC. These vessel owners and operators are required to submit information about their intended and actual fishing activities. These submissions would allow the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council to monitor the fisheries. Submissions include pre-trip reporting requirements and vessel monitoring systems (VMS). Pre-trip reporting requirements are essential for effectively and efficiently assigning available observer coverage to selected HMS vessels. Data collected by observers are critical to evaluate that the objectives of the HMS FMP are being achieved and for evaluating the impacts of potential changes in fishery management. VMS units facilitate enforcement of management measures associated with HMS fisheries, provide timely information on associated fleet activities and enable confirmation of reported vessel fishing activity locations, which help validate logbook record accuracy.

II. Method of Collection

VMS installation/activation and on/off reports are submitted electronically, VMS position reports are submitted via automated electronic transmission and pre-trip notifications are made by telephone.

III. Data

OMB Control Number: 0648–0498.

Form Number(s): None.

Type of Review: Regular submission (revision and extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 34.

Estimated Time per Response: Vessel monitoring system (VMS) activation reports, 15 minutes; pre-trip reports, 5 minutes; maintenance and repair, 60 minutes.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $22,187 (reporting costs for vessels 24 meters or more is covered by vessel owner/operators).

IV. Request for Comments

Comments are requested 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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 7, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–29688 Filed 12–9–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Order Excluding Farm Credit System Institutions From the Commodity Exchange Act's Definition of "Commodity Trading Advisor"

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: Pursuant to the authority under section 1a(12)(B)(vii) of the Commodity Exchange Act (''CEA'' or ''Act''), the Commodity Futures Trading Commission (''Commission'') is issuing an order (''Order'') excluding institutions in the Farm Credit System (''FCS'') from the definition of ''commodity trading advisor'' (''CTA''). The Commission finds that FCS institutions are primarily engaged in lending to U.S. farmers, ranchers, and agricultural cooperatives, and that any commodity trading advice provided by FCS institutions to their clientele is solely incidental to that lending conduct, as required by CEA section 1a(12)(C). Therefore, the Commission concludes that FCS institutions are not entities within the intent of the statutory CTA definition, and that the issuance of this Order excluding them from the definition is appropriate.

DATES: Effective date: December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Amanda Olear, Associate Director, Division of Swap Dealer and Intermediary Oversight, (202) 418–5283, *aolear@cftc.gov,* or Elizabeth Groover, Special Counsel, Division of Swap Dealer and Intermediary Oversight, (202) 418–5985, *egroover@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2016, the Farm Credit Council (''Farm Credit'' or ''Council'') petitioned the Commission for an order excluding FCS institutions from the CTA definition in the CEA. The Council is the national trade association for the FCS, a federally-chartered network of borrower-owned lending institutions comprised of cooperatives and related service organizations.[1] Farm Credit's petition states that the FCS institutions should be excluded from the CTA definition because (1) the FCS institutions are not within the intent of the CTA definition because they are in the business of banking and lending, and (2) certain services provided by them, which could constitute commodity trading advice, are solely incidental to their primary lending business.[2]

FCS institutions are important lenders to U.S. farmers, ranchers and agricultural cooperatives. The FCS institutions include the FCS Banks (CoBank, AgriBank, AgFirst Farm Credit Bank, and Farm Credit Bank of Texas), as well as Agricultural Credit Associations, Federal Land Credit Associations, and Production Credit Associations (together, the ''Associations'').[3] The FCS Banks make

[1] *Petition for Order to Exclude Farm Credit System Institutions from the Commodity Trading Advisor Definition in Accordance with Section 1a(12)(B)(vii) of the Commodity Exchange Act,* Farm Credit Council (Oct. 28, 2016) (''Petition''), at 1.

[2] *Id.* at 3.

[3] An Agricultural Credit Association (ACA) can make short-, intermediate-, and long-term loans, as each ACA contains two subsidiaries: A Federal Land Credit Association (FLCA) that can only make long-term real estate loans, and a Production Credit Association (PCA) that makes short- and intermediate-term loans. Although legally separated, the ACA and its FLCA and PCA subsidiaries operate an integrated lending business with loans made through the subsidiary possessing the appropriate authority. The ACA, PCA, and FLCA are jointly and severally liable on the full amount of the indebtedness to the relevant FCS Bank under the FCS Bank's General Financing

Continued

loans to affiliated Associations in their geographic areas, which, in turn, make loans to farmers, ranchers, and other eligible borrowers.[4] Although FCS institutions do not take deposits, they provide loans, leases, and related services to farmers, ranchers, rural homeowners, aquatic producers, timber harvesters, agricultural cooperatives, rural utilities, and other eligible borrowers in all 50 states, the District of Columbia, and Puerto Rico.[5]

The Farm Credit Administration (''FCA'') is responsible for regulating and supervising the FCS institutions. The FCA is defined as an ''appropriate federal banking agency'' under the CEA[6] and is one of the ''Prudential Regulators'' charged with implementing certain key regulatory requirements promulgated by the Dodd-Frank Act.[7] The Petition states that the FCA regulates FCS institutions like banks, and that such regulation appropriately mitigates the risks of FCS institutions.[8] In particular, the FCA promulgates policies and regulations intended to: Protect the safety and soundness of the FCS institutions; implement the FCA's statutory authority in the Farm Credit Act of 1971;[9] establish minimum requirements for lending, related services, investments, capital, liquidity, and mission; and ensure adequate financial disclosure and appropriate governance of the FCS institutions.[10] Consequently, the FCS institutions are subject to investment guidelines,[11] capital requirements,[12] liquidity requirements,[13] guidelines for the use of derivatives,[14] risk management standards,[15] periodic reporting obligations,[16] as well as the FCA's examination authority.[17]

FCS institutions use derivatives to manage their own risks, and also to offer their eligible borrowers or their affiliated Associations' eligible borrowers the ability to hedge the risks, including interest rate risk, associated with their loans through the use of over-the-counter (''OTC'') swaps.[18] The use of derivatives is specifically permitted and overseen by the FCA and is subject to certain conditions, in order to protect the FCS institution eligible borrowers and to preserve the ''safety and soundness'' of the FCS as a whole.[19] The Petition states that swaps offered to FCS institution eligible borrowers are intended to assist them in hedging their interest rate and other risks arising from FCS institution loans, and that FCS institutions do not enter into swaps with persons unless they are eligible borrowers of an FCS institution.[20]

In connection with the lending-related swap transactions, FCS institutions sometimes provide eligible borrowers with information about the financial instrument to be used, *i.e.,* an interest rate swap, through presentations or in writing.[21] The Petition further states that such information generally is generic and not intended as commodity trading advice.[22] Additionally, an eligible borrower in this context acknowledges that the FCS institution is not its advisor, and that the borrower is not relying on the information as FCS institution advice.[23] Nevertheless, because the FCS institution is providing information about a commodity interest transaction to an eligible borrower, Farm Credit and FCS institutions are concerned that the provision of such information could be construed as the provision of commodity trading advice requiring registration as a CTA with the Commission.[24] Therefore, Farm Credit filed the Petition seeking an Order excluding the FCS institutions from the CEA's CTA definition to clarify their registration and compliance obligations with respect to the CEA and the regulations promulgated thereunder.[25] Farm Credit's Petition argues that issuing such an Order is appropriate because FCS institutions are not within the intent of the CTA definition, and because any provision of information about commodity interests to eligible borrowers is solely incidental to the FCS institutions' primary business of lending.[26]

II. Legal Authority and Analysis

CEA section 1a(12)(A) defines ''commodity trading advisor'' as any person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any commodity interest transactions;[27] any person who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i) of CEA section 1(a)(12)(A);[28] any person who is

Agreement. Additionally, the ACA, PCA, and FLCA agree to guarantee each other's debts and obligations, pledge their respective assets as security for the guarantee, and share common capital. Petition, at 2.

[4] *Id.* Additionally, CoBank also lends directly to agricultural cooperatives, rural utilities, and other eligible borrowers. *Id.*

[5] Petition, at 3.

[6] 7 U.S.C. 1a(2).

[7] Public Law 111–203, 124 Stat. 1376 (2010).

[8] Petition, at 3. In fact, Farm Credit believes that FCS institutions are, in fact, banks that would otherwise be excluded from the CTA definition by CEA section 1a(12)(B)(i). However, Farm Credit states that it petitioned for this Order to achieve greater certainty for the FCS institutions because the term ''bank'' is not defined in the CEA or the Commission's regulations. *Id.*

[9] 12 U.S.C. 2001–2279cc.

[10] *2015 Annual Report on the Farm Credit System,* Farm Credit Administration, Regulator of the FCS, p. 5 (''FCA Annual Report''). *See also id.* at 41–44.

[11] 12 CFR part 615, subpart E.

[12] 12 CFR part 615, subparts H and K. The FCA published final rules in July 2016 that are intended to ensure that FCS capital requirements are appropriate for the FCS' cooperative structure, and comparable to the Basel III framework and the standardized approach adopted by the federal banking regulatory agencies. *See* Regulatory Capital Rules: Regulatory Capital, Implementation of Tier 1/Tier 2 Framework, 81 FR 49720 (July 28, 2016).

[13] 12 CFR part 615, subpart E.

[14] David C. Baer, Director, Office of Examination, FCA to All Farm Credit Banks, ''Guidelines for Utilizing Derivative Products,'' Bookletter, BL–023 (Oct. 31, 1995) (''FCA Guidelines for Utilizing Derivatives''), *available at http://ww3.fca.gov/readingrm/Handbook/_layouts/15/WopiFrame.aspx?sourcedoc=/readingrm/Handbook/FCA%20Bookletters/BL-023.docx&action=default.* These Guidelines are designed to complement existing FCA regulations pertaining to risk management, investment practices, and asset and liability management practices. *Id.* at 3.

[15] 12 CFR part 615, subpart G.

[16] 12 CFR part 621, subpart D.

[17] FCA Annual Report, p. 5.

[18] Petition, at 2. The Petition states that FCS institutions also use derivatives to manage interest rate, liquidity, and balance sheet risks, but because FCS institutions primarily enter into such transactions with registered swap dealers, the Council does not view such activity as raising CTA concerns. *Id.*

[19] Petition, at 5. The Petition specifically cites detailed FCA policies mandating counterparty credit risk management, as well as the ''comprehensive safety and soundness regulation and oversight by the FCA.'' Petition, at 5–6. As a result, all of the FCS institutions' derivatives activity, whether with swap dealers or eligible borrowers, falls within the definition of ''hedging or mitigating commercial risk'' in Commission regulations. *Id.* at 6. This is consistent with the FCA's historic position related to the use of derivatives by FCS institutions, as stated in the FCA Guidelines for Utilizing Derivatives: ''The FCA considers any speculative use of derivatives an unsafe and unsound banking practice.'' FCA Guidelines for Utilizing Derivatives, at 1.

[20] Petition, at 2. Further, the Petition states that FCS institutions are prohibited from engaging in speculative derivatives activity, and that approved swap transactions with eligible borrowers are limited to those that enable eligible borrowers to hedge risk or that are necessary for the financing of individual transactions. *Id.* at 6.

[21] Petition, at 2–3.

[22] *Id.* at 3.

[23] *Id.*

[24] Petition, at 2–3.

[25] *Id.* at 3.

[26] *Id.*

[27] 7 U.S.C. 1a(12)(A)(i). Specifically, such transactions include any contract for sale of a commodity for future delivery, security futures product, or swap; any agreement, contract, or transaction described in 7 U.S.C. 2(c)(2)(i) or 7 U.S.C. 2(c)(2)(D)(i); any commodity option authorized under section 6c of this title; or any leverage transaction authorized under section 23 of this title. 7 U.S.C. 1a(12)(A)(i)(I)–(IV).

[28] 7 U.S.C. 1a(12)(A)(ii).

registered with the Commission as a commodity trading advisor;[29] or any person who the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of the CEA.[30]

CEA section 1a(12)(B) excludes certain types of persons and entities from the CTA definition, and permits the Commission to further exclude, such other persons not within the intent of the CTA definition as the Commission may specify by rule, regulation, or order.[31] Additionally, CEA section 1a(12)(C) states that these exclusions, including any additional exclusion adopted through rule, regulation or order by the Commission, shall apply only if the furnishing of such services by persons referred to in CEA section 1a(12)(B) is solely incidental to the conduct of their business or profession.[32] Therefore, the Commission must consider whether the potential CTA activity is solely incidental to the primary business purposes and conduct of the FCS institutions, and whether FCS institutions may be properly excluded from the CTA definition.

The Commission agrees with the Petition that the provision of general information about interest rate swaps to eligible borrowers of FCS institutions is solely incidental to the FCS institutions' main business and mission, *i.e.,* agricultural lending. This conclusion is supported by the fact that the information is provided solely to eligible borrowers of the FCS institutions, and also by the strict limitations on the swap activities of FCS institutions—FCS institutions may only enter into swaps with an eligible borrower to hedge the risk(s) inherent in the underlying financing transaction between that borrower and an FCS institution.[33] Additionally, the Petition states that FCS institutions do not incur significant costs in providing the information to eligible borrowers, do not charge eligible borrowers for the information, do not solicit eligible borrowers, do not require eligible borrowers to hedge their loan risks through an FCS institution, and do not hold themselves out to the public as an entity providing CTA services.[34] Under these circumstances, the Commission concludes that the provision of information related to a swap transaction to eligible borrowers of FCS institutions is solely incidental to the FCS institutions' lending activity with such eligible borrowers.

Further, the primary business activity of FCS institutions is engaging in direct lending to farmers, ranchers, and other eligible borrowers under the regulation and supervision of the FCA. This lending activity is generally comparable to the lending activities of banking institutions, which are excluded from the CTA definition under section 1a(12)(B) of the CEA.[35] The Commission believes that it is reasonable under the facts and circumstances discussed above to conclude that granting FCS institutions an exclusion from CTA registration is consistent with the intent of section 1a(12) of the CEA.

III. Conclusion and Order

The Commission finds that under the circumstances set forth above it is appropriate to exercise the statutory authority afforded to it under CEA section 1a(12)(B)(vii) to exclude FCS institutions from the CTA definition. Accordingly, the Commission is issuing this Order excluding FCS institutions from the CTA definition in CEA section 1a(12)(A). This Order is based upon the representations made by the petitioner. The Commission reserves authority, in its discretion, to revisit the Order.

Issued in Washington, DC, on December 6, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–29613 Filed 12–9–16; 8:45 am]

BILLING CODE 6351–01–P

[29] 7 U.S.C. 1a(12)(A)(iii).

[30] 7 U.S.C. 1a(12)(A)(iv).

[31] 7 U.S.C. 1a(12)(B); 7 U.S.C. 1a(12)(B)(vii).

[32] 7 U.S.C. 1a(12)(C).

[33] Petition, at 6.

[34] *Id.* at 9.

[35] *See* 7 U.S.C. 1a(12)(B)(i).

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: January 6, 2017, 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC in the Lecture Room.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Ms. Jennifer Michael at *jmichael@ostp.eop.gov,* (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 6, 2017 from 9:00 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to discuss its study semiconductors as well as its review on the National Nanotechnology Initiative, and other science and technology topics. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on January 6, 2017, which must take place in the White House for

the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 6, 2017 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 9:00 a.m. (Eastern Time) on December 30, 2016. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (Eastern Time) on December 30, 2016 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on December 6, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–29657 Filed 12–9–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP 400]

Record of Decision for Issuing a Presidential Permit to Transmission Developers, Inc.—New England, for the New England Clean Power Link Transmission Line Project

AGENCY: Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) announces its decision to issue a Presidential permit to Champlain VT, LLC, d/b/a Transmission Developers, Inc.—New England (TDI–NE), to construct, operate, maintain, and connect an electric transmission line across the U.S./Canada international border in northern Vermont. The potential environmental impacts associated with the transmission line are analyzed in the *New England Clean Power Link (NECPL) Project Final Environmental Impact Statement (DOE/EIS–0503).*

As proposed, the NECPL Transmission Line would extend south from the U.S./Canada international border approximately 154 miles to a new converter station in Ludlow, Vermont and the existing Coolidge Substation in the towns of Ludlow and Cavendish, Vermont.

ADDRESSES: The Final Environmental Impact Statement (EIS) and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://nepa.energy.gov/* and on the NECPL Project EIS Web site at *http://necplinkeis.com.* Copies of the Final EIS and ROD are also available for review on the NECPL Project EIS Web site.

Copies of the Final EIS and this ROD may be requested by contacting Mr. Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; phone 202–586–8267; email *Brian.Mills@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on the NECPL Project EIS, contact Mr. Brian Mills as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; email *askNEPA@hq.doe.gov;* or facsimile to 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (EO) 10485 (September 9, 1953), as amended by EO 12038 (February 7, 1978), requires that a Presidential permit be issued by DOE before electricity transmission facilities may be constructed, operated, maintained, or connected at the U.S. border. DOE may issue or amend a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a permit for a proposed action is in the public interest, DOE considers the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE considers relevant to the public interest.

On June 23, 2014, TDI–NE applied to DOE for a Presidential permit to construct, operate, maintain, and connect a high-voltage direct current (HVDC) transmission line across the U.S./Canada international border. The proposed transmission line would be capable of transmitting up to 1,000 megawatts (MW) of electricity. The line would extend south from the U.S./Canada international border approximately 154 miles. The transmission line would be located underground in Alburgh, Vermont, for approximately 0.5 miles and would enter Lake Champlain. The cables would then be installed in Lake Champlain, primarily buried in sediments, for 97.6 miles in a southern direction. The cables would emerge from Lake Champlain in the town of Benson, Vermont, and would be buried primarily along town roads and state highway rights-of-way for approximately 55.7 miles in a south-

easterly direction until terminating at a proposed converter station in Ludlow, Vermont. The alternating current (AC) system would run approximately 0.3 miles from the converter station in Ludlow to the Coolidge Substation located in the towns of Ludlow and Cavendish, Vermont.

Consultation

Pursuant to Section 7 of the Endangered Species Act, DOE has consulted with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impacts on federally listed threatened or endangered species in the area of the proposed NECPL Project, and DOE has prepared a Biological Assessment (BA). The USFWS concurred on December 1, 2015, with DOE's determination that the project would not adversely impact the Indiana bat and the northern long eared bat.

DOE and the Vermont State Historic Preservation Officer (VTSHPO) consulted under Section 106 of the National Historic Preservation Act and signed a Programmatic Agreement (PA) regarding historic properties in October 2015. The PA requires TDI–NE to prepare a Cultural Resources Management Plan, which will meet the survey, data collection and mitigation measures necessary as identified by the VTSHPO.

Documents associated with both these consultations are available on the NECPL Project EIS Web site at *http://necplinkeis.com.*

NEPA Review

On August 26, 2014, DOE issued a Notice of Intent (79 FR 50901) to prepare an EIS for the NECPL Project and conduct public scoping.

On June 12, 2015, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft EIS (80 FR 33519), that began a 60-day public review period. DOE held two public hearings on the Draft EIS in Burlington and Rutland, Vermont, and received no oral comments on the Draft EIS. Throughout the EIS process, DOE worked with the cooperating agencies to ensure that impacts will be appropriately addressed. DOE considered all comments received on the Draft EIS in the preparation of the Final EIS. The comments received and DOE's responses are contained in Appendix M of the Final EIS. DOE issued the Final EIS in October 2015. On November 6, 2015, the U.S. EPA published a NOA of the Final EIS (80 FR 68868).

The U.S. EPA Region 1 (USEPA), the New England District of the U.S. Army Corps of Engineers (USACE), and the U.S. Coast Guard (USCG) participated as cooperating agencies in the preparation of the EIS.

Alternatives Considered

In the EIS, DOE analyzed the No Action Alternative and the Proposed Action of granting the Presidential permit for the construction, operation, maintenance, and connection of the proposed NECPL Project facilities. Under the No Action Alternative, DOE would not issue a Presidential permit for the proposed NECPL Project and the transmission line would not be built. Under the Proposed Action of granting the Presidential permit (the DOE Preferred Alternative), the transmission line would be constructed from the U.S./Canada international border to the new converter station in Ludlow, Vermont and the existing Coolidge Substation in the towns of Ludlow and Cavendish, Vermont.

Analysis of Environmental Impacts

The EIS analyzes potential environmental impacts associated with the alternatives for each of the following resource areas: Land use, transportation and traffic, water resources and quality, aquatic and terrestrial habitats and species, aquatic and terrestrial protected and sensitive species, wetlands, geology and soils, cultural resources, infrastructure, recreation, public health and safety, hazardous materials and wastes, air quality, noise, socioeconomics, environmental justice, and cumulative impacts. This analysis assumes the implementation of all TDI–NE-proposed measures to avoid or minimize adverse impacts (Section 5 and Appendix G of the EIS). The potential impacts of the Proposed Action would be predominantly associated with construction activities and would generally have either no effect (*e.g.,* on infrastructure) or minor, temporary, and/or short-term impacts (*e.g.,* on water quality and recreation).

In the floodplain analysis contained in Sections 5.1.3 and 5.2.3 of the EIS, DOE concluded that the proposed NECPL Project would avoid floodplains to the maximum extent practicable, and that appropriate measures to minimize potential harm to or within the floodplains would be taken. The Vermont Secretary of Natural Resources issued a Flood Hazard Area & River Corridor Individual Permit to TDI–NE on November 24, 2015. This permit is available under Public Documents on the NECPL Project EIS Web site at *http://necplinkeis.com.*

Implementation of the No Action Alternative would not result in changes to existing conditions in these resource areas and is, therefore, the environmentally preferable alternative.

Comments Received on the Final EIS

EPA provided comments on the Final EIS to DOE on December 4, 2015. EPA noted that earlier comments on the Draft EIS focused on impacts during construction, operation and maintenance of the project to wetlands, water quality, drinking water, environmental justice, and air quality and that the Final EIS addressed many of their environmental concerns. The EPA provided additional comments on ''areas where more could be done to characterize and address project impacts.'' The comments, and DOE's responses, are discussed herein.

EPA referred to its comments on the Draft EIS regarding DOE's purpose and need and stated that ''an analysis of a broader set of alternatives would have improved the environmental review process'' for the NECPL Project. DOE reiterates that its role is limited to deciding whether the issuance of a Presidential permit is in the public interest, and that the purpose and need is to respond to the applicant's request for a Presidential permit.

EPA expressed support for the overland routing approach for the project adjacent to and within existing transportation corridor right-of-way, and added that proper mitigation to address impacts from project construction and operation would be an important part of the project design. In regard to the segment within Lake Champlain, EPA observed that the project ''appears to be designed to avoid impacts to shallow water areas'' and expressed support for the use of horizontal directional drilling to achieve that objective.

Regarding water supply and water resources, EPA recommended that any future maps of the project mark the location of the ten surface water systems, nine groundwater systems, and four private wells in the vicinity of the project. DOE notes that the locations of the public water supply system sources (lake intakes and groundwater wells) and associated Source Protection Areas are depicted on the Natural Resource and Public Water Supply Map Series (December 2, 2014) that is available at *www.necplink.com.* TDI–NE intends to add the locations of the ten surface water systems and nine groundwater systems to the issued-for-construction drawings. Mapping of these features is intended as a precautionary measure and would not imply that construction activities would have an impact on these features. Also, EPA pointed out that the Final EIS indicates that the ''deep intake of one supplier (Grand Isle

Consolidated Water District [GICWD]) is within one hundred feet of the project.'' DOE notes that more recent information on intake locations from the Applicant indicates that the GICWD's deep intake is over 300 feet from the NECPL Project alignment.

EPA commented that the Final EIS does not describe how the proposed project would meet state regulations and any state guidance for protection of surface and groundwater drinking supplies and recommends that DOE provide this information before the close of the NEPA process. EPA encourages DOE to underscore the importance that TDI–NE consider all state and local land use restrictions designed to protect water supplies. DOE notes that oversight of public water systems is managed by ''primacy'' agencies, which are either state government agencies or EPA regional offices. The State of Vermont received primacy approval from EPA to supervise the public water systems in its jurisdiction. TDI–NE received a 401 Water Quality Certificate from the State of Vermont on November 24, 2015. The Vermont Agency for Natural Resources (VT ANR) considered the potential impact of the project on groundwater, in accordance with Section 1–04(A)(2) of the Vermont Water Quality Standards (CVR–12–030–025), and associated Anti-degradation Implementation Procedure. TDI–NE also prepared an Overall Oil and Hazardous Materials Spill Prevention and Contingency Plan for the NECPL Project.

EPA commented that TDI–NE should provide real-time turbidity data to water suppliers that draw water from Lake Champlain to inform water treatment decisions. EPA recommended that DOE include in the ROD a specific requirement that TDI–NE provide water suppliers this notification. DOE notes that TDI–NE will be required by its permit from the Vermont Public Service Board to notify public water systems, which would involve notifying all ten public water systems with lake intakes near the project in writing at least three weeks prior to construction. The notification would include detailed information regarding the Project schedule, methods, and predicted effects (if any) to sediment and turbidity. Also, the public water systems monitor turbidity in real time at their own intakes already, as required by permits issued by VT ANR.

EPA also recommended to DOE that TDI–NE provide construction management plans to water suppliers prior to construction. TDI–NE will be required by state permit to notify water suppliers in advance of construction and to provide details on the construction process and contact information. Regarding spill notification, TDI–NE would comply with all applicable state and federal laws and would request approval of the Oil and Hazardous Materials Spill Prevention and Contingency Plan from the VT ANR at least 90 days prior to construction.

Regarding sediments and water quality, EPA recommended that town and state culverts be replaced whenever necessary to avoid or minimize any negative environmental impacts. DOE notes that TDI–NE received a stream alternation permit from the VT ANR on November 24, 2015. Specific techniques for crossing all regulated streams were approved after consultation with VT ANR, local towns, and the Vermont Agency of Transportation (VTrans). In a limited number of circumstances, the replacement of a culvert may be necessary due to the size or condition of the culvert. For the majority of streams that are crossed, the culverts would either not be impacted by the project or the need for replacement would be assessed during construction. The specific design at each stream crossing would ensure that the cable is buried at a sufficient depth below each stream's stable longitudinal profile to allow the culverts to be replaced by appropriately-sized structures in the future without needing to disturb the cable. This additional burial depth would help avoid and minimize future negative environmental impacts that would occur when these structures are replaced.

EPA also recommended that TDI–NE commit to compliance with Vermont road and bridge standards during roadside ditch construction. TDI–NE made such commitments in their agreements with VTrans and the Towns of Alburgh, Benson and Ludlow. These commitments can be viewed on TDI–NE's project Web site at *www.necplink.com.*

EPA commented that DOE should require TDI–NE to consult with the Lake Champlain Basin Project (LCBP) on the issue of invasive species prior to project construction. TDI–NE would be subject to State of Vermont stipulations related to invasive species, which are documented in the Section 401 Water Quality Certificate, Lake Encroachment Permits, and Vermont Wetlands Permits issued by the VT ANR. For the Lake segment, TDI–NE would:

Prior to placing any equipment (e.g., boat, trailer, vehicle, or gear) that has been in or on any other waterbody other than Lake Champlain into public waters for Project construction or related to Project operation, the Permittee shall inspect and decontaminate the equipment in accordance with the ''Aquatic Invasive Species Management and Control Plan, for the New England Clean Power Link HVDC Transmission Project.''

DOE notes that TDI–NE consulted with the LCBP staff during the development of the NECPL Project, as well as with parties staffing a similar program in New York. TDI–NE's Invasive Species Management Plan is based on a guidance document that was developed in cooperation with the LCBP and was reviewed and approved by the VT ANR.

Regarding the overland segment of the NECPL Project, TDI–NE is obligated to comply with a Vegetation Management Plan which details the plan for managing, monitoring and controlling non-native invasive species along the project corridor. Monitoring of invasive species per this plan would be required for three years after construction.

In regard to greenhouse gas (GHG) emissions and climate change, EPA commented that it was inappropriate for DOE to compare Project emissions to global levels in Section 5 of the Final EIS. DOE notes that the Final EIS concludes that GHG emissions from construction and operation of the project would be small in comparison to total annual emissions for the state. Moreover, the Final EIS explains that operation of the Project would be expected to offset the need for other sources of electricity, including those with higher levels of GHG emissions. As such, the proposed project could contribute positively to Vermont achieving its GHG reduction goals. EPA stated that DOE should recommend that TDI–NE ensure that specific detailed mitigation measures are implemented during construction to help reduce and minimize air quality impacts from the construction phase of the project. The Presidential permit will include conditions requiring TDI–NE to implement mitigation measures in the Final EIS including those related to local air emissions during construction of the project.

EPA also commented that DOE could have improved the Final EIS by discussing the emissions profile of the electricity to be imported with that of the ''electricity it would likely displace from the New England Power grid.'' EPA recommends that DOE use tools on the Council of Environmental Quality's *NEPA.gov* Web site. DOE notes that it consulted directly with EPA staff on the Motor Vehicle Emission Simulator (MOVES) program to quantify GHG emissions and associated effects and

presented the analysis in Section 5 and Appendix K of the Final EIS.

EPA also commented that the Final EIS could have been ''improved with a discussion of the environmental effects that would be avoided through potential reductions in the need to operate power plants with significant cooling water needs.'' DOE notes that such a discussion might be beneficial but would be premised on substantial uncertainty.

In regard to environmental justice, EPA acknowledged that analysis in the Final EIS identifies low-income populations and minority populations at the census tract level but commented that it ''does not differentiate between the overland and lake segments.'' EPA further commented that, ''This is significant in that populations likely to be affected by the project will be in the overland section, and the proximity of the project to those populations would be useful to examine.'' DOE notes that its analysis did include potential impacts to low-income populations and minority populations in communities throughout the potentially affected area.

EPA also recommended that DOE and TDI–NE conduct public outreach during the construction phase of the project to keep environmental justice populations informed about the project's progress and potential impacts, even those anticipated to be minor in nature. DOE notes that in addition to the four public meetings held during DOE's NEPA process, TDI–NE conducted comprehensive outreach throughout the development of the project using town offices, Front Porch Forums, and targeted letters to landowners in the vicinity of the project route to communicate project information. TDI–NE conducted six local open house meetings in several communities along the project route. TDI–NE plans to continue to use these forums to communicate with local citizens along the project route.

The construction phase of the NECPL project including stipulations, mitigation measures, and public outreach efforts, would be under the jurisdiction of the USACE, VT–ANR, VTrans, the VT Public Service Board, and the Towns of Alburgh, Benson and Ludlow.

Decision

DOE has decided to issue Presidential Permit PP–400 to authorize TDI–NE to construct, operate, maintain, and connect a 1,000-MW HVDC transmission line across the U.S./Canada international border. The permit will include a condition requiring TDI–NE to implement the Applicant-proposed avoidance and minimization measures identified in the EIS.

Basis for Decision

DOE's decision to grant this Presidential permit is based on consideration of environmental impacts, impacts on the reliability of the U.S. electric power supply system under normal and contingency conditions, and the favorable recommendations of the U.S. Departments of State and Defense (which were provided, respectively, in July and August of 2015).

DOE determined that the proposed international electric transmission line would not have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE reviewed the System Impact Study produced by the Independent System Operator New England Inc. (ISO–NE) in October 2016 and a November 1, 2016, letter from ISO–NE. Based on the information available, DOE staff has determined that the 1000 MW of incremental north-to-south transfer, which represents south-bound transmission service requests from Quebec to the United States, will not have a negative impact on the reliability of the United States electric grid if operated consistent with both ISO-New England and North American Electric Reliability Corporation policies and standards, terms and conditions of the Presidential Permit and other regulatory and statutory requirements. Neither DOE nor ISO–NE has studied a south-to-north transfer, so the permit does not authorize such a transfer.

Mitigation

All practicable means to avoid or minimize environmental harm from the alternative selected have been, or will be, adopted. TDI–NE's proposed measures to avoid and minimize adverse impacts are described in the EIS, the BA, and the PA. TDI–NE will be responsible for implementing these avoidance and minimization measures. Additional measures will be required as a result of ongoing consultations (*e.g.,* regarding Clean Water Act Section 404, the Cultural Resources Management Plan) between TDI–NE and state and federal agencies as part of approval and permitting processes.

Issued in Washington, DC, on December 5, 2016.

Meghan Conklin,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–29700 Filed 12–9–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2242–078]

Eugene Water and Electric Board; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement (amending settlement agreement filed October 23, 2008).

b. *Project No.:* 2242–078.

c. *Date filed:* November 30, 2016.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Carmen-Smith Hydroelectric Project.

f. *Location:* On the McKenzie River in Lane and Linn counties, near the town of McKenzie Bridge, Oregon. The project occupies approximately 560 acres of the Willamette National Forest.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Frank Lawson, General Manager, Eugene Water and Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, Oregon 97440–2148; (541) 685–7000.

i. *FERC Contact:* Dianne Rodman; (202) 502–6077 or *dianne.rodman@ferc.gov.*

j. *Deadline for Filing Comments:* January 2, 2017. Reply comments due January 17, 2017.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2242–078.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Eugene Water and Electric Board (EWEB) filed the settlement agreement on behalf of itself and the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Forest Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of Siletz Indians of Oregon, Confederated Tribes of the Warm Springs Reservation of Oregon, McKenzie Flyfishers, Rocky Mountain Elk Foundation, Inc., and Trout Unlimited. The purpose of the settlement agreement is to resolve among the signatories all issues associated with issuance of a new license for the project regarding water quality, instream flows, fish passage and habitat, wildlife, recreation, aesthetics, and cultural resources. EWEB requests that the Commission accept and incorporate into any new license for the project the protection, mitigation, and enhancement measures stated in the amended settlement agreement.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29620 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TS17–1–000]

Northern California Power Agency; Notice of Filing

Take notice that on November 29, 2016, Northern California Power Agency filed a notice of potential change in material facts and a request for continued waiver of the Standards of Conduct.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 20, 2016.

Dated: December 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29699 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1855–049, 1892–029, 1904–077, 2077–106, 2323–214]

TransCanada Hydro Northeast Inc.; TC Hydro Inc.; Notice of Application for Transfer of Licenses and Soliciting Comments and Motions To Intervene

On November 18, 2016, the above mentioned transferor and TC Hydro Inc. (transferee) filed an application for transfer of licenses for the following projects.

Project No.	Project name	Location
P–1855–049	Bellows Falls Project	Connecticut River, Cheshire and Sullivan counties, NH and Windham and Windsor counties, VT.
P–1892–029	Wilder Project	Connecticut River, Windsor and Orange counties, VT and Grafton County, NH.
P–1904–077	Vernon Project	Connecticut River, Grafton County, NH and Caledonia County, VT.
P–2077–106	Mile Falls Hydroelectric Project	Connecticut River, Grafton County, NH and Caledonia County, VT.
P–2323–214	Deerfield River Project	Windham and Bennington, counties, VT and Franklin and Berkshire counties, MA.

The transferor and transferee seek Commission approval to transfer the licenses for the above mentioned projects from the transferor to the transferee.

Applicant Contacts: For Transferor and Transferee: Ms. Erin A. O'Dea, Legal Counsel, TransCanada U.S. Northeast, 110 Turnpike Road, Suite 300, Westborough, MA 01581, Phone: 508–599–1434, Email: *erin_odea@transcanada.com.* And John A. Whittaker, IV, Winston & Strawn LLP, and 1700 K Street NW., Washington, DC 20006–3817, Phone: 202–282–5766, Email: *jwhittaker@winston.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice, by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit

brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–1855–049, P–1892–029, P–1904–077, P–2077–106, or P–2323–214.

Dated: December 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29619 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

NYISO Electric System Planning Working Group Meeting

December 7, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-12-07.*

NYISO Business Issues Committee Meeting

December 14, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-12-14.*

NYISO Operating Committee Meeting

December 15, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-12-15.*

NYISO Management Committee Meeting

December 21, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-12-21.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Transco, LLC, Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: December 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29624 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Ef16–6–001]

Western Area Power Administration; Notice of Filing

Take notice that on December 5, 2016, Western Area Power Administration submitted a tariff filing per: DSW_NTS/AS_WAPA175A–20161201 to be effective 10/1/2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 4, 2017.

Dated: December 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29698 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–501–000]

Texas Eastern Transmission, LP; Notice of Schedule for Environmental Review of the Proposed Marshall County Mine Panel 17W Project

On September 15, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed an application in Docket No. CP16–501–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as Marshall County Mine Panel 17W Project (Project) located in Marshall County, West Virginia.

On September 29, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice

of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 24, 2017
90-day Federal Authorization Decision Deadline—April 24, 2017

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Texas Eastern proposes to excavate and elevate sections of its Lines 10 (30-inch-diameter), 15 (30-inch-diameter), 25 (36-inch-diameter) and 30 (36-inch-diameter) to minimize and monitor potential strains on the pipelines due to anticipated longwall mining activities of Marshall Coal. Concurrent with pipeline elevation, portions of two of the lines, Lines 10 and 15, will be replaced with new pipe to accommodate a minimum US Department of Transportation Class 2 design. The sections of Lines 25 and 30 will be removed and Texas Eastern will perform maintenance activities on them. The four mainline sections will be returned to natural gas service while remaining elevated using sandbags and skids during the longwall mining activities and potential ground subsidence. Once the mining-induced subsidence and the 2017–2018 heating season have both ended, the two sections of Lines 10 and 15 located within wetlands will be removed and the four elevated pipeline sections will be re-installed belowground, hydrostatically tested, and placed back into service.

Background

On September 30, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Marshall County Mine Panel 17W Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission did not receive any comments in response to the NOI.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP16–501), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29696 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4253–002]

River Street Associates; Contoocook Hydro, LLC; Notice of Transfer of Exemption

1. By letter filed November 23, 2016, Contoocook Hydro, LLC informed the Commission that the exemption from licensing for the River Street Project No. 4253, originally issued May 4, 1982 [1] has been transferred to Contoocook Hydro, LLC. The project is located on the Nubanusit River in Hillsborough County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. Contoocook Hydro, LLC is now the exemptee of the River Street Project No. 4253. All correspondence should be forwarded to: Ms. Lori Barg, President, Contoocook Hydro, LLC, 581 Quaker Street, Henniker, NH 03242, Phone: 802–454–8458, Email: *Lori@communityhydro.biz.*

Dated: December 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29622 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 19 FERC 62,193, Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5Megawatts or Less (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–5–001]

Western Area Power Administration; Notice of Filing

Take notice that on December 5, 2016, Western Area Power Administration submitted a tariff filing per: RMR_WACM_LAP_CRSP_174Refile-20161205 to be effective 10/1/2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 4, 2017.

Dated: December 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29697 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Additional eTariff Type of Filing Codes

Take notice that, effective January 3, 2017, the Chief Administrative Law Judge requires that all settlements in Parts 35, 154, 284 and 341 [1] proceedings set for trial-type evidentiary hearing and/or settlement judge procedures before a Presiding Judge or Settlement Judge must be filed in eTariff. Filers are required to use the following list of available eTariff Type of Filing Codes (TOFC) to make these filings in eTariff.[2]

TOFC	Filing title	Filing category	Description of change
1380	ALJ Settlement	Compliance	Settlement in a Part 35 FPA Traditional Cost of Service and Market Based Rate Program proceeding.
1390	ALJ Settlement	Compliance	Settlement in a Part 35 FPA Market Based Rate Program proceeding.
1400	ALJ Settlement	Compliance	Settlement in a Part 154 NGA Gas Pipelines Program proceeding.
1410	ALJ Settlement	Compliance	Settlement in a Part 284 NGPA 311 Gas Pipelines Program proceeding.
1420	ALJ Settlement	Compliance	Settlement in a Part 341 Oil Pipelines Program proceeding.

For more information, contact H. Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an email to *FERCOnline@ferc.gov.*

Dated: December 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29623 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2386–004; 2387–003; 2388–004]

City of Holyoke Gas and Electric Department; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* Subsequent Licenses.

b. *Project Nos.:* 2386–004, 2387–003, and 2388–004.

c. *Date filed:* August 31, 2016.

d. *Applicant:* City of Holyoke Gas and Electric Department.

e. *Names of Projects:* Holyoke Number 1 Hydroelectric Project, P–2386–004; Holyoke Number 2 Hydroelectric Project, P–2387–003; and Holyoke Number 3 Hydroelectric Project, P–2388–004.

f. *Locations:* Holyoke Number 1 (P–2386–004) and Holyoke Number 2 (P–2387–003) are located between the first and second level canals, and Holyoke Number 3 (P–2388–004) is located between the second and third level canals on the Holyoke Canal System, adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul Ducheney, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Kyle Olcott at (202) 502–8963; or email at *kyle.olcott@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket numbers P–2386–004, P–2387–003, and 2388–004.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. These applications have been accepted for filing, but are not ready for environmental analysis at this time.

l. *The existing Holyoke Number 1 project consists of:* (1) An intake at the wall of the first level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with two 14-foot-8-inch-tall by 24-foot-7.5-inch wide trash rack screens with 3.5-inch clear spacing; (2) two parallel 10-foot-diameter, 36.5-foot-long penstocks; (3) a 50-foot-long by 38-foot-wide brick powerhouse with two 240-kilowatt and two 288-kilowatt turbine generator units; (4) two parallel 20-foot-wide, 328.5-foot-long brick arched tailrace conduits discharging into the second level canal; and, (5) appurtenant facilities. There is no transmission line associated with the project as it is located adjacent to the substation of interconnection. The project is estimated to generate 2,710,000 kilowatt-hours annually.

The existing Holyoke Number 2 project consists of: (1) An intake at the wall of the first level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with three trash rack screens (one 16-foot-2-inch tall by 26-foot-2-inch-wide and two 14-foot-9-inch tall by 21-foot-10-inch long) with 3-inch clear spacing; (2) two 9-foot diameter, 240-foot-long penstocks; (3) a 17-foot-high by 10-foot-diameter surge tank; (4) a 60-foot-long by 40-foot-wide by 50-foot high powerhouse with one 800-kilowatt vertical turbine generator unit; (4) two parallel 9-foot-wide, 10-

[1] 18 CFR parts 35, 154, 284 and 341 (2016).

[2] The type of filing business process categories are described in the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (November 14, 2016), found on the Commission's Web site, *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

foot-high, 120-foot-long brick arched tailrace conduits discharging into the second level canal; (5) an 800-foot-long, 4.8-kilovolt transmission line; and (6) appurtenant facilities. The project is estimated to generate 4,710,000 kilowatt-hours annually.

The existing Holyoke Number 3 project consists of: (1) A 52-foot-3-inch long by 14-foot-high intake trash rack covering an opening in the second level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004); (2) two 11-foot-high by 11-foot-wide headgates; (3) two 85-foot-long, 93-square-foot in cross section low pressure brick penstocks; (4) a 42-foot-long by 34-foot-wide by 28-foot-high reinforced concrete powerhouse with one 450-kilowatt turbine generator unit; (5) a 29.7-foot-wide, 10-foot-deep, 118-foot-long open tailrace discharging into the third level canal; and, (6) 4.8-kilovolt generator leads that connect directly to the 4.8-kilovolt area distribution system; and (7) appurtenant facilities. The project is estimated to generate 2,119,000 kilowatt-hours annually.

m. A copy of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: December 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–29621 Filed 12–9–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9956–43–OARM]

Senior Executive Service Performance Review Board; Membership

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the membership of the U.S. Environmental Protection Agency Performance Review Board for 2016.

FOR FURTHER INFORMATION CONTACT: Karen D. Higginbotham, Director, Executive Resources Division, 3606A, Office of Human Resources, Office of Administration and Resources Management, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–7287.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive.

Members of the 2016 EPA Performance Review Board are:

John Armstead, Director, Land and Chemicals Division, Region 3
Beverly Banister, Director, Air, Pesticides and Toxics Management Division, Region 4
Sheryl Bilbrey, Director, Office of Environmental Cleanup, Region 10
Jerry Blancato, Director, Office of Science Information Management, Office of Research and Development
David Bloom, Deputy Chief Financial Officer, Office of the Chief Financial Officer
Rebecca Clark, Deputy Director, Office of Ground Water and Drinking Water, Office of Water
Sam Coleman, Deputy Regional Administrator, Region 6
Rafael DeLeon, Deputy Director, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance
Lilian Dorka (Ex-Officio), Acting Director, Office of Civil Rights, Office of the Administrator
Alfred P. Dufour, Senior Research Microbiologist, Office of Research and Development
John Filippelli, Director, Clean Air and Sustainability Division, Region 2
Karen Flournoy, Director, Water, Wetlands and Pesticides Division, Region 7
Lynn Flowers, Associate Director for Health, National Center for Environmental Assessment, Office of Research and Development
Linda Gray (Ex-Officio), Director, Office of Human Resources, Office of Administration and Resources Management
Peter Grevatt, Director, Office of Ground Water and Drinking Water, Office of Water
Christopher Grundler, Director, Office of Transportation and Air Quality, Office of Air and Radiation
Margaret Guerriero, Director, Land and Chemicals Division, Region 5
Karen D. Higginbotham (Ex-Officio), Director, Executive Resources Division, Office of Human Resources, Office of Administration and Resources Management
Randy Hill, Deputy Assistant Administrator, Office of International and Tribal Affairs
Richard Keigwin, Deputy Director, Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention
Michael Kenyon, Assistant Regional Administrator for Administration and Resources Management, Region 1
Kenneth Lapierre, Assistant Regional Administrator for Policy and Management, Region 4
David Lloyd, Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management
James McDonald, Assistant Regional Administrator for Management, Region 6
Robert McKinney, Senior Agency Information Security Officer, Office of Environmental Information
Oscar Morales, Associate Assistant Administrator for Management, Office

of Chemical Safety and Pollution Prevention

Rebecca Moser, Director, Office of Enterprise Information Programs, Office of Environmental Information

Elise Packard, Associate General Counsel, Civil Rights and Finance Law, Office of General Counsel

Kimberly Patrick, Director, Office of Acquisition Management, Office of Administration and Resources Management

Michelle Pirzadeh, Deputy Regional Administrator, Region 10

Denise Polk, Director, Office of Grants and Debarment, Office of Administration and Resources Management

John Reeder, Deputy Chief of Staff, Office of the Administrator

Christopher Robbins, Acting Deputy Assistant Administrator, Office of Research and Development

John Showman, Acting Deputy Assistant Administrator, Office of Administration and Resources Management

Carol Ann Siciliano, Associate General Counsel, Cross—Cutting Issues, Office of General Counsel

Stefan Silzer, Controller, Office of the Chief Financial Officer

Nigel Simon, Director, Office of Program Management, Office of Land and Emergency Management

Walker Smith, Director, Office of Global Affairs and Policy, Office of International and Tribal Affairs

Allyn Stern, Regional Counsel, Region 10, Office of Enforcement and Compliance Assurance

Alexis Strauss, Acting Regional Administrator, Region 9

Susan Studlien, Director, Office of Environmental Stewardship, Region 1

Debra Thomas, Deputy Regional Administrator, Region 8

Donna Vizian, (Ex-Officio), Principal Deputy Assistant Administrator, Office of Administration and Resources Management

Jeffery Wells, Deputy Director, Office of Customer Advocacy, Policy and Portfolio Management, Office of Environmental Information

Pai-Yei Whung, Senior Research Scientist, Office of Research and Development

Anna Wood, Director, Air Quality Policy Division, Office of Air and Radiation

Christopher Zarba, Director, Science Advisory Board Staff Office, Office of the Administrator

Dated: November 29, 2016.

Donna J. Vizian,

Principal Deputy Assistant Administrator, Office of Administration and Resources Management.

[FR Doc. 2016–29743 Filed 12–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9956–34–Region 2]

Proposed CERCLA Section 122(h) Cost Recovery Settlement for the Columbia Smelting and Refining Works Site, Brooklyn, Kings County, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed cost recovery settlement agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), with the City of New York (the ''Settling Party'') for the Columbia Smelting and Refining Works Site (''Site'') in Brooklyn, Kings County, New York. The Site is a ''facility'' as defined by Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

The Site is composed of (1) Red Hook Recreation Area Ball Field Numbers 5, 6, 7, and 8 (''Ball Fields 5–8''); (2) areas surrounding Ball Fields 5–8 where grass is planted (referred to as ''Planting Strips''); (3) Red Hook Recreation Area Ball Field Number 9 (''Ball Field 9''); (4) the Ball Field 9 Planting Strips; (5) the sidewalks bordering the Ball Fields 5–8 Planting Strips and the Ball Field 9 Planting Strips; and (6) any other areas that have been impacted by the historic operations of the former Columbia Smelting and Refining Works facility. Ball Fields 5–8 and the Ball Fields 5–8 Planting Strips, collectively, comprise approximately 4.17 acres and are located on Block 581, Lot 1 of the Tax Map of Kings County, New York, bordered on the north by Lorraine Street, on the east by Henry Street, on the south by Bay Street, and on the west by Hicks Street. Ball Field 9 and the Ball Field 9 Planting Strips, collectively, comprise approximately 3.4 acres and are bordered on the north by Bay Street, on the east by Soccer Field #2, on the south by Halleck Street, and on the west by a track surrounding Soccer Field #3, located generally in the vicinity of Block 614, Lot 300 and Block 602, Lot 1 of the Tax Map of Kings County, New York. Settling Party is the current owner of the Site.

The Settling Party agrees to pay EPA $395,105.40 in reimbursement of past response costs related to the performance of work performed by EPA at the Site.

The settlement includes a covenant by EPA not to sue or to take administrative action against the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to the response costs related to work performed at the Site. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before January 11, 2017.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Columbia Smelting and Refining Works Site, Index No. CERCLA–02–2016–2018. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Andrew Praschak, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. Email: *praschak.andrew@epa.gov.* Telephone: 212–637–3172.

Dated: November 21, 2016.

Walter Mugdan,

Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency.

[FR Doc. 2016–29745 Filed 12–9–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10256 Home National Bank, Blackwell, OK

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10256 Home National Bank, Blackwell, OK (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Home National Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29736 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10123 Southern Colorado National Bank, Pueblo, Colorado

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10123 Southern Colorado National Bank, Pueblo, Colorado (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Southern Colorado National Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29734 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10045 Colorado National Bank, Colorado Springs, Colorado

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10045 Colorado National Bank, Colorado Springs, Colorado (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Colorado National Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29733 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10327—Oglethorpe Bank, Brunswick, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Oglethorpe Bank, Brunswick, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Oglethorpe Bank on January 14, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29738 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10474, First Federal Bank, Lexington, Kentucky

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10474, First Federal Bank, Lexington, Kentucky (''Receiver''), has been authorized to take all actions necessary to terminate the receivership estate of First Federal Bank (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29635 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10247—First National Bank, Rosedale, Mississippi

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First National Bank, Rosedale, Mississippi (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First National Bank on June 4, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29735 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10010 First Priority Bank, Bradenton, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10010 First Priority Bank, Bradenton, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Priority Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29739 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10010, First Priority Bank, Bradenton, Florida

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10010, First Priority Bank, Bradenton, Florida (''Receiver''), has been authorized to take all actions necessary to terminate the receivership estate of First Priority Bank (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29692 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10487 Sunrise Bank of Arizona, Phoenix, Arizona

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10487 Sunrise Bank of Arizona, Phoenix, Arizona (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Sunrise Bank of Arizona (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29741 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10500 Slavie Federal Savings Bank, Bel Air, Maryland

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10500 Slavie Federal Savings Bank, Bel Air, Maryland (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Slavie Federal Savings Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29740 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10487, Sunrise Bank of Arizona, Phoenix, Arizona

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10487, Sunrise Bank of Arizona, Phoenix, Arizona (''Receiver''), has been authorized to take all actions necessary to terminate the receivership estate of Sunrise Bank of Arizona (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29691 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate the Receivership of 10327, Oglethorpe Bank, Brunswick, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Oglethorpe Bank, Brunswick, Georgia (the ''Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Oglethorpe Bank on January 14, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 6, 2016.

Valerie J. Best,

Assistant Executive Secretary,

Federal Deposit Insurance Corporation.

[FR Doc. 2016–29638 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10271, Bayside Savings Bank, Port Saint Joe, Florida

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10271, Bayside Savings Bank, Port Saint Joe, Florida (''Receiver'') has been authorized to take all actions necessary to terminate the receivership estate of Bayside Savings Bank (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Date: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29636 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10500, Slavie Federal Savings Bank, Bel Air, Maryland

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10500, Slavie Federal Savings Bank, Bel Air, Maryland (''Receiver'') has been authorized to take all actions necessary to terminate the receivership estate of Slavie Federal Savings Bank (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29693 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10316 Gulf State Community Bank, Carrabelle, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10316 Gulf State Community Bank, Carrabelle, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Gulf State Community Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 7, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–29737 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of the Receivership of 10316, Gulf State Community Bank, Carrabelle, Florida

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10316, Gulf State Community Bank, Carrabelle, Florida (''Receiver''), has been authorized to take all actions necessary to terminate the receivership estate of Gulf State Community Bank (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–29637 Filed 12–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is adopting a proposal to revise, with revision, the Joint Standards for Assessing Diversity Policies and Practices (Policy Statement).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Joint Standards for Assessing Diversity Policies and Practices.

Agency form number: FR 2100.

OMB control number: 7100–0368.

Frequency: Annual.

Respondents: Financial institutions regulated by the Federal Reserve.

Estimated annual burden hours: 3,912 hours.

Estimated average hours per response: 8 hours.

Number of respondents: 488.

General description of report: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (the Agencies) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. Section 342 requires each OMWI director to develop standards for ''assessing the diversity policies and practices of entities regulated by the agency.'' The Policy Statement, published jointly by the Agencies in June 2015, contain those standards.

Legal authorization and confidentiality: The Board's Legal Division has determined that the information collections contained within the Policy Statement are authorized by section 342 of the Dodd-Frank Act, which requires the Board's OMWI director to develop standards for assessing regulated entities' diversity policies and practices and are voluntary.

The Standard regarding transparency, and a portion of the self-assessment Standard, call for regulated entities to provide information to the public, so confidentiality is not an issue with respect to those aspects of the Policy. A regulated entity may provide self-assessment material to the Board that contains confidential commercial information protectable under exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and may request that the information be kept confidential on a case-by-case basis. The Federal Reserve will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with such a request. As noted in the Policy Statement, an entity's primary federal regulator may share information obtained from regulated entities with other Agencies, but will publish information disclosed to them only in a form that does not identify a particular entity or individual or disclose confidential business information.

Current Actions: The Federal Reserve previously received OMB approval for a voluntary information collection with respect to the Policy Statement, pursuant to which entities regulated by the Federal Reserve voluntarily self-assess their diversity policies and practices.[1] This revision to that collection adds the Diversity Self-Assessment Template to assist with the self-assessment. The Template (1) asks for general information about a respondent; (2) includes a checklist of the standards set forth in the Policy Statement; (3) seeks additional diversity data; and (4) provides an opportunity for a respondent to provide other information regarding or comment on the self-assessment of its diversity policies and practices.

On September 27, 2016, the Federal Reserve published a notice in the **Federal Register** (81 FR 66275) requesting comment on the proposal to include a reporting tool entitled ''Diversity Self-Assessment Template.'' The comment period for this notice expired on November 28, 2016. The Federal Reserve did not receive any comments. The reporting template will be implemented as proposed.

[1] 80 FR 33016 (June 10, 2015).

Board of Governors of the Federal Reserve System, December 6, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–29606 Filed 12–9–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 2017.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *First IC Corporation;* to become a bank holding company by acquiring 100 percent of the outstanding shares of First Intercontinental Bank, both of Doraville, Georgia.

2. *Marine Bancorp of Florida, Inc.;* to become a bank holding company by acquiring 100 percent of the outstanding shares of Marine Bank & Trust Company, both of Vero Beach, Florida.

Board of Governors of the Federal Reserve System, December 7, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29689 Filed 12–9–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Stratford Bancshares Inc.,* Stratford, Wisconsin; to merge with Spencer Bancorporation, Inc., Spencer, Wisconsin, and thereby indirectly acquire Stratford State Bank, Stratford, Wisconsin.

Board of Governors of the Federal Reserve System, December 6, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29618 Filed 12–9–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2017.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Home BancShares, Inc.,* Conway, Arkansas; to acquire 100 percent of Bank of Commerce, Sarasota, Florida.

Board of Governors of the Federal Reserve System, December 6, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29617 Filed 12–9–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m. on Thursday, December 15, 2016.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on Wednesday, December 14, 2016. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C §§ 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Final Rule Establishing Total Loss-Absorbing Capacity and Buffers, Long-term Debt, and Clean Holding Company Requirements for U.S. Global Systemically Important Banking Holding Companies and U.S. Intermediate Holding Companies of Foreign Global Systemically Important Banking Organizations

Notes

1. The staff memo to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to:

Freedom of Information Office
Board of Governors of the Federal Reserve System
Washington, DC 20551

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 8, 2016.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–29892 Filed 12–8–16; 4:15 pm]

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 January 9, 2017.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Hope Bancorp, Inc.,* to retain 9.90 percent of the voting stock of Broadway Financial Corporation, and indirectly its wholly-owned subsidiary, Broadway Federal Bank, F.S.B., all of Los Angeles, California, pursuant to section 225.28 of Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29690 Filed 12–9–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–17–1009]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB No. 0920–1009, exp. 3/31/2017)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public.

If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable. CDC/ATSDR will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

OMB approval is requested for three years. There are no costs to respondents other than their time. The estimated annualized burden hours are 20,350.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
In person surveys, online surveys, telephone surveys, in person observation/testing.	GenIC_Request Template	7,000	1	30/60
Focus groups	GenIC_Request Template	800	1	2

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Customer comment cards, interactive voice surveys	GenIC_Request Template	61,000	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–29731 Filed 12–9–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16AWJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS)—Existing Collection in Use without an OMB Control Number—National Center for Environmental Health NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is requesting a three-year Paperwork Reduction Act (PRA) clearance to conduct information collection under ''The Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS)'' for three years beginning with the 2017 data collection cycle. The ACBS is an existing collection in use without an OMB Control Number. BRFSS (OMB Control No. 0920–1061, expiration date 3/31/2018) is a nationwide system of customized, cross-sectional telephone health surveys sponsored by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) Division of Population Health. The BRFSS information collection is conducted in a continuous, three-part telephone interview process: Screening, participation in a common BRFSS core survey, and participation in optional question modules that states use to customize survey content.

The ACBS is not an optional state module, but rather, is a follow-up survey to the regular BRFSS efforts. It is funded by the National Asthma Control Program (NACP) in the Air Pollution and Respiratory Health Branch (APRHB) of the National Center for Environmental Health (NCEH). The ACBS is administered by NCCDPHP on behalf of NCEH using its existing BRFSS sampling frame. BRFSS coordinators in the health departments in U.S. states, territories, and the District of Columbia (collectively referred to as states) are responsible for survey administration. Currently CDC provides its 40 participating states with technical and methodological assistance.

The purpose of ACBS is to gather state-level asthma data and to make them available to track the burden of the disease, to monitor adherence to asthma guidelines, and to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Beyond asthma prevalence estimates, for most states, the ACBS provides the only sources of adult and child asthma data on the state and local level.

As a follow-up, the ACBS is conducted within two weeks after the BRFSS survey. Data collection for ACBS involves (1) screening, (2) obtaining permission, (3) consenting and telephone interviewing on a subset of the BRFSS respondents from participating states. The ACBS eligible respondents are BRFSS adults, 18 years and older, who report ever being diagnosed with asthma. In addition, some states include children, below 18 years of age, who are randomly selected subjects in the BRFSS household. Parents or guardians serve as ACBS proxy respondents for their children ever diagnosed with asthma. If both the BRFSS adult respondent and the selected child in the household have asthma, then only one or the other is eligible for the ACBS.

The ACBS adds considerable state-level depth to the existing body of asthma data. It addresses critical questions surrounding the health and experiences of persons with asthma. Health data include symptoms, environmental factors, and medication use among persons with asthma. Data on their experiences include activity limitation, health system use, and self-management education. These asthma data are needed to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Federal agencies and other entities also rely on this critical information for planning and evaluating efforts and to reduce the burden from this disease.

The CDC makes annual ACBS datasets available for public use and provides

guidance on statistically appropriate uses of the data. Participation in the ACBS is voluntary and there are no costs to respondents other than their time. The burden table reflects the landline and cell phone data collection methods used in 2013 and later years. Additionally, the burden table accounts for reporting burden incurred by the states for the monthly or quarterly data submission to CDC. The burden hour estimates represent the 2013 data collection which is the most recent data released.

The total estimated annualized burden hours for all respondents are 6,029 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
BRFSS Adults	ACBS Landline Screener—Adult	21,424	1	1/60
	ACBS Cell Phone Screener—Adult	8,976	1	1/60
BRFSS Parents or Guardians of Children	ACBS Landline Screener—Child	4,245	1	1/60
	ACBS Cell Phone Screener—Child	2,238	1	1/60
ACBS Adults	ACBS Adult Consent and Survey—2013	19,954	1	10/60
ACBS Parents or Guardians of Children	ACBS Child Consent and Survey—2013	3,887	1	10/60
State BRFSS Coordinators	ACBS Data Submission Layout	40	12	3

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–29730 Filed 12–9–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Accomplishments of the Domestic Violence Hotline, Online Connections and Text (ADVHOCaT) Study.

OMB No.: 0970–0468.

Description: The National Domestic Violence Hotline (The Hotline) and loveisrespect (LIR), which are supported by the Division of Family Violence Prevention and Services within the Family and Youth Services Bureau (FYSB) of the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), serve as partners in the intervention, prevention, and resource assistance efforts of the network of domestic violence and dating violence service providers.

In order to describe the activities and accomplishments of The Hotline and LIR and develop potential new or revised performance measures, the ACF/HHS Office of Planning, Research and Evaluation (OPRE) and FYSB are proposing a data collection activity as part of the Accomplishments of the Domestic Violence Hotline, Online Connections and Text (ADVHOCaT) Study.

As part of ongoing program activities and monitoring for The Hotline and LIR, ACF proposes to collect information via voluntary phone, chat, and web-based surveys of individuals who contact The Hotline and LIR. Participants will complete a baseline survey at the end of their contact with The Hotline and LIR, and a follow-up survey approximately two weeks later. The survey will include questions about reasons for contacting The Hotline/LIR, whether needs were met, satisfaction with services received, and helpfulness of information provided. This data collection builds on a previous data collection that was focused on understanding the preferred mode of contact by those who contact The Hotline and LIR. This new information will inform future efforts to monitor and improve the performance of domestic violence hotlines and provide hotline services.

Respondents: Individuals aged 18 and older who contact The Hotline and LIR via phone or chat.

ANNUAL BURDEN ESTIMATES—2 YEAR REQUEST

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
The Hotline/LIR Baseline Survey	2200	1100	1	0.056	62
The Hotline/LIR Follow Up Survey	2200	1100	1	0.1	110

Estimated Total Annual Burden Hours: 172.

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,

Reports Clearance Officer.

[FR Doc. 2016–29709 Filed 12–9–16; 8:45 am]

BILLING CODE 4184–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–3466]

Immediately in Effect Guidance Document: Conditions for Sale for Air-Conduction Hearing Aids; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Immediately in Effect Guidance Document: Conditions for Sale for Air-Conduction Hearing Aids.'' FDA is issuing this guidance to communicate to consumers, hearing aid dispensers, hearing aid manufacturers, and hearing health professionals that FDA does not intend to enforce certain conditions for sale of hearing aid devices that are required per FDA regulation. Specifically, FDA does not intend to enforce the medical evaluation or recordkeeping requirements prior to the dispensing of certain hearing aid devices to individuals 18 years of age and older.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–3466 for ''Immediately in Effect Guidance Document: Conditions for Sale for Air-Conduction Hearing Aids.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Immediately in Effect Guidance Document: Conditions for Sale for Air-Conduction Hearing Aids'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Srinivas Nandkumar, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2436, Silver Spring, MD 20993–0002, 301–796–6480.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this guidance to communicate to consumers, hearing aid dispensers, hearing aid manufacturers, and hearing health professionals that FDA does not intend to enforce certain conditions for sale of hearing aid devices that are required per FDA regulation. Specifically, FDA does not intend to enforce the medical evaluation (§ 801.421(a) (21 CFR 801.421(a)) or recordkeeping (§ 801.421(d))

requirements prior to the dispensing of certain hearing aid devices to individuals 18 years of age and older.

This guidance applies to the subset of hearing aids that are regulated as class I air-conduction hearing aids under § 874.3300(b)(1) (21 CFR 874.3300(b)(1)) and class II wireless air-conduction hearing aids under § 874.3305, where hearing aid means ''any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing,'' as defined in § 801.420(a)(1). This guidance does not apply to class II bone-conduction hearing aids as identified in § 874.3300(b)(2). Also, hearing aids labeled for prescription use only, *e.g.,* those that are inserted deep in the ear canal by a hearing health professional, should continue to be sold only as directed.

This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (see section 701(h)(1)(C)(i) of the FD&C Act (21 U.S.C. 371(h)(1)(C)(i)) and § 10.115.(g)(2) (21 CFR 10.115(g)(2))). FDA believes that immediate implementation of the guidance is needed to assist in addressing a significant public health issue. Further, FDA has determined that this guidance document presents a less burdensome policy that is consistent with public health. Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on conditions for sale for air-conduction hearing aids. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. Persons unable to download an electronic copy of ''Immediately in Effect Guidance Document: Conditions for Sale for Air-Conduction Hearing Aids'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16041 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

Dated: December 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29724 Filed 12–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–P–1363]

Determination That SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (Sodium Chloride), Injectable, 234 Milligrams/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 milligrams (mg)/milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for sodium chloride, injectable, 234 mg/mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: David Faranda, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–8767.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, is the subject of NDA 019329, held by Abraxis Pharmaceutical Products, and initially approved on April 22, 1987. SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER is indicated for use in patients who have special problems of sodium electrolyte intake or excretion, and for the treatment of sodium chloride and water deficiencies, which commonly occur in many diseases.

In a letter dated January 18, 1996, the original NDA holder, Fujisawa USA, Inc., notified FDA that SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug

Product List'' section of the Orange Book.

Gordon Johnston Regulatory Consultants, LLC, submitted a citizen petition dated May 25, 2016 (Docket No. FDA–2016–P–1363), under 21 CFR 10.30, requesting that the Agency determine whether SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list SODIUM CHLORIDE 23.4% IN PLASTIC CONTAINER (sodium chloride), injectable, 234 mg/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29674 Filed 12–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Ebola Virus Disease Vaccines—Amendment

ACTION: Notice of Amendment to the December 3, 2014, Declaration under the Public Readiness and Emergency Preparedness Act for Ebola Virus Disease Vaccines.

SUMMARY: The Secretary is amending the Declaration issued pursuant to section 319F–3 of the Public Health Service Act on December 3, 2014 (79 FR 73314) and amended on December 1, 2015 (80 FR 76541) to extend the effective time period for an additional 24 months and to clarify the description of Covered Countermeasures consistent with the terms of the Declaration and republishing the Declaration in its entirety as amended.

DATES: The Amended Declaration is effective as of December 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone 202–205–2882.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration. Using this authority, the Secretary is amending the Declaration that provides liability immunity to Covered Persons for activities related to the Covered Countermeasures, Ebola Virus Disease Vaccines listed in Section VI of the Declaration, to extend the effective time period for an additional 24 months and to clarify the description of Covered Countermeasures consistent with the terms of this Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug, and Cosmetic (FD&C) Act to provide new authorities for the emergency use of approved products in emergencies and products held for emergency use. PAHPRA accordingly amended the definitions of ''Covered Countermeasures'' and ''qualified pandemic and epidemic products'' in section 319F–3 of the Public Health Service Act (PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

The Ebola virus causes an acute, serious illness that is often fatal. From 2014 to 2015, West Africa experienced the largest and most complex Ebola outbreak since the virus was discovered in 1976, affecting populations in West African countries and travelers who left West Africa. In 2014, the World Health Organization (WHO) declared the Ebola Virus Disease Outbreak as a Public Health Emergency of International Concern under the framework of the International Health Regulations (2005). In March 2016, WHO determined that the Ebola outbreak no longer constituted a Public Health Emergency of International Concern, but emphasized the crucial need for continued support to prevent, detect and respond rapidly to any new Ebola outbreak in West Africa. Thus, there is a continuing need for development of vaccines against Ebola Virus Disease.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may constitute such

an emergency. This determination is separate and apart from a Declaration issued by the Secretary under section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. Accordingly, in Section I, the Secretary determines that there is a credible risk that the spread of Ebola virus and the resulting disease may constitute a public health emergency.

Section II, Factors Considered

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II, the Secretary states that she has considered these factors.

Section III, Recommended Activities

The Secretary must recommend the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures (Recommended Activities). In Section III, the Secretary recommends activities for which the immunity is in effect.

Section IV, Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration . . . has been issued with respect to such countermeasure.'' In Section IV, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

Section V, Covered Persons

The PREP Act's liability immunity applies to ''Covered Persons'' with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.

A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drug, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a state or local government, including an Indian tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's Declaration. Under this definition, a private sector employer or community group or other ''person'' can be a program planner when it carries out the described activities.

A qualified person means a licensed health professional or other individual authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word ''person'' as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department.

Section V describes Covered Persons under the Declaration, including Qualified Persons.

Section VI, Covered Countermeasures

As noted above, section III describes the Secretary's Recommended Activities for which liability immunity is in effect. This section identifies the countermeasures for which the Secretary has recommended such activities. The PREP Act states that a ''Covered Countermeasure'' must be: A ''qualified pandemic or epidemic product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that is: (i) Manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.

A security countermeasure is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that: (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.

To be a Covered Countermeasure, qualified pandemic or epidemic

products or security countermeasures also must be approved or cleared under the FD&C Act; licensed under the PHS Act; or authorized for emergency use under sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is subject to an exemption (that is, it is permitted to be used under an Investigational Drug Application or an Investigational Device Exemption) under the FD&C Act and is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device. A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within 10 years after the Department's determination that procurement of the countermeasure is appropriate.

Section VI lists the Ebola Virus Disease Vaccines that are Covered Countermeasures. The Secretary is amending the description of Covered Countermeasures to clarify that coverage for vaccines includes coverage of all components and constituent materials of the vaccines, and all devices and their constituent components used in the administration of these vaccines. The change is intended to clarify existing coverage; is consistent with PREP Act declarations for vaccines against other potential public health threats, and it is not intended to be a substantive legal change.

Section VI also refers to the statutory definitions of Covered Countermeasures to make clear that these statutory definitions limit the scope of Covered Countermeasures. Specifically, the Declaration notes that Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

Section VII, Limitations on Distribution

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to: (a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements; or (b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

Section VII defines the terms ''Authority Having Jurisdiction'' and ''Declaration of an emergency.'' We have specified in the definition that Authorities having jurisdiction include federal, state, local, and tribal authorities and institutions or organizations acting on behalf of those governmental entities.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles. This last limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary must identify, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure. In Section VIII, the Secretary states that the disease threat for which she recommends administration or use of the Covered Countermeasures is Ebola virus disease.

Section IX, Administration of Covered Countermeasures

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the Declaration. In Section IX, the Secretary defines ''Administration of a Covered Countermeasure:''

Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

The definition of ''administration'' extends only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a Declaration issued under the Act. Under the Secretary's definition, these liability claims are precluded if they allege an injury caused by physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a vaccine, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip and fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the

countermeasure. This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes ''any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.''

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population. Section X includes these statutory conditions in the Declaration for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area or areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the Declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area. Section XI provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in West Africa or other locations outside the U.S. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas; and (2) to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI includes these statutory conditions in the Declaration for clarity.

Section XII, Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII is amended to extend the effective time period for different means of distribution of Covered Countermeasures up to an additional 24 months.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile (SNS) under 42 U.S.C. 247d–6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the Stockpile. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continues during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under XII of the Declaration, plus the ''Additional Time Period'' described under section XIII of the Declaration.

Section XIII provides for 12 months as the additional time period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to any products obtained for the Strategic National Stockpile during the effective period of the Declaration.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not align with the requirements for liability immunity provided under the PREP Act. Section XIV, ''Countermeasures Injury Compensation Program'' explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the United States, only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the United States may not be eligible for CICP benefits.

Section XV, Amendments

This is the second amendment to the Declaration issued December 3, 2014 (79 FR 73314). The first amendment was issued December 1, 2015 (80 FR 76541). The Secretary may amend any portion of this Declaration through publication in the **Federal Register**.

Republished Declaration

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Ebola Virus Disease Vaccines

This Declaration amends and republishes the December 3, 2014, Declaration, as amended on December 1, 2015, for coverage under the Public Readiness and Emergency Preparedness (''PREP'') Act for Ebola Virus Disease Vaccines. To the extent any term of the December 3, 2014, Declaration, as amended on December 1, 2015, is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Ebola

virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an emergency; (b) any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the FD&C Act; (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Ebola Virus Disease vaccines, all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines:

(1) Recombinant Replication Deficient Chimpanzee Adenovirus Type 3-Vectored Ebola Zaire Vaccine (ChAd3–EBO–Z);

(2) Recombinant Vesicular Stomatitis Virus-vectored vaccine expressing EBOV-Zaire glycoprotein (rVSV–ZEBOV–GP), and;

(3) Ad26.ZEBOV/MVA–BN–Filo (MVA–mBN226B).

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements; or,

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a Declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A Declaration of emergency means any Declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal Declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is Ebola virus disease.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered

Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction began on December 3, 2014, and extends through December 2, 2018.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect or (2) through December 2, 2018, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Dated: December 2, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–29610 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Ebola Virus Disease Therapeutics—Amendment

ACTION: Notice of Amendment to the February 27, 2015, Declaration under the Public Readiness and Emergency Preparedness Act for Ebola Virus Disease Therapeutics.

SUMMARY: The Secretary is amending the February 27, 2015, Declaration issued pursuant to the Public Health Service Act and amended December 9, 2015 (80 FR 76536) to extend the effective time period for an additional 24 months consistent with the terms of the Declaration and republishing the Declaration in its entirety as amended.

DATES: The Amended Declaration is effective as of February 27, 2017.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD, MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201; Telephone 202–205–2882.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration. Using this authority, the Secretary is amending the Declaration that provides liability immunity to Covered Persons for activities related to the Covered Countermeasures, Ebola Virus Disease Therapeutics as listed in Section VI of the Declaration to extend the effective time period for an additional 24 months, consistent with the terms of this Declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug, and Cosmetic (FD&C) Act to provide authorities for the emergency use of approved products in emergencies and products held for emergency use.

PAHPRA accordingly amended the definitions of ''Covered Countermeasures'' and ''qualified pandemic and epidemic products'' in section 319F–3 of the Public Health Service Act (PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

The Ebola virus causes an acute, serious illness that is often fatal. From 2014 to 2015, West Africa experienced the largest and most complex Ebola outbreak since the virus was first discovered in 1976, affecting populations in multiple West African

countries and travelers from West Africa to the United States (U.S.) and other countries. The World Health Organization (WHO) declared the Ebola Virus Disease Outbreak as a Public Health Emergency of International Concern under the framework of the International Health Regulations (2005). In March 2016, WHO determined that the Ebola outbreak no longer constituted a Public Health Emergency of International Concern, but emphasized the crucial need for continued support to prevent, detect and respond rapidly to any new Ebola outbreak in West Africa. Thus, there is a continuing need for development of vaccines against Ebola Virus Disease.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. This determination is separate and apart from a Declaration issued by the Secretary under section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. Accordingly, in Section I, the Secretary determines that there is a credible risk that the spread of Ebola virus and the resulting disease may constitute a public health emergency.

Section II, Factors Considered

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II, the Secretary states that she has considered these factors.

Section III, Recommended Activities

The Secretary must recommend the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures (''Recommended Activities''). In Section III, the Secretary recommends activities for which the immunity is in effect under the conditions stated in the Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an investigational new drug application (IND) and that are directly supported by the U.S. The Secretary specifies that the term ''directly supported'' in this Declaration means that the United States has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing. This condition is intended to afford liability immunity only to activities related to clinical trials using the Covered Countermeasure being conducted in the U.S. and West Africa that are directly supported by the U.S.

Section IV, Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration . . . has been issued with respect to such countermeasure.'' In Section IV, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

Section V, Covered Persons

The PREP Act's liability immunity applies to Covered Persons with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the U.S. The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.

A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drug, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a state or local government, including an Indian tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's Declaration. Under this definition, a private-sector employer or community group or other ''person'' can be a program planner when it carries out the described activities.

A qualified person means a licensed health professional or other individual authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word ''person'' as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department. Section V describes Covered Persons under the Declaration, including Qualified Persons.

Section VI, Covered Countermeasures

As noted above, section III describes the Secretary's Recommended Activities for which liability immunity is in effect. Section VI identifies the countermeasures for which the Secretary has recommended such activities. The PREP Act states that a

Covered Countermeasure must be: A ''qualified pandemic or epidemic product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that is: (i) Manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.

A security countermeasure is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that: (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.

To be a Covered Countermeasure, qualified pandemic or epidemic products or security countermeasures also must be approved or cleared under the FD&C Act; licensed under the PHS Act; or authorized for emergency use under sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is subject to an exemption (that is, it is permitted to be used under an Investigational Drug Application or an Investigational Device Exemption) under the FD&C Act and is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device. A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within 10 years after the Department's determination that procurement of the countermeasure is appropriate.

Section VI lists the Ebola Virus Disease Therapeutics that are Covered Countermeasures. Section VI also refers to the statutory definitions of Covered Countermeasures to make clear that these statutory definitions limit the scope of Covered Countermeasures. Specifically, the Declaration notes that Covered Countermeasures must be ''qualified pandemic or epidemic products, or security countermeasures, or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.''

Section VII, Limitations on Distribution

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to clinical trials permitted to proceed after FDA review, that administer or use the Covered Countermeasure under an IND, and directly supported by the U.S., as described in Section III of this Declaration, through present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements or arrangements.

This limitation is intended to afford liability immunity to activities that are related to clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the U.S. As stated in Section III of the Declaration, the term ''directly support'' means that the U.S. has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing. As of the date of this Declaration, activities primarily are those with a direct connection to the conduct of clinical trials in the U.S. and West Africa, but this Declaration also would apply to use in qualifying clinical trials outside those areas.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

This last limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary must identify, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure. In Section VIII, the Secretary states that the disease threat for which she recommends administration or use of the Covered Countermeasures is Ebola Virus Disease.

Section IX, Administration of Covered Countermeasures

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the Declaration. In Section IX, the Secretary defines ''Administration of a Covered Countermeasure'':

Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

The definition of ''administration'' extends only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a Declaration issued under the

Act. Under the Secretary's definition, these liability claims are precluded if the claims allege an injury caused by physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a therapeutic, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip-and-fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure. This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes ''any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.''

In addition, the PREP Act specifies that liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population and to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population. Section X includes these statutory conditions in the Declaration for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area or areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the Declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area. Section XI provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in West Africa or other locations outside the U.S. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas and to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI includes these statutory conditions in the Declaration for clarity.

Section XII, Effective Time Period

The Secretary must identify for each Covered Countermeasure the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII identifies the effective time period. The effective time period commences at the start of clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the U.S., as described in Section III of the Declaration. Liability immunity is afforded to claims arising from such administration or use of the Covered Countermeasures after that date that have a causal relationship with any of the Recommended Activities stated in this Declaration. Section XII is amended to extend the effective time period an additional 24 months.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile (SNS) under 42 U.S.C. 247d–6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the SNS. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continues during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under XII of the Declaration, plus the ''Additional Time Period'' described under section XIII of the Declaration.

Section XIII provides for 12 months as the additional time period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to products obtained for the SNS during the effective period of the Declaration.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not always align with the requirements for liability immunity provided under the PREP Act. Section XIV, Countermeasures Injury

Compensation Program, explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the U.S., only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the U.S. may not be eligible for CICP benefits.

Section XV, Amendments

This is the second amendment to the February 27, 2015, Declaration (80 FR 73314). The first amendment was issued December 9, 2015 (80 FR 76536). The Secretary may amend any portion of a Declaration through publication in the **Federal Register**.

Republished Declaration

Declaration, as Amended, Public Readiness and Emergency Preparedness Act Coverage for Ebola Virus Disease Therapeutics

This Declaration amends and republishes the February 27, 2015 for coverage under the Public Readiness and Emergency Preparedness (PREP) Act for Ebola Virus Disease Therapeutics. To the extent any term of the February 27, 2015, Declaration is inconsistent with any provision of this Republished Declaration, the terms of this Republished Declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Ebola virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures under the conditions stated in this Declaration, including the condition that the activities relate to clinical trials permitted to proceed after review by the Food and Drug Administration (FDA) that administer or use the Covered Countermeasure under an IND application and that are directly supported by the U.S. The term ''directly supported'' in this Declaration means that the U.S. has provided some form of tangible support such as supplies, funds, products, technical assistance, or staffing.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are manufacturers, distributors, program planners, qualified persons, and their officials, agents, and employees, as those terms are defined in the PREP Act, and the U.S. In addition, I have determined that the following additional persons are qualified persons: Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity to carry out clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Ebola Virus Disease Therapeutics: ZMapp monoclonal antibody therapeutic.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to clinical trials permitted to proceed after FDA review that administer or use the Covered Countermeasure under an IND and that are directly supported by the United States, as described in Section III of this Declaration, through present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements or arrangements.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is Ebola virus disease.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures began on February 27, 2015, and extends through February 26, 2019.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available by telephone at 855–266–2427 (toll-free) or *http://www.hrsa.gov/cicp/*.

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Any amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Dated: December 2, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–29609 Filed 12–9–16; 8:45 am]

BILLING CODE 4150–28–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; Neurogastroenterology.

Date: December 14, 2016.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Ganesan Ramesh, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 2182, MSC 7818, Bethesda, MD 20892, *ganesan.ramesh@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: December 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29603 Filed 12–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Eye Council.

Date: January 19, 2017.

Open: 8:30 a.m. to 1:00 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: Terrace Level Conference Rooms, 5635 Fishers Lane, Rockville, MD 20852.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Terrace Level Conference Rooms, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Paul A. Sheehy, Ph.D., Director, Division of Extramural Affairs, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *ps32h@nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–29604 Filed 12–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Zika Virus Vaccines

Description of Technology

Zika virus (ZIKV) is a flavivirus transmitted by mosquitos that is strongly linked to neurological complications including Guillain-Barré syndrome, meningoencephalitis, and microcephaly. The association between active ZIKV infection during pregnancy and microcephaly and intrauterine growth retardation in the fetus has been confirmed in murine models of ZIKV infection.

Scientists at NIAID have developed nucleic acid-based vaccine candidates to prevent ZIKV infection in humans. The current lead candidate vaccine is a plasmid DNA vaccine demonstrated to accord protection in preclinical models and is undergoing clinical trial evaluation. Nucleic acid-based vaccines have been developed previously for West Nile virus, another flavivirus similar to Zika (J.E. Ledgerwood, et al. J. Infect. Dis. (2011) 203 (10): 1396–1404). Immunization with the nucleic acid ZIKV vaccine candidate results in production of noninfectious virus like particles (VLPs) made of ZIKV proteins. These ZIKV VLPs elicit an immune response which includes neutralizing antibodies to ZIKV.

Other preclinical ZIKV vaccine candidates include mRNA, protein, and noninfectious VLPs.

NIAID is continuing development of these vaccine candidates. The DNA-based ZIKV vaccine candidate is currently in clinical trials. Consequently, for some fields of use, NIAID will evaluate a license applicant's capabilities and experience in advancing similar technologies through the regulatory process.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration. This technology is not eligible for NIH's start up license.

Potential Commercial Applications:

- Prevention of Zika virus infection

Competitive Advantages:

- There is currently no licensed Zika virus vaccine

Development Stage:

- Currently, DNA-based vaccine candidate in Phase I clinical trial
- Phase II clinical trial planned for early 2017 for DNA-based vaccine candidate
- Other candidates are in pre-clinical development

Inventors: Barney S. Graham (NIAID), Theodore C. Pierson (NIAID), Kimberly A. Dowd (NIAID), John R. Mascola (NIAID), Wing-Pui Kong (NIAID), Sung-Youl Ko (NIAID), Eun Sung Yang (NIAID), Wei Shi (NIAID), Lingshu Wang (NIAID), Christina R. Demaso (NIAID), Rebecca S. Pelc (NIAID), Adrian Creanga (NIAID), Julie Ledgerwood (NIAID), William Schief (The Scripps Research Institute), Sebastian Ramisch (The Scripps Research Institute), Leda Castilho (Federal University of Rio de Janeiro)

Publications: K.A. Dowd, et al., *Science,* 354, *237–240* (2016).

DOI: 10.1126/science.aai9137.

Intellectual Property: U.S. Patent Application No. 62/396,613 filed September 19, 2016 (HHS Reference No. E–181–2016/0–US–01).

Licensing Contact: Dr. Amy Petrik, 240–627–3721; *amy.petrik@nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Zika virus vaccine technologies. For collaboration opportunities, please contact Dr. Amy Petrik, 240–627–3721; *amy.petrik@nih.gov*.

Dated: December 5, 2016.

Suzanne Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2016–29605 Filed 12–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Modification and Clarification of the National Customs Automation Program Tests Regarding Post-Summary Corrections and Periodic Monthly Statements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify and clarify the National Customs Automation Program (NCAP) test pertaining to the processing of post-summary correction (PSC) claims to entry summaries that are filed in the Automated Commercial Environment (ACE), as well as the periodic monthly statement (PMS) test. The modifications made by this notice eliminate some requirements and liberalize certain requirements needed for the filing of a PSC making it easier for importers to file a PSC for additional entry types, and allowing for additional time to make a deposit for duties, fees and taxes owed. With regard to the PMS

test program, this notice announces the time at which CBP considers a PMS as paid when filers use the Automated Clearing House (ACH) debit process. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the tests remain in effect.

DATES: The changes made by this notice are effective January 14, 2017.

ADDRESSES: Comments concerning these test programs may be submitted via email to Monica Crockett at *ESARinfoinbox@dhs.gov* with a subject line identifier reading, ''Post-Summary Corrections Processing.''

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact John Everett via email at *otentrysummary@cbp.dhs.gov.* For technical questions related to ABI transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650–3500.

SUPPLEMENTARY INFORMATION:

I. Background

Post-Summary Correction (PSC) and Periodic Monthly Statement (PMS) Test Programs

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS) as the CBP-authorized electronic data interchange (EDI) system. ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995). A list of ACE tests is provided in Section III below.

1. PSC Test Program

On June 24, 2011, CBP published a notice in the **Federal Register** (76 FR 37136) that announced a plan to conduct an NCAP test concerning new ACE capabilities which allow importers to file a PSC for certain entry summaries using the Automated Broker Interface (ABI). Importers and other brokers are also allowed to use ABI to file a PSC to those pre-liquidation ACE entry summaries that were accepted by CBP, fully paid, and under CBP control. On November 19, 2013, CBP published a notice in the **Federal Register** modifying and clarifying the terms and conditions of the PSC test. *See* 78 FR 69434.

2. PMS Test Program

On February 4, 2004, CBP published a notice in the **Federal Register** (69 FR 5362) that announced a plan to conduct an NCAP test concerning PMS which allows importers to deposit estimated duties, fees and taxes on a monthly basis. CBP modified and clarified the PMS test in seven subsequent **Federal Register** notices published on: September 8, 2004 (69 FR 54302); February 1, 2005 (70 FR 5199); August 8, 2005 (70 FR 45736); September 22, 2005 (70 FR 55623); January 20, 2006 (71 FR 3315); June 2, 2006 (71 FR 32114); and October 17, 2008 (73 FR 61891).

II. Test Modifications and Clarifications

This document announces numerous modifications and clarifications to the PSC and PMS tests. Each modification and clarification is discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous notices regarding the PSC and PMS tests remain in effect.

A. Modifications and Clarifications of the PSC Test

1. Expansion of Entry Types

This document announces that CBP is expanding the type of entries that may be corrected by filing a PSC, in addition to the current entry types 01 (Consumption—Free and Dutiable) and 03 (Consumption—Antidumping/Countervailing Duty). The additional entry types are as follows:

- 02—Consumption—Quota/Visa
- 06—Consumption—Foreign Trade Zone (FTZ)
- 07—Consumption—Antidumping/Countervailing Duty and Quota/Visa Combination
- 21—Warehouse
- 22—Re-Warehouse
- 23—Temporary Importation Bond (TIB)
- 31—Warehouse Withdrawal—Consumption
- 32—Warehouse Withdrawal—Quota
- 34—Warehouse Withdrawal—Antidumping/Countervailing Duty
- 38—Warehouse Withdrawal—Antidumping/Countervailing Duty & Quota/Visa Combination
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

2. Merchandise Subject to Quota

When filing a PSC for an entry of merchandise subject to quota, the date and time of submission will be considered the date and time of presentation of the merchandise to CBP. If a PSC is filed on an entry with merchandise subject to quota, and the quota is full or nearly full at threshold, the PSC filer must do two things. The filer must follow the Entry Summary Business Rules and Process Document on *www.CBP.gov* and also, within 24 hours of making the correction, contact Headquarters Quota Branch: (202) 863–6560 (public phone number), email address: *HQQuota@cbp.dhs.gov,* regardless of whether the correction concerns merchandise subject to quota.

3. Deposit of Duties, Fees and Taxes With PSC Showing Increase in Liability

This document announces that if a PSC is filed that increases the importer's liability for duties, fees or taxes, the importer must deposit those additional duties, fees and taxes within three business days of submitting the PSC. No additional PSCs can be filed until those duties, fees and taxes are deposited.

4. Change of Entry Type When Antidumping and/or Countervailing Duties Are Involved

Previously, a filer under the PSC test could not change a type 03 entry to a type 01 entry. *See* 76 FR 37136. This document announces that a PSC may declare that a previously filed entry which stated that merchandise covered by that entry was subject to antidumping and/or countervailing duties is not, in fact, subject to such duties. For instance, a PSC may declare that a previously filed 03 entry type is

corrected to indicate it is a 01 entry type.

5. Elimination of CBP's Policy of Rejecting a PSC When There Is No Deposit of Antidumping and/or Countervailing Duties at Time of Submission of PSC

This notice announces a change in CBP policy which will allow an importer to deposit new or additional antidumping and/or countervailing duties within three business days of submitting the PSC. However, no additional PSCs can be filed until the duties are deposited. Previously, when a PSC declared that an entry was corrected to indicate it was subject to antidumping and/or countervailing duties, or a greater amount of antidumping and/or countervailing duties was owed, and those duties were not deposited at the time of submitting the PSC, CBP would reject the PSC.

6. No Filing of PSC To Make a Post-Importation Claim Under 19 U.S.C. 1520(d)

On June 24, 2011, CBP announced in the **Federal Register** (76 FR 37136) that one of the data elements that may not be modified via a PSC is the NAFTA indicator. This notice clarifies that such prohibition applies not only to a post-importation NAFTA claim under 19 U.S.C. 1520(d), but also to a claim made under other free trade agreements covered by 19 U.S.C. 1520(d).

7. PSC Submission Within the Time Limitations Authorized by This Test

On November 19, 2013, CBP published a notice in the **Federal Register** (78 FR 69434) that stated that a PSC cannot be filed when any merchandise covered by the original entry has been conditionally released and its right to admission has not been determined. This restriction was overly broad and prevented importers from filing a PSC because all goods are conditionally released and their admissibility is not legally determined until liquidation. This notice announces that this restriction does not prevent the filing of a PSC within the time periods allowed as long as all other requirements and limitations are met. The time limits authorized by this test are set forth in notices published in the **Federal Register** on June 24, 2011 (76 FR 37136) and November 19, 2013 (78 FR 69434). This clarification is in line with current practice.

B. Modification to the PMS Test

This notice announces that CBP will consider a PMS as paid, in the event the importer uses the Automated Clearing House (ACH) debit process, when CBP receives confirmation from the Treasury Department that funds are available and transferred to CBP from the financial institution designated by the importer for payment of the ACH debit authorization. Prior to this modification, CBP considered a PMS as paid when CBP transmitted the debit authorization to the designated financial institution. *See* 69 FR 5362 (February 4, 2004). This change will result in a delay of approximately two working days in the time that CBP uses to consider a PMS as paid. It is important to note that this modification applies only to importers who participate in the test program. For all other importers, the current regulation, 19 CFR 24.25(c)(4), still applies which means CBP will consider a statement as paid upon acceptance of the ACH debit authorization.

III. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency Message Set through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program Test Concerning the Automated Commercial Environment Partner Government Agency Message Set Regarding the Toxic Substances Control Act Certification Required by the Environmental Protection Agency: 81 FR 7133 (February 10, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings: 81 FR 10264 (February 29, 2016).
- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).
- Cessation of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 81 FR 18634 (March 31, 2016).
- Automated Commercial Environment (ACE); Announcement of National Customs Automation Program Test of the In-Transit Manifest Pilot Program: 81 FR 24837 (April 27, 2016).
- Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service: 81 FR 27149 (May 5, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data: 81 FR 30320 (May 16, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Entry and Entry Summary Filings: 81 FR 32339 (May 23, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) Protest Module as the Sole CBP-Authorized Method for Filing Electronic Protests: 81 FR 49685 (July 28, 2016).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Accounts to Establish the Protest Filer Account and Clarification that the Terms and Conditions for Account Access Apply to all ACE Portal Accounts: 81 FR 52453 (August 8, 2016).
- National Customs Automation Program (NCAP) Test Concerning Electronic Filing of Protests in the Automated Commercial Environment (ACE): 81 FR 53497 (August 12, 2016).

Dated: December 7, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–29702 Filed 12–9–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Effective Date for the Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings. The changes announced in that notice were to have been effective on October 1, 2016. On October 3, 2016, CBP published a notice in the **Federal Register** announcing that the effective date for the transition to ACE as the sole CBP-authorized EDI system for electronic drawback and duty deferral entry and entry summary filings would be delayed until further notice. This notice announces that the effective date for the transition will be January 14, 2017.

DATES: *Effective January 14, 2017:* ACE will be the sole CBP-authorized EDI system for processing electronic drawback and duty deferral entry and entry summary filings, and ACS will no longer be a CBP-authorized EDI system for purposes of processing these filings.

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to *ASKACE@cbp.dhs.gov* with the subject line identifier reading ''ACS to ACE Drawback and Duty Deferral Entry and Entry Summary Filings transition''.

SUPPLEMENTARY INFORMATION: On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** (81 FR 59644) announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings, effective on October 1, 2016. The document also announced that, on October 1, 2016, the Automated Commercial System (ACS) would no longer be a CBP-authorized EDI system for purposes of processing these electronic filings. Finally, the notice announced a name change for the ACE filing code for duty deferral and the creation of a new ACE filing code for all electronic drawback filings, replacing the six distinct drawback codes previously filed in ACS. On October 3, 2016, CBP published a notice in the **Federal Register** (81 FR 68023) announcing that the effective date for these changes would be delayed until further notice.

This notice announces that the new effective date for the transition will be January 14, 2017. At that time, ACE will become the sole CBP-authorized EDI system for electronic drawback and duty deferral entry and entry summary filings, and ACS will no longer be a CBP-authorized EDI system for purposes of processing these electronic filings.

Dated: December 7, 2016.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016–29711 Filed 12–9–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Modification of the National Customs Automation Program Test Regarding Reconciliation and Transition of the Test From the Automated Commercial System to the Automated Commercial Environment

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test regarding reconciliation, and the transition of the test from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE). The modifications made by this notice eliminate several requirements for participation in the test, impose new data requirements, and establish the requirement that reconciliation entries be filed in ACE beginning January 14, 2017, regardless of whether the underlying entry was filed in ACS or ACE. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the reconciliation test remain in effect.

DATES: The changes made by this notice are effective January 14, 2017.

ADDRESSES: Comments concerning this test program may be submitted any time during the test via email, with a subject line identifier reading, ''Comment on Reconciliation test'', to *OFO-RECONFOLDER@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Acenitha Kennedy, Entry Summary and Revenue Branch, Trade Policy and Programs, Office of Trade at (202) 863–6064 or *ACENITHA.KENNEDY@CBP.DHS.GOV.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Reconciliation

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS) as the CBP-authorized electronic data interchange (EDI) system. ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 637 of the Customs Modernization Act amended Section 484 of the Tariff Act of 1930 to establish a new section (b), entitled ''Reconciliation'', a planned component of the NCAP. (19 U.S.C. 1484(b)).

Reconciliation is the process that allows an importer, at the time an entry

summary is filed, to identify indeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic ''flag'' which is placed on the entry summary at the time the entry summary is filed and payment (applicable duty, taxes, and fees) is made.

Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995). This test is established pursuant to this regulation. The reconciliation program is currently being tested by CBP using the Automated Commercial System (ACS). CBP announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001; 67 FR 61200, published on September 27, 2002 (with a correction document published at 67 FR 68238 on November 8, 2002); 69 FR 53730, published on September 2, 2004; 70 FR 1730, published on January 10, 2005; 70 FR 46882, published on August 11, 2005; 71 FR 37596, published on June 30, 2006, 78 FR 27984, published on May 13, 2013; and 79 FR 34334 published June 16, 2014. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

The previously published **Federal Register** documents have set forth that the issues for which an entry summary may be ''flagged'' (for the purpose of later reconciliation) are limited and relate to: (1) Value issues other than claims based on latent manufacturing defects; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (9802 issues); and (4) issues concerning post-importation claims, under 19 U.S.C. 1520(d), for preferential tariff treatment for merchandise entered under the Acts implementing the North American Free Trade Agreement, the United States-Chile Free Trade Agreement, the Dominican Republic-Central America-United States Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Peru Trade Promotion Agreement, the United States-Korea Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, and the United States-Panama Trade Promotion Agreement.

The flagged entry summary (the underlying entry summary) is liquidated by CBP for all aspects of the entry except those issues that were flagged. Upon liquidation of an underlying entry summary, any decision by CBP entering into that liquidation, *e.g.,* classification, may be protested pursuant to 19 U.S.C. 1514. The means of providing the outstanding information flagged on the underlying entry summary to be reconciled is through the filing of a reconciliation entry. A reconciliation entry is treated as an entry for purposes of liquidation, reliquidation, and protest. When the outstanding information, *e.g.,* value as determined by the actual costs, is later furnished in the reconciliation entry CBP will liquidate the reconciliation entry as to the flagged issues. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (*See* 63 FR 6257, February 6, 1998 for a more detailed presentation of the basic reconciliation process.) The liquidation of the reconciliation entry will be posted in the same manner and place as the notices of liquidation of other entries. Liquidation of a reconciliation entry may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for and contained in the reconciliation entry (*i.e.,* the protest may not address issues previously liquidated on the underlying entry summary).

CBP reminds test participants that the filing of a reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by an importer of record who is required to exercise reasonable care in filing the underlying entry summary, flagging issues for later reconciliation, and filing the reconciliation entry. Importers must also be aware of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person discloses the circumstances of a violation of 19 U.S.C. 1592 pursuant to CBP regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is indeterminable and will be provided at a later time when the reconciliation entry is filed.

B. Transition Into ACE

Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE. On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first phase of the transition was announced in a **Federal Register** notice published on February 29, 2016 (81 FR 10264). The second phase was announced in a **Federal Register** notice published on May 16, 2016 (81 FR 30320). The third phase of the transition was announced in a **Federal Register** notice published on May 23, 2016 (81 FR 32339). Most recently, CBP announced in a **Federal Register** notice published on July 28, 2016 (81 FR 49685) that ACE is the sole CBP-authorized method for filing electronic protests. This notice announces a further transition from ACS to ACE as CBP is transitioning the reconciliation test from ACS to ACE. The changes made by this notice related to the application process for participation in this test, the flagging of underlying entries and the filing of reconciliation entries are effective January 14, 2017. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous notices regarding the reconciliation test remain in effect.

II. Test Modifications and Transition Into ACE

This document announces numerous modifications to the reconciliation test and the transition of the test from ACS to the Automated Commercial Environment (ACE). Each modification and the transition from ACS to ACE are discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous notices regarding the reconciliation test

remain in effect. It should be noted that the changes made by this document related to the filing of reconciliation entries apply only to reconciliation entries filed in ACE; they do not apply to reconciliation entries filed in ACS.

A. Mandatory Use of ACE for Filing Reconciliation Entries

This document announces that beginning January 14, 2017, all reconciliation entries must be filed in ACE regardless of whether the underlying entry was filed in ACS or ACE and regardless of whether it is a replacement, substitution or follow-up to a reconciliation entry originally filed in ACS. As of January 14, 2017, ACS is decommissioned for the filing of reconciliation entries.

B. Elimination of Reconciliation Processing Ports

This document announces that CBP is eliminating the requirement that reconciliation entries be filed at specified reconciliation processing ports. Beginning on January 14, 2017, reconciliation entries may be filed in ACE at any CBP port. CBP reminds importers and customs brokers that the filing of a reconciliation entry is considered customs business under 19 U.S.C. 1641, which requires that a broker wishing to file a reconciliation entry have a district or national permit authorizing the broker to file the reconciliation entry at the port where the reconciliation entry is filed.

C. Application Process and Participation Preconditions

This document announces that, except for suspended parties wishing to be reinstated into the test, CBP is removing the requirement that interested importers apply to participate in this test. Beginning January 14, 2017, CBP is opening this test to all non-suspended importers without any need for interested importers to apply and be accepted into the test. The only importers who may not participate in this test, *i.e.,* not flag underlying entries for reconciliation, are those who have been suspended from participation. Any party suspended from the test will not be allowed to flag entries until the suspension period ends and the party applies for reinstatement and reinstatement is granted. Suspended importers are still required to file reconciliation entries timely during the suspension period for underlying entries flagged prior to the suspension becoming effective. Any party suspended from the test who wishes to be reinstated must submit an application to its assigned Center of Excellence and Expertise designee if it has one; otherwise the application should be submitted at the local CBP port. The application for reinstatement must address the reasons for the suspension and fully describe all corrective action taken to address the grounds for suspension. CBP will respond to all applications for re-instatement but until and unless reinstatement is granted, the suspended importers may not participate in the test, *i.e.,* importers may not flag underlying entries for reconciliation.

Importers wishing to participate in the test are still required, as a precondition to participation, to have a continuous bond on file with CBP with the required reconciliation bond rider. An importer without the required reconciliation bond rider will be unable to flag underlying entries.

D. Elimination of Importer Requests That CBP Blanket Flag on Importer's Behalf

This document announces that CBP is streamlining the process for blanket flagging underlying entries for reconciliation. Prior to the changes announced herein, importers provided CBP a request asking that CBP input and apply a blanket flag to all underlying entries filed by the importer for a specific time period. Importers also identified the specific issue(s) for which they requested that CBP input and apply the requested blanket flag. This document announces that effective January 14, 2017, importers no longer will submit requests asking that CBP apply a blanket flag on their behalf. Instead, importers may input and apply a blanket flag themselves. Importers who use blanket flagging must continue to identify the issue(s) they are flagging.

E. Requests for Retroactive Flagging

This document announces that beginning January 14, 2017, all test participants may request that CBP retroactively flag underlying entries on their behalf. A request may be made by sending an email to *OFO-RECONFOLDER@cbp.dhs.gov.* The request must be made at least 60 days before the scheduled liquidation date of the underlying entry the importer wishes to have CBP flag retroactively. CBP's decision to grant or deny such a request is entirely discretionary and solely within CBP's province. CBP's decision is final and cannot be appealed. CBP will send an email to the importer or his agent when its request is approved or denied along with a list of the entry numbers which were flagged and a list of the entry numbers which were not flagged. It should be noted that CBP intends to grant these requests sparingly and only as a courtesy where appropriate.

F. Automation of the Reconciliation Entry Filing Process and Elimination of Spreadsheets

This document announces that reconciliation entries filed in ACE will be fully automated and all required data and information must be transmitted electronically on the reconciliation entry. Reconciliation entries must continue to be filed using the Automated Broker Interface (ABI). This document also announces that paper and compact disc spreadsheets will no longer be accepted as part of the filing of reconciliation entries. The data formerly contained in the associated files and spreadsheets, reduced as explained in section G below, will be transmitted electronically as part of the reconciliation entry.

G. Reduction of Information Requirements for Reconciliation Entries

This document announces that reconciliation entries with no changes to flagged entries must only report the flagged underlying entry numbers (no line item data) and must be filed as an aggregate reconciliation entry, *i.e.,* no entry-by-entry reconciliation entry will be allowed when there are no changes to declare. Reconciliation entries with changes to the flagged entry will no longer have to include original transaction values, or original duties, fees and taxes amounts declared in the flagged entry. As a result, reconciliation entries with changes will only have to report the newly determined transaction value and the newly reconciled duties, fees and taxes. Reconciliation entries claiming preferential tariff treatment pursuant to a free trade agreement post-importation claim must include electronic certifications of the statements and declarations required by regulation. Reconciliation entries reconciling classification issues must provide information indicating the protest, administrative ruling or court action which necessitates reconciling the classification of the underlying flagged entry. Reconciliation entries flagged only for a value change must indicate by checking a checkbox if the value change results in a classification change as well.

H. New Data Requirements

This document announces that reconciliation entry filers must check a checkbox indicating if a prior disclosure has been made on any of the flagged underlying entries. If no prior disclosure was made, the checkbox should not be

checked. Additionally, the reconciliation entry line item data must include the line number of the underlying flagged entry being reconciled.

I. Elimination of Masterfile Extract and Liquidation Extract Reports

This document also announces that the Masterfile Extract and Liquidation Extract Reports that CBP provided upon request, for a fee, will be discontinued in both paper and diskette form as soon as that information is available in an ACE report CBP will be discontinuing the issuance of the Masterfile and Liquidation Extract reports because the information usually contained in these reports will be available free of charge in ACE reports for those parties having an ACE Portal Account. For information on ACE Portal Accounts please see CBP's general notice published in the **Federal Register** on October 21, 2015 (80 FR 63817). ACE Portal Accounts allow the trade community to run reports, as needed, to access their customs data. CBP will provide notice that the information is available on an ACE report by announcing it on the ACE reports home page and through the issuance of a message made on the Cargo Systems Messaging Service (*CSMS).* CBP recommends that trade members subscribe to *CSMS* to receive email notifications from CBP regarding ACE reports and other important information. For information about subscribing to *CSMS,* please go to: *http://apps.cbp.gov/csms/csms.asp?display_page=1.*

III. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment

(ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency Message Set through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program Test Concerning the Automated Commercial Environment Partner Government Agency Message Set Regarding the Toxic Substances Control Act Certification Required by the Environmental Protection Agency: 81 FR 7133 (February 10, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings: 81 FR 10264 (February 29, 2016).
- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).
- Cessation of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 81 FR 18634 (March 31, 2016).
- Automated Commercial Environment (ACE); Announcement of National Customs Automation Program Test of the In-Transit Manifest Pilot Program: 81 FR 24837 (April 27, 2016).
- Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service: 81 FR 27149 (May 5, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data: 81 FR 30320 (May 16, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Entry and Entry Summary Filings: 81 FR 32339 (May 23, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) Protest Module as the Sole CBP-Authorized Method for Filing Electronic Protests: 81 FR 49685 (July 28, 2016).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Accounts to Establish the Protest Filer Account and Clarification that the Terms and Conditions for Account Access Apply to all ACE Portal Accounts: 81 FR 52453 (August 8, 2016).
- National Customs Automation Program (NCAP) Test Concerning Electronic Filing of Protests in the Automated Commercial Environment (ACE): 81 FR 53497 (August 12, 2016).

Dated: December 7, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–29704 Filed 12–9–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0023; OMB No. 1660–0125]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA Preparedness Grants: Homeland Security Grant Program (HSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 11, 2017.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This information collection previously published in the **Federal Register** on September 26, 2016 at 81 FR 66051 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: FEMA Preparedness Grants: Homeland Security Grant Program (HSGP).

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0125.

Form Titles and Numbers: FEMA Form 089–1, HSGP Investment Justification (SHSP and UASI); FEMA Form 089–16, OPSG Operations Order Report; FEMA Form 089–20, OPSG Inventory of Operation Orders; FEMA Form 089–0–27, Operation Stonegarden Daily Activity Report (DAR).

Abstract: The HSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/State/local planning, operations, and investments.

The HSGP is a primary funding mechanism for building and sustaining national preparedness capabilities. The HSGP is comprised of three separate grant programs: The SHSP, the UASI, and OPSG. Together, these grants fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration costs. The OPSG will begin to utilize the Office of Management and Budget's web-based portal MAX.GOV, at *https://www.MAX.GOV/,* for operational management of the grant program. The HSGP now requires applicants to submit the SAFECOM Compliance Letter, which has been added to this collection. The compliance letter certifies that the applicant will comply with SAFECOM Guidance when implementing interoperable communications projects. The letter will be attached in the Non-Disaster Grants Management System as part of the HSGP application.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 664.

Estimated Total Annual Burden Hours: 269,579 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $16,587,196. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $2,022,270.

Dated: December 7, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–29729 Filed 12–9–16; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5987–N–01]

Relief From HUD Requirements Available to Public Housing Agencies To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Severe Storms and Flooding in Louisiana

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public that HUD has established an expedited process for the review of requests for relief from HUD regulatory and/or administrative requirements (''HUD requirements'') for public housing agencies (PHAs) that are located in a parish of Louisiana that has been declared a federal disaster area due to severe storms and flooding. Specifically, these PHAs may request waivers of HUD requirements and receive expedited review of such requests.

DATES: *Effective Date:* December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Denise M. Cotten, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4112, Washington, DC 20410–5000, telephone number (202) 402–4313. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

From March 8 through April 8, 2016, more than 3 dozen parishes in Louisiana experienced severe storms and flooding. A Major Disaster Declaration covering these parishes [1] was issued on March 13, 2016 (MDD 4263). From August 11 through August 31, 2016, severe storms and flooding affected nearly 2 dozen parishes. A Major Disaster Declaration for these parishes [2] was issued on August 14, 2016 (MDD 4277). Seven parishes were included in both the March and August Major Disaster Declarations.[3] The notice covers Major Disaster Declarations (MDDs) 4263 and 4277,[4] issued on March 13, 2016, and August 14, 2016, respectively.

In order to provide relief from certain HUD requirements governing programs administered by the Office of Public and Indian Housing (PIH) to PHAs that are located in areas covered by MDD(s) 4263 and/or 4277 (MDD PHAs), HUD is publishing this notice. The notice describes a number of flexibilities that are available to such PHAs, lists HUD requirements that HUD is willing to waive upon request from a PHA, and provides for the expedited review of waiver requests. HUD is publishing this notice to assist MDD PHAs in responding to these major disaster declarations and in contributing to long-term recovery.

The notice is organized as follows:

- Section II opens with a description of flexibilities that are available to MDD PHAs, where such flexibilities are built into statute and/or regulation. MDD PHAs may avail themselves of these flexibilities, following the process described in Section IV of the notice.
- Section III describes certain HUD requirements that, if waived, may facilitate an MDD PHA's ability to participate in relief and recovery efforts. An MDD PHA may request a waiver of a HUD requirement not listed in Section III and receive expedited review of the request if the MDD PHA demonstrates that the waiver is needed in order to assist in its relief and recovery efforts.

[1] Allen, Ascension, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Claiborne, De Soto, East Carroll, Franklin, Grant, Jackson, Lafourche, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Tammany, Tangipahoa, Union, Vernon, Washington, Webster, West Carroll, Winn.

[2] Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. James, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, West Feliciana.

[3] Ascension, Avoyelles, Livingston, St. Helena, St. Tammany, Tangipahoa, Washington.

[4] Disaster Recovery numbers assigned by the Federal Emergency Management Agency. See *https://www.fema.gov/disasters/grid/state-tribal-government/4.*

An MDD PHA may not adopt any requested waiver prior to receiving HUD approval.

• Section IV describes the process HUD has established for MDD PHAs to provide notice to and/or request approval from HUD regarding statutory or regulatory flexibilities and/or to request waivers of HUD requirements. Waiver requests will be handled on an expedited, case-by-case basis. Consistent with section 7(q) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), a regulated party that seeks a waiver of HUD regulations must request a waiver from HUD in writing. The waiver request must specify the need for the waiver. Typically, the request is submitted to the HUD field office, which reviews the request and submits its recommendation to HUD headquarters. HUD headquarters then responds to the regulated party in writing. Since the damage to property and the displacement of families and individuals in the disaster areas is massive, and the need for relief from HUD requirements may be necessary, HUD will expedite the processing of waiver requests from MDD PHAs, providing for concurrent review by the HUD field office and HUD headquarters.

Waiver requests approved by HUD pursuant to this notice will be published in the **Federal Register** and will identify the MDD PHAs receiving such approvals.

II. Flexibilities That Are Available to MDD PHAs

HUD is exercising discretionary authority to provide relief from the requirements described in this section. Upon notification to HUD or upon HUD approval, as noted below, relief is granted to MDD PHAs. Relief from the requirements must benefit families affected by the disasters, for example by enabling MDD PHA staff to focus on relief and recovery efforts. Section IV of this notice describes the process an MDD PHA must follow to provide notification to and/or to request approval from HUD. Such notification and/or request must be made by January 26, 2017.

A. 24 CFR 905.306 (Extension of deadline for obligation and expenditure of Capital Funds). Section 9(j)(1) of the Act requires PHAs to *obligate* capital funds not later than 24 months after the date on which the funds became available, or the date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, plus the period of any extension approved under section 9(j)(2) of the Act. Section 9(j)(5)(A) of the Act requires a PHA to *expend* capital funds not later than 4 years after the date on which the funds become available for obligation, plus the period of any extension approved under section 9(j)(2). Section 9(j)(2) of the Act authorizes the Secretary to extend the time period for the obligation of capital funds for such period as the Secretary determines necessary if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to an event beyond the control of the PHA. The severe storms and flooding in Louisiana were beyond the control of MDD PHAs and caused such massive and widespread destruction and displacement that HUD is willing to extend the obligation deadline under section 9(j)(1) of the 1937 Act pursuant to section 9(j)(2)(A)(v) of the Act for an additional 12 months, upon the request of an MDD PHA. The extension of the section 9(j) obligation and extension deadlines made in this notice also applies to the implementing regulation at 24 CFR 905.306.

B. 24 CFR 984.105(d) (Family Self-Sufficiency minimum program size). 24 CFR 984.105(d) defines the circumstances under which a PHA may, upon HUD approval, operate a program that is smaller than the required program size. HUD has determined that an MDD PHA's ability to operate a program that meets the minimum program size requirements may be infeasible due to circumstances related to MDD(s) 4263 and/or 4277. Upon the submission to HUD of a certification (as defined in 24 CFR 984.103), an MDD PHA will be exempt from the minimum program size requirement for a period of 24 months from the effective date of this notice.

C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). Section 990.145 lists the categories of vacant public housing units that are eligible to receive operating subsidy and are therefore considered to be ''approved vacancies.'' Under Section 990.145(b), a PHA shall receive operating subsidy for units that are vacant due to a declared disaster, subject to prior HUD approval, on a project-by-project basis. If an MDD PHA has a unit that has been vacated due to severe storms and flooding, then the MDD PHA, with HUD approval, may treat the unit as an ''approved vacancy.'' Upon the request of an MDD PHA and HUD approval, on a case-by-case basis, such units may be considered approved vacancies for a period not to exceed 12 months from the date of HUD approval.

III. HUD Requirements That May be Waived

For an MDD PHA, HUD will review requests for waivers of HUD requirements on an expedited basis. This section lists requirements for which HUD anticipates receiving such requests. An MDD PHA may also request a waiver of a HUD requirement not listed in this section and receive expedited review of the request if the MDD PHA documents that the waiver is needed for relief and recovery purposes.

HUD expects that any waiver granted pursuant to this notice will benefit families affected by the disasters, for example by enabling MDD PHA staff to focus on relief and recovery efforts.

An MDD PHA seeking a waiver of a HUD requirement listed below or of any other HUD requirement needed to assist the MDD PHA in its relief and recover efforts must submit a waiver request pursuant to the process outlined in Section IV of this notice. HUD will not approve an MDD PHA's or other recipient's request to waive a fair housing, civil rights, labor standards, or environmental requirement. The request must be submitted to HUD not later than January 26, 2017.

A. 24 CFR 5.512(d) (Verification of eligible immigration status; Secondary verification). Section 5.512 describes the process by which verification of eligible immigration status must be undertaken for families seeking assistance under certain HUD programs. In circumstances under which secondary verification must be requested, Section 5.512(d) provides a PHA with 10 calendar days from the date of receipt of the results of the primary verification to request secondary verification from Immigration and Customs Enforcement (ICE). To initiate secondary verification, 24 CFR 5.512(d)(2) requires that the PHA provide ICE with ''photocopies of the original [ICE] documents required for the immigration status declared (front and back), attached to the [ICE] document verification request form G–845S (Document Verification Request), or such other form specified by the [ICE].'' HUD is willing to consider a request from an MDD PHA to extend the timeframe for secondary verification requests to ICE to 90 calendar days, for any primary verification result received after the effective date of this notice where a secondary request is required, for a period not to exceed 12 months from the date of HUD approval.

B. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). Section 5.801 establishes uniform financial reporting

standards (UFRS) for PHAs (and other entities). Section 5.801(c) requires that PHAs submit financial information in accordance with 24 CFR 5.801(b) annually, not later than 60 days after the end of the fiscal year of the reporting period. Section 5.801(d)(1) requires that PHAs submit their *unaudited* financial statements not later than 60 calendar days after the end of their fiscal year and that PHAs submit their *audited* financial statements not later than 9 months after the end of their fiscal year. HUD is willing to consider requests to extend these reporting deadlines. Specifically, for MDD PHAs with fiscal years ending September 30, 2016, December 31, 2016, and March 31, 2017, the deadline for submission of financial information in accordance with 24 CFR 5.801(b) and unaudited financial statements may be extended to 180 calendar days, and the deadline for submission of audited financial statements may be extended to 13 months.

C. 24 CFR 902 (Public Housing Assessment System). Part 902 sets out the indicators by which HUD measures the performance of a PHA. The indicators measure a PHA's physical condition, financial condition, management operations, capital fund obligation, and occupancy. For an MDD PHA that has a fiscal year end of June 30, 2016, September 30, 2016, December 31, 2016, or March 31, 2017, HUD is willing to consider a request to waive the inspection and scoring of public housing projects, as required under 24 CFR 902.

D. 24 CFR 905.322(b) (Fiscal closeout). Section 905.322(b) establishes deadlines for the submission of an Actual Development Cost Certificate (ADCC) and an Actual Modernization Cost Certificate (AMCC). Specifically, the ADCC must be submitted 12 months from the date of completion/termination of a modernization activity, and the AMCC must be submitted not later than 12 months from the activity's expenditure deadline. Upon request from an MDD PHA, HUD is willing to extend these deadlines by 12 months.

E. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit). Section 905.314(b)–(c) establishes the calculation of maximum project cost and the calculation of total development cost. In order to facilitate the use of Capital Funds for repairs and construction for needed housing in the disaster areas, HUD is willing to waive the total development cost (TDC) and housing cost cap limits for all work funded by the Capital Grant (Capital Grant Funds with undisbursed balances and HOPE VI funds) until issuance of 2017 TDC levels. MDD PHAs that request to waive this provision and receive approval to do so must strive to keep housing costs reasonable given local market conditions, based upon the provisions outlined in 2 CFR part 200.

F. 24 CFR 905.314(j) (Cost and other limitations; Types of labor). This section establishes that non–high performer PHAs may use force account labor for modernization activities only when the use of force account labor for such activities has been included in a Board-approved Capital Fund Program 5-Year Action Plan. HUD is willing to waive this requirement to allow for the use of force account labor for modernization activities even if this activity has not been included in the non–high performer MDD PHA's 5-Year Action Plan. This waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

G. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development). Section 905.400 describes the Capital Fund formula. Section 905.400(i)(5) limits the use of replacement housing funds to the development of new public housing. To help address housing needs as a result of the displacement caused by the severe storms and flooding, HUD is willing to waive 905.400(i)(5) to allow all Capital Fund Replacement Housing Factor Grants with undisbursed balances to be used for public housing modernization. This waiver will be in effect for funds obligated within 12 months from the date of HUD approval.

H. 24 CFR 960.202(c) (Tenant selection policies) and 982.54(a) (Administrative plan). Section 960.202(c) provides that public housing tenant selection policies must be duly adopted and implemented. Section 982.54(d) provides that a PHA's Section 8 administrative plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. For temporary revisions to an MDD PHA's public housing tenant selection policies or Section 8 administrative plan that an MDD PHA wishes to put into place to address circumstances unique to relief and recovery efforts, HUD is willing to consider requests to waive the requirements for formal approval. Any waiver request must include documentation that an MDD PHA's Board of Commissioners or an authorized MDD PHA official supports the waiver request and must identify the temporary revisions, which shall be effective for a period not to exceed 12 months from the date of HUD's approval. Additionally, any waiver request is limited to revisions that do not constitute a significant amendment or modification to the MDD PHA plan; pursuant to Section 5(A)(g) of the 1937 Act, HUD cannot waive the approval by the board or other authorized PHA officials if the proposed revision would constitute a significant amendment or modification to the PHA plan. Finally, HUD cannot waive any terms within a PHA's own plan or state law requiring the approval of the board or authorized PHA officials.

I. 24 CFR 965.302 (Requirements for energy audits). This section establishes the requirement that all PHAs complete an energy audit for each PHA-owned project under management, not less than once every 5 years. HUD is willing to consider a request for an additional 12 months after December 31, 2016, to complete such an audit.

J. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). This section describes where a PHA must provide public notice when it opens its waiting list for tenant-based assistance. HUD is willing to consider a request from an MDD PHA that wishes, in lieu of the requirement to provide notice in a local newspaper of general circulation, to provide public notice via its Web site, at any of its offices, and/or in a voice-mail message, for any opening of the waiting list for tenant-based assistance that occurs within a period not to exceed 12 months from the date of HUD approval. MDD PHAs that request a waiver of this requirement and receive HUD approval must consider the fair housing implications of the means by which they choose to provide public notice. For example, an MDD PHA that chooses to provide public notice at its offices must consider the impact on persons with disabilities, who may have difficulty visiting the office in-person. Similarly, an MDD PHA that chooses to provide public notice via voice-mail message must consider how it will reach persons with hearing impairments and persons with limited English proficiency. HUD maintains the requirement that an MDD PHA must also provide the public notice in minority media. Any notice must comply with HUD fair housing requirements.

K. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). 24 CFR 982.503(c) authorizes HUD to approve an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). Typically, a PHA must provide data about the local market to substantiate the need for an exception payment standard. In a natural disaster situation, however, the typical data sources fail to capture conditions on the

ground. In these cases, HUD takes into account the most recently available data on the rental market, prior to the disaster, then estimates the number of households seeking housing units in the wake of the disaster to arrive at an emergency exception payment standard amount. For Louisiana, American Community Survey data at the parish level show that, within the state of Louisiana, only 52,209 vacant-for-rent units were available as of 2014. As part of its response to the severe storms and flooding that occurred in 2016, the Federal Emergency Management Agency had issued 63,307 rental vouchers as of late September 2016, pushing the effective rental vacancy rate in Louisiana to zero. HUD has decided, based on this data, that exception payment standard amounts up to 150 percent of the FMR are justified and that an MDD PHA may therefore request a waiver to establish an exception payment standard up to 150 percent of the FMR without providing supporting data. Upon approval by HUD, an exception payment standard adopted pursuant to this notice may be adopted for any Housing Assistance Payment (HAP) contract entered into as of the effective date of this notice. HUD intends for these exception payment standards to remain in effect until such time as HUD implements changes to the FMRs in the affected areas. MDD PHAs are reminded that increased per-family costs resulting from the use of exception payment standards may result in a reduction in the number of families assisted or may require other cost-saving measures in order for an MDD PHA to stay within its funding limitations.

L. 24 CFR 982.401(d) (Housing quality standards; Space and security). This section establishes a standard for adequate space for an HCV-assisted family. Specifically, it requires that each dwelling unit have at least 1 bedroom or living/sleeping room for each 2 persons. HUD is willing to consider a request from an MDD PHA that wishes to waive this requirement in order to house families displaced due to the severe storms and flooding. The waiver will be in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family. For any family occupying a unit pursuant to this waiver, the waiver will be in effect for the initial lease term.

M. 24 CFR 982.633(a) (Occupancy of home). This section establishes the requirement that PHAs may make HAP for homeownership assistance only while a family resides in their home and must stop HAP no later than the month after a family moves out. HUD is willing to consider a request from an MDD PHA wishing to waive this requirement to allow families displaced from their homes located in areas affected by MDD(s) 4263 and/or 4277 to comply with mortgage terms or make necessary repairs. A PHA requesting a waiver of this type must show good cause by demonstrating that the family is not already receiving assistance from another source. Note: An MDD PHA that wishes in addition to request a waiver of the requirement at 982.312 that a family be terminated from the program if they have been absent from their home for 180 consecutive calendar days must do so separately.

N. 24 CFR 984.303(d) (Contract of participation; contract extension). Part 984 establishes the requirements for the Section 8 and Public Housing Family Self-Sufficiency (FSS) Program. Section 984.303(d) authorizes a PHA to extend a family's contract of participation for a period not to exceed 2 years, upon a finding of good cause, for any family that requests such an extension in writing. HUD is willing to consider a request from an MDD PHA that wishes to extend family contracts for up to 3 years, if such extensions are merited based on circumstances deriving from MDD(s) 4263 and/or 4277. Any waiver granted pursuant to this request will be in effect for requests made to the MDD PHA during a period not to exceed 12 months from the date of HUD approval.

O. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)). Part 985 sets out the requirements by which section 8 tenant-based assistance programs are assessed. For an MDD PHA that has a fiscal year end of September 30, 2016, December 31, 2016, or March 31, 2017, HUD is willing to consider a request to carry forward the SEMAP score from the previous year.

P. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)). PHAs are required to transmit form HUD–50058 not later than 30 calendar days following receipt of an applicant's or participant's SSN documentation. HUD is willing to consider a request to extend this requirement to 90 calendar days, for a period not to exceed 12 months from the date of HUD approval.

IV. Notification and Expedited Waiver Process—Instructions

HUD has developed a checklist (Attachment A to this notice) that an MDD PHA must complete and submit in order to take advantage of the provisions identified in this notice and the expedited review of waiver requests. Each provision on the checklist indicates the documentation that must accompany the MDD PHA's submission. Each request for a waiver (Section 3 of the checklist) must include a good-cause justification stating why the particular waiver is needed for the PHA's relief and recovery efforts.

To complete the checklist, take the following steps:

1. Download the checklist to your computer, saving the document with the following filename: FR–5987–N–01.Your Agency's HA Code (*e.g.,* FR–5987–N–01.MI001).
2. Complete the section titled Information about Requesting Agency. This section must be complete. An official of the MDD PHA must sign where indicated. If the information about the requesting agency is incomplete or the checklist has not been signed, then the checklist will be returned without review.
3. Complete Sections 1, 2, and/or 3 of the checklist, as applicable, noting the documentation (if any) that accompanies each provision.
4. Address an email to both *Louisiana_Disaster_Relief@hud.gov* and your Field Office Public Housing Director. In the subject line, type ''Louisiana Disaster Relief.''
5. Attach the completed checklist to your email.
6. Click ''Send.''

Checklists and any supporting documentation or information must be submitted not later than January 26, 2017. Requests submitted after January 26, 2017 will not be considered, nor will HUD consider any waiver requests submitted to this email address that are unrelated to relief and recovery efforts.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by Calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: November 22, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

ATTACHMENT A

Relief from HUD Requirements Available to Public Housing Agencies to Assist with Recovery and Relief Efforts on Behalf of Families Affected by Severe Storms and Flooding in Louisiana

Federal Register Notice (FR–5987–N–01)

Information about Requesting Agency

NAME OF PHA:
PHA CODE:
Address:
City or Locality:
Parish:
Date of Submission: [may not be after **January 26, 2017].**

Signature of PHA Official: _____

Name/Title of PHA Official:
Phone number of PHA Official:

Section 1. Insert an ''X'' next to the applicable category (A, B, or C).

__**Category A: My agency is located in one of the parishes that received a Major Disaster Declaration on March 13, 2016 [MDD 4263].** Allen, Ascension, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Claiborne, De Soto, East Carroll, Franklin, Grant, Jackson, Lafourche, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Tammany, Tangipahoa, Union, Vernon, Washington, Webster, West Carroll, Winn

__**Category B: My agency is located in one of the parishes that received a Major Disaster Declaration on August 14, 2016 [MDD 4277].** Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. James, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, West Feliciana

__**Category C: My agency is located in a parish that was designated a major disaster area under both MDD 4263 and 4277.** Ascension, Avoyelles, Livingston, St. Helena, St. Tammany, Tangipahoa, Washington

Section 2. Insert an ''X'' next to the applicable flexibilities.

An MDD PHA may adopt the flexibilities listed below.

__**A. 42 U.S.C. 1437g(j)(1) and (j)(5)(A) (Extension of deadline for obligation and expenditure of Capital Funds.).** (Office of Capital Improvements)

My agency requests that HUD extend the deadline for the obligation and expenditure of Capital Funds for an additional 12 months. We will maintain documentation substantiating the need for this extension.

__**B. 24 CFR 984.105 (Family Self-Sufficiency minimum program size).** (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency submits the certification required by 24 CFR 984.103 and will operate an FSS program that is smaller than the required program size for up to 24 months from December 12, 2016

__**C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies).** (REAC—Public Housing Financial Management Division)

My agency requests HUD approval to treat certain public housing units in our inventory as approved vacancies. I have attached a project-by-project listing of the units for which this approval is requested. I understand that any units that remain vacant shall be considered approved vacancies only for a period not to exceed 12 months from the date of HUD approval.

Section 3. Insert an ''X'' next to the applicable waiver requests.

An MDD PHA may request a waiver of a HUD requirement listed below or of any other HUD requirement and receive expedited review of the request, as long as the MDD PHA demonstrates that the waiver is needed for relief and recovery purposes. Each request must include a good-cause justification for the particular waiver, documenting why the waiver is needed for such purposes. No requested waiver may be implemented unless and until written approval from HUD has been obtained.

__**A. 24 CFR 5.512(d) (Verification of eligible immigration status; Secondary verification).** (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency requests a waiver of 24 CFR 5.512(d) to extend the timeframe for secondary verification requests to Immigration and Customs Enforcement from 30 to 90 days. I understand that, if approved, this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

__**B. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates).** (REAC)

My agency requests a waiver of 24 CFR 5.801(c) to extend the deadline for reporting of financial information by 180 days and of 24 CFR 5.801(d)(1) to extend the reporting deadlines for unaudited financial statements by 180 days and audited financial statements by 4 months. My PHA has a fiscal year end of 9/30/16, 12/31/16, or 3/31/17.

__**C. 24 CFR 902 (Public Housing Assessment System).** (REAC)

My agency requests a waiver of the inspection and scoring of public housing projects, as required under 24 CFR 902. My agency has a fiscal year end of 6/30/16, 9/30/16, 12/13/16, or 3/31/17.

__**D. 24 CFR 905.322(b) (Fiscal closeout)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.322(b) to extend the deadline for submission of the Actual Development Cost Certificate and the Actual Modernization Cost Certificate by 12 months.

__**E. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit).** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.314(b)–(c), which establish the calculation of maximum project cost and total development cost limits for the Capital Fund program. I understand that this waiver is in effect only until such time as 2017 TDC limits have been published.

__**F. 24 CFR 905.314(j) (Cost and other limitations; Types of labor)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 904.314(j) to allow for the use of force account labor for modernization activities even if this activity has not been included in our agency's 5-Year Action Plan. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

__**G. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.400(i)(5) to allow for the use of Capital Fund Replacement Housing Factor grants with undisbursed balances for public housing modernization. I understand that this waiver will be in effect only for funds obligated within 12 months from the date of HUD approval.

__**H. 24 CFR 960.202(c) (Tenant selection policies) and 24 CFR 982.54(a) (Administrative plan).** (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency requests a waiver of 24 CFR 960.202(c) and/or 24 CFR 982.54(a) so that our public housing tenant selection policies and section 8 administrative plan may be revised on a temporary basis, without formal approval, to address circumstances unique to relief and recovery efforts. I have attached documentation that our Board of Commissioners or an authorized PHA official supports the waiver request. I have also attached documentation identifying the temporary revisions. The adoption of these revisions does not constitute a significant amendment to our PHA plan, nor does state law prevent us from adopting the revisions without formal approval. I understand that these revisions will be in effect for a period not to exceed 12 months from the date of HUD's approval.

__**I. 24 CFR 965.302 (REQUIREMENTS FOR ENERGY AUDITS).** (Public Housing Management and Occupancy)

My agency requests a waiver of 24 CFR 965.302 to provide us with an additional 12 months after December 31, 2016, to complete our audits.

__**J. 24 CFR 982.206(A)(2) (WAITING LIST; OPENING AND CLOSING; PUBLIC NOTICE).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.206(a)(2) so that we can provide public notice of the opening of our waiting list via our Web site, at any of our offices, and/or in

a voice-mail message in lieu of providing notice in a local newspaper of general circulation. I understand that this waiver is in effect for a period not to exceed 12 months from the date of HUD approval.

__**K. 24 CFR 982.503(C) (HUD APPROVAL OF EXCEPTION PAYMENT STANDARD AMOUNT).** (Housing Voucher Management and Operations)

My agency requests to establish an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). I have attached our proposed emergency exception payment standard schedule, which shows both the dollar amounts requested and those amounts as a percentage of the FMRs in effect at the time of the request. I understand that any approved exception payment standard will remain in effect until such time as HUD revises the FMRs for the area. I also understand that increased per-family costs resulting from the use of such exception payment standard may result in a reduction in the number of families assisted or may require my agency to adopt other cost-saving measures.

__**L. 24 CFR 982.401(D) (HOUSING QUALITY STANDARDS; SPACE AND SECURITY).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.401(d) so that we may allow families to occupy units that are smaller than our occupancy standards would otherwise dictate. I understand that this waiver is in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family.

__**M. 24 CFR 982.633(A) (OCCUPANCY OF HOME).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.633(a) so that we may continue HAP for homeownership for families displaced from their homes if needed to comply with mortgage terms or make necessary repairs. We have determined that the family is not receiving assistance from another source. I understand that such payments must cease if the family remains absent from their home for more than 180 consecutive calendar days.

__**N. 24 CFR 984.303(D) (CONTRACT OF PARTICIPATION; CONTRACT EXTENSION).** (Public Housing Management and Occupancy; Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 984.303(d) so that a family's contract of participation may be extended for up to 3 years. I understand that such extensions may be made only during the 12-month period following the date of HUD approval.

__**O. 24 CFR 985.101(A) (SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 985.101(a) so that our SEMAP score from the previous year may be carried over. My agency has a fiscal year end of 9/30/16, 12/31/16, or 3/31/17.

__**P. NOTICE PIH 2012–10, SECTION 8(C) (VERIFICATION OF THE SOCIAL SECURITY NUMBER (SSN))** (REAC)

My agency requests a waiver of section 8(c) of Notice PIH 2012–10 to allow for the submission of Form HUD–50058 90 calendars days from receipt of an applicant's or participant's SSN documentation. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

__**Q. WAIVERS NOT IDENTIFIED IN FR–5987–N–01.**

My agency seeks waivers of the HUD requirements listed below. I have included documentation justifying the need for the waivers.

Regulation	Description
Example: 24 CFR 982.54	Example: A waiver of this regulation will facilitate our agency's capacity to participate in relief and recovery efforts by. . .

[FR Doc. 2016–29642 Filed 12–9–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5982–D–01]

Delegation of Authority for the Office of Lead Hazard Control and Healthy Homes

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: Under the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Office of Lead Hazard Control and Healthy Homes (OLHCHH) is authorized to develop, demonstrate, and promote measures to correct lead-based paint-related health and safety hazards in the home environment that affect children, particularly of low-income families. In this notice, the Secretary delegates to the Director of OLHCHH, all authority pursuant to the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, sections 501 and 502 of the Housing and Urban Development Act of 1970, and authorizing legislation pertaining to lead hazard control and healthy homes contained within annual appropriations acts, for matters pertaining to lead hazard control and healthy homes. This includes oversight and enforcement of the Lead Disclosure Rule as well as oversight of the Lead Safe Housing Rule for all HUD programs and enforcement of the Lead Safe Housing Rule for Multifamily Housing programs, the Single Family Asset Management program, and Public and Indian Housing (PIH) programs. PIH enforcement actions include coordination with the appropriate PIH field office.

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

FOR FURTHER INFORMATION CONTACT: Karen Griego, Program Environmental Clearance Officer, OLHCHH, Department of Housing and Urban Development, 500 Gold Avenue SW., Suite 7301, P.O. Box 906, Albuquerque, NM 87103–0906, telephone number (505) 346–6462 (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 1–800–877–8339.

SUPPLEMENTARY INFORMATION: OLHCHH was created by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, October 28, 1991). Under the Residential Lead-Based Paint Hazard Reduction Act of 1992, OLHCHH is authorized to develop, demonstrate, and promote measures to correct lead-based paint related health and safety hazards in the home environment that affect children, particularly of low-income families.

Today's delegation also supersedes all prior delegations of authority for OLHCHH.

Section A. Authority Delegated

The Secretary hereby delegates to the Director of OLHCHH, all authority of the Secretary pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*), sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2), and authorizing legislation pertaining to lead hazard control and/or healthy homes contained within annual appropriations acts for matters pertaining to lead hazard control and healthy homes. This includes the oversight and enforcement of the Lead Disclosure Rule and the oversight of the Lead Safe Housing Rule (24 CFR part 35, subparts A through R) for all HUD programs and enforcement of the Lead Safe Housing Rule for Multifamily Housing programs, the Single Family Asset Management program, and PIH programs. PIH enforcement actions include coordination with the appropriate PIH field office. The Director of OLHCHH also has responsibility for ensuring compliance, within assistance programs administered by OLHCHH, with relevant environmental requirements described in 24 CFR part 50, and with HUD responsibilities under 24 CFR part 58 in accordance with the Memorandum of Understanding Regarding U.S. Department of Housing and Urban Development Compliance with the National Environmental Policy Act and Related Laws and Authorities, See, 81 FR 66075, September 26, 2016.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued or to issue or waive regulations.

Section C. Authority To Redelegate

The Secretary authorizes the Director of OLHCHH to redelegate the authority described in Section A.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority to OLHCHH. The Secretary may revoke the authority authorized herein, in whole or part, at any time.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 28, 2016.

Julián Castro,

Secretary.

[FR Doc. 2016–29653 Filed 12–9–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2016–N134; FXRS1261030000–178–FF03R02000]

Glacial Ridge National Wildlife Refuge, Polk County, Minnesota; Final Comprehensive Conservation Plan, Environmental Assessment, and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP), environmental assessment (EA), and finding of no significant impact (FONSI) for the Glacial Ridge National Wildlife Refuge (refuge, NWR). In this final CCP we describe how we propose to manage the refuge for the next 15 years.

ADDRESSES: You will find the final CCP, a summary of the final CCP, and the EA/FONSI on the planning Web site at *http://www.fws.gov/midwest/planning/GlacialRidge/index.html.* A limited number of hard copies and CD–ROMs are available. You may request one by any of the following methods:

- *Email: r3planning@fws.gov.* Include ''Glacial Ridge Final CCP/EA'' in the subject line of the message.
- *U.S. Mail:* Attention: Refuge Manager, Glacial Ridge NWR, 17788 349th St. SE., Erskine, MN 56535.

FOR FURTHER INFORMATION CONTACT: Gregg Knutsen, 218–687–2229 x16.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Glacial Ridge National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (78 FR 3909) on January 17, 2013. For more about the initial process and the history of this refuge, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (81 FR 31655) on May 19, 2016. The 42-day comment period ended on June 20, 2016. A summary of public comments and the agency responses are included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP/EA may be found at *http://www.fws.gov/midwest/planning/glacialridge/index.html.* The document incorporates an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*). The CCP/EA includes detailed information about the planning process, refuge, issues, and management alternatives considered and proposed. The EA includes discussions of three alternative refuge management options. The Service's preferred alternative is reflected in the final CCP.

The selected alternative for Glacial Ridge NWR includes refuge management actions that approximate ecological processes that maintained native habitats prior to European

settlement, emphasizing the use of multiple habitat disturbance regimes (*e.g.,* fire, grazing, mowing). These actions would maintain and increase the diversity of native vegetation and wildlife communities that mimic pre-settlement conditions. Management activities would be ''focused'' via a refuge prioritization effort to maximize the intended impacts on priority units, given reduced refuge staff and funding. Public use opportunities would continue with minimal changes. Staff time and funding would focus on improving opportunities for self-guided interpretation of refuge habitats and wildlife using existing infrastructure.

Charles M. Wooley,

Acting Regional Director.

[FR Doc. 2016–29672 Filed 12–9–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N093; FF04E00000–1113–0000–178]

Proposed Candidate Conservation Agreement With Assurances for Camp Blanding Joint Training Center, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Florida Department of Military Affairs, via the Florida Armory Board (applicant), has applied for an enhancement of survival permit associated with a candidate conservation agreement with assurances (CCAA) pursuant to the Endangered Species Act of 1973, as amended. The permit application includes a proposed CCAA between the applicant, the Service, and the Florida Fish and Wildlife Conservation Commission for 22 species, including 2 Federal candidate species—the striped newt and the gopher tortoise—and 20 other at-risk species, including Florida State-listed species. The CCAA will cover 46,494 acres of the Camp Blanding Joint Training Center, which is located in Clay County, Florida. The duration of the CCAA is 15 years. We invite public comments on the application.

DATES: We must receive written comments at our Regional Office (see **ADDRESSES**) on or before January 11, 2017.

ADDRESSES: *Obtaining Documents for Review:* You may obtain a copy of the application and associated documents by contacting Mr. Jay Herrington, Field Supervisor, Fish and Wildlife Service, North Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256. Documents are also available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Atlanta, GA 30345, or at the Service's North Florida Ecological Services Field Office. Note that requests for application documents must be in writing to be processed. When requesting information about or submitting comments regarding this notice, please reference ''Camp Blanding Candidate Conservation Agreement with Assurances; TE 72196B'' in your correspondence.

Submitting Comments: See the Public Comments section under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Harris, At-Risk Species Coordinator, at the Atlanta Regional Office (see **ADDRESSES**), telephone: 404–679–7066; or Ms. Lourdes Mena, Endangered Species Biologist, at the North Florida Ecological Services Field Office (see **ADDRESSES**), telephone: 904–731–3119.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Florida Department of Military Affairs via the Florida Armory Board (applicant) has applied for an enhancement of survival permit (permit) associated with a candidate conservation agreement with assurances (CCAA) pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The permit application includes a proposed CCAA between the applicant, the Service, and the Florida Fish and Wildlife Conservation Commission for 22 species, including 2 Federal candidate species—the striped newt (*Notophthalmus viridescens*) and the gopher tortoise (*Gopherus polyphemus*)—and 20 other at-risk species, including Florida State-listed species (covered species). The CCAA will cover 46,494 acres of the Camp Blanding Joint Training Center, which is located in Clay County, Florida (enrolled lands). The duration of the CCAA is 15 years. We invite public comments on the application.

Introduction

CCAAs encourage private and other non-Federal property owners to implement conservation efforts for candidate and at-risk species while providing regulatory assurances to the property owners that they will not be subjected to increased property use restrictions should the species become listed as threatened or endangered under the Act. Application requirements and issuance criteria for enhancement of survival permits through CCAAs are found in 50 CFR 17.22(d) and 17.32(d).

Under the CCAA, the applicant agrees to voluntarily undertake conservation practices on the enrolled lands to protect, enhance, restore, and/or maintain habitat benefiting the covered species. In turn, the applicant will receive regulatory assurances and incidental take authorization should a covered species be federally listed in the future. The conservation practices vary according to the six habitat types that support the covered species on the enrolled lands. These practices include use of prescribed fire and thinning to maintain forest habitats, protection of wetlands and streams through the maintenance of riparian zones and prohibition of impoundments and channelization, and other actions such as monitoring and control of invasive exotic species.

Request for Information

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including our determination that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in their CCAA. Therefore, our proposed issuance of the requested permit qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). A low-effect CCAA is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. We also solicit information regarding the adequacy of the CCAA per 50 CFR parts 13 and 17.

Public Comments

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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by one of the following methods. You may mail comments to the Fish and Wildlife Service's Atlanta Regional Office (see **ADDRESSES**) or comment via the internet to *michael_harris@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at either of the telephone numbers listed under **FOR FURTHER INFORMATION CONTACT**. You also may hand-deliver comments to either of our offices listed under **ADDRESSES**. Please reference ''Camp Blanding Candidate Conservation Agreement with Assurances; TE 72196B'' in any comments you submit.

Next Steps

We will evaluate the applicant's enhancement of survival permit application, including the CCAA and any comments we receive, to determine whether the permit issuance requirements of section 10(a)(1)(A) of the Act are met. We will also evaluate via an intra-Service consultation on whether issuance of the section 10(a)(1)(A) permit would comply with section 7 of the Act. If we determine that the requirements are met, we will issue the requested permit to the applicant in accordance with the applicable regulatory requirements. We will not make a final decision on whether to issue the permit until after the close of the 30-day comment period.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: December 2, 2016.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2016–29677 Filed 12–9–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Land Acquisitions; Pokagon Band of Potawatomi Indians, Michigan and Indiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire 165.81 acres, more or less, of land in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana, for gaming and other purposes on November 17, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On November 17, 2016, the Assistant Secretary—Indian Affairs issued a decision to accept approximately 165.81 acres, more or less, of land in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana (Band), under the authority of the Pokagon Restoration Act, Public Law No. 103–323 (Sept. 21, 1994), 108 Stat. 2152. The Department previously determined that land acquired for the Band pursuant to the Pokagon Restoration Act was eligible for gaming pursuant to the Indian Gaming Regulatory Act's ''restored lands'' exception, 25 U.S.C. 2719 (b)(1)(B)(iii), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title in the name of the United States of America in trust for the Pokagon Band of Potawatomi Indians upon fulfillment of Departmental requirements.

Legal Description

The 165.81 acres, more or less, are located in the County of St. Joseph, State of Indiana, and are described as follows:

Bill Marvin

Parcel I

Lot 2A, as shown on the Plat of Locust Meadows First Replat recorded May 19, 2006 in the Office of the Recorder of St. Joseph County, Indiana, as Instrument No. 0620937, together with the west half of vacated Maple Road as adopted by South Bend City Ordinance 10093–11 which lies east of the portion of Lot 2A lying west of the vacated Maple Road and also together with the east half of the vacated Maple Road lying within said lot 2A and west of and adjacent to the west line of said lot 2A.

Parcel II

All that part of the West Half of the Northwest Quarter of Section 27, Township 37 North, Range 2 East that lies north and east of the U.S. 31/U.S. 20 Bypass.

Said Parcel II also described in survey as follows: That part of the West Half of the Northwest Quarter of Section 27, Township 37 North, Range 2 East, City of South Bend, St. Joseph County, Indiana, that lies north and east of the U.S. 31/U.S. 20 Bypass, more particularly described as: Beginning at a found rebar with Cap #22436 at the southeast corner of Lot 2A, Plat of Locust Meadows First Replat recorded May 19, 2006 in the Office of the Recorder of St. Joseph County, Indiana, as Instrument No. 0620937, said point being on the north line of said Section 27 a distance of 1305.58 feet South 89°43′47″ West of the North Quarter corner of said Section 27; thence South 00°25′21″ East on the east line of the West Half of the Northwest Quarter of said Section 27 a distance of 102.16 feet to a ⅝″ rebar with Cap #20800148 on the northeasterly right of way line of U.S. Highway 31; thence North 51°54′48″ West on said northeasterly right of way line 164.63 feet to a ⅝″ rebar with Cap #20800148 on the south line of said Lot 2A, said line also being the north line of said Section 27; thence North 89°43′47″ East (platted North 89°26′43″ East) 128.83 feet (platted 119.82 feet) to the point of beginning.

TPN: 018–8155–5574

Bova

Lot Numbered One (1) as shown on the plat of CATALDO'S LOCUST ROAD MINOR SUBDIVISION recorded June 23, 2008 in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0820866.

TPN: 018–8153–5528

Cataldo

Lot 2 as shown on the plat of Cataldo's Locust Road Minor Subdivision recorded June 23, 2008 in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0820866. Also, the easterly fifty (50) feet of the southerly two hundred (200) feet of Lot 1 as shown on the plat of Hollingsworth Prairie Avenue Minor Subdivision recorded December 26, 2006 in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0654912.

TPN: 018–8153–551404 and 018–8153–551406

Crady

That part of the East Half of the Northeast Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southeast Quarter of Section 21, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as follows:

Commencing at the East Quarter corner of said Section 21; thence South 00°19′53″ East (deeded south) on the east line of said Section 21 a distance of 630.19 feet (deeded 628.7 feet); thence North 89°38′11″ West (deeded west) 30.00 feet to a ⅝. rebar with cap #20800148 on the west right of way line of South Maple Road and the Point of Beginning of the land herein described; thence South 00°19′53″ East on said west right of way line and parallel with said east Section line, 860.71 feet to a ⅝. rebar with cap #20800148 on the northeasterly right of way line of U.S. Highway 31 Bypass; thence Northwesterly 60.78 feet on said northeasterly right of way line and on a 11594.15 foot radius curve to the left whose chord bears North 50°28′47″ West 60.78 feet to a ⅝. rebar with cap #20800148; thence North 69°16′33″ West on said northeasterly right of way line 159.48 feet to a ⅝. rebar with cap #20800148; thence Northwesterly 376.40 feet on said northeasterly right of way line and on a 11544.15 foot radius curve to the left whose chord bears North 52°18′50″ West 376.39 feet to a ⅝ rebar with cap #20800148; thence North 40°19′31″ West on said northeasterly right of way line 144.95 feet to a ⅝. rebar with cap #20800148; thence Northwesterly 35.61 feet (deeded 36.6 feet) on said northeasterly right of way line and on a 799.40 foot radius curve to the right whose chord bears North 42°14′16″ West (deeded North 41°49′ West per a right of way grant to the Indiana State Highway Commission recorded in Deed Record 630, pages 379–381 in the Office of the Recorder of St. Joseph County, Indiana and deeded North 41°49′ West per a Quit Claim Deed recorded as Document Number 0403607 in the Office of the Recorder of St. Joseph County, Indiana) 35.60 (deeded 36.6 feet) feet to a ⅝ rebar with cap #20800148; thence North 39°49′12″ West (deeded North 40°30′ West) on said northeasterly right of way line 32.90 feet to a ⅝. rebar with cap #20800148 said point being on the west line of the East Half of the Northeast Quarter of the Southeast Quarter of said Section 21 and on the west line of Locust Meadows First Replat, Document No. 0620937, and extension thereof; thence North 00°20′11″ West (platted North 00°36′56″ West) on said west line and on said west subdivision line extended 477.36 feet to a 3. diameter post at the southwest corner of Lot 2A of said Locust Meadows First Replat; thence South 89°38′11″ East (platted South 89°55′48″ East) on the south line of said Lot 2A 194.37 feet to a ⅝. rebar with cap #20800148; thence South 00°19′53″ East (deeded south) parallel with said east Section line, 100 feet to a ⅝. rebar with cap #20800148; thence South 89°38′11″ East (deeded east) parallel with said south subdivision line, 435.60 feet to the point of beginning. Said in survey to contain 10.24 acres more or less.

Together with the west half of the vacated Maple Road as adopted by South Bend City Ordinance 10093–11 lying east and adjacent to the above described parcel.

Subject to legal highways.

Parcel No.: 018–8152–5499

Donmoyer

The South forty feet of the following real estate in St. Joseph County, Indiana:

All that part of the West Half of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, which lies South of Sumption Prairie Road, *excepting* a tract of land containing five acres taken off of the east side thereof, *also excepting* the West 70 feet thereof.

Description of parcel as surveyed: That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at the West Quarter corner of said Section 22, said point being a found Harrison Monument and referred as a St. Joseph County Remonumentation Corner, Station Number 425; thence North 89°20′04″ East on the south line of the Northwest Quarter of said Section 22 a distance of 70.00 feet to a found ⅝″ capped rebar and the point of beginning of the land herein described; thence North 00°05′32″ West parallel with the West line of the Northwest Quarter of said Section 22 a distance of 40.00 feet to a found ⅝″ capped rebar; thence North 89°20′04″ East parallel with said South line 1063.69 feet to a found ⅝″ capped rebar; thence South 00°00′55″ West 40.00 feet to a found gear shaft on said South line; thence South 89°20′04″ West on said South line 1063.61 feet to the point of beginning.

TPN: 018–8153–5509 and 018–8153–5510

Gary Marvin

Lot Numbered One A (1A) as shown on the plat of LOCUST MEADOWS FIRST REPLAT recorded May 19, 2006 in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0620937.

TPN: 018–8155–557401

Geyer

That part of the Southwest Quarter of Section 22 and the Northwest Quarter of Section 27, Township 37 North, Range 2 East, City of South Bend, Centre Township, St. Joseph County, Indiana, described as: Beginning at a mag nail with washer #20800148 marking the Quarter corner common to said Sections 22 and 27; thence South 00°57′09″ East on the east line of the Northwest Quarter of said Section 27 a distance of 275.91 feet to a mag nail with washer #20800148; thence South 89°11′23″ West 10.49 feet (deeded North 89°43′26″ West 10.24 feet) to a found mag nail; thence South 20°45′32″ West 62.41 feet (deeded South 23°49′29″ West 61.92 feet) to a found concrete right of way monument; thence South 89°43′47″ West (deeded North 89°11′02″ West) 993.31 feet to a ⅝″ rebar with cap #20800148 on the northwesterly right of way line of U.S. Highway 31 By-Pass; thence North 42°13′26″ West (deeded North 42°44′ West) on said northwesterly right of way line 40.06 feet (deeded 37.9 feet) to a ⅝″ rebar with cap #20800148; thence North 51°54′48″ West (deeded North 52°25′ West) on said northwesterly right of way line 325.98 feet (deeded 326.4 feet) to a ⅝″ rebar with cap #20800148 on the west line of the East Half of the Northwest Quarter of said Section 27; thence North 00°25′21″ West on said west line 102.16 feet to a found capped rebar #22436 at the southwest corner of the East Half of the Southwest Quarter of said Section 22, said point also being the southeast corner of Locust Meadows First Replat, Document Number 0620937; thence North 00°02′40″ West (deeded North, platted North 00°19′32″ West) on the west line of the East Half of the Southwest Quarter of said Section 22, said line also being the east line of said Locust Meadows First Replat, 448.31 feet to a found 3″ metal post in concrete; thence North 89°43′47″ East (deeded East) 779.92 feet to a ⅝″ rebar with cap #20800148; thence South 00°15′29″ West (deeded South) parallel with said east line of the Southwest Quarter 165.00 feet to a ⅝″ rebar with cap #20800148; thence North 89°43′47″ East (deeded East) 528.02 feet to a mag nail with washer #20800148 on said east line; thence South 00°15′29″ West on said east line 283.33 feet to the point of beginning.

Subject to legal highways.

TPN: 018–8155–5589 and 023–1046–3052

Haverstock

That part of the Northwest Quarter of Section 27, Township 37 North, Range 2 East, City of South Bend, Centre Township, St. Joseph County, Indiana, described as: Commencing at a mag nail with washer #20800148 marking the north quarter corner of said Section 27; thence South 00°57′09″ East (deed South and South 00°14′58″ West) on the east line of the Northwest Quarter of said Section 27 a distance of 334.27 feet (deeded 333 feet); thence South 89°43′47″ West 33.58 feet (deeded North 89°11′02″ West 35 feet) to a found concrete right of way monument marking the west right of way line of Locust Road and the POINT OF BEGINNING of the land herein described; thence South 00°39′05″ East (deed South 00°14′58″ West) on said west right of way line 62.84 feet (deeded 68.24 feet) to a ⅝″ rebar with cap #20800148; thence South 03°47′20″ West (deed South 04°41′22″ West) on said west right of way line 250.74 feet to a ⅝″ rebar with cap #20800148; thence South 09°09′18″ East (deeded South 08°15′16″ East) on said west right of way line 101.12 feet to a ⅝″ rebar with cap #20800148; thence South 00°37′26″ East (deeded South 00°16′34″ West) on said west right of way line 50.00 feet to a ⅝″ rebar with cap #20800148; thence South 15°19′16″ West (deeded South 16°13′18″ West) on said west right of way line 72.80 feet to a ⅝″ rebar with cap #20800148; thence South 00°11′14″ West (deeded South 01° 05′26″ West) on said west right of way line 33.08 feet to a ⅝″ rebar with cap #20800148; thence South 03°09′39″ West (deeded South 02°35′ West) on said west right of way line 226.50 feet (deeded 225.6 feet) to a ⅝″ rebar with cap #20800148 on the northeasterly right of way line of U.S. Highway 31 By-Pass; thence South 88°38′20″ West (deeded South 89°20′ West) on said northeasterly right of way line 125.50 feet (deeded 127.13 feet) to a ⅝″ rebar with cap #20800148; thence North 48°38′34″ West (deeded North 49°09′ West) on said northeasterly right of way line 790.28 feet (deeded 793.5 feet) to a ⅝″ rebar with cap 20800148; thence North 42°13′26″ West (deeded North 42°44′ West) on said northeasterly right of way line 362.47 feet (deeded 364.7 feet) to a ⅝″ rebar with cap #20800148; thence North 89°43′47″ East 993.31 feet (deeded North 89°20′ East 995.80 feet) to the Point of Beginning, said in survey to containing 10.63 acres more or less.

Subject to legal highways.

TPN: 023–1046–3053

Horrall

Part of the Southwest ½ of the Northwest ½ of Section 22, Township 37 North, Range 2 East, described as follows:

Beginning at a point Four Hundred Ninety-four and Five Tenths (494.5) feet East of the West ¼ corner of Section Twenty-two (22), Township Thirty-seven (37) North, Range Two (2) East; thence North Seven Hundred Forty-three and Eighty-seven Hundredths (743.87) feet to the center line of Prairie Avenue; thence Northeasterly One Hundred (100) feet along said center line of Prairie Avenue; thence South Seven Hundred Ninety-five and Twenty-five Hundredths (795.25) feet to the East and West center line of said Section Twenty-two (22), Township Thirty-seven (37) North, Range Two (2) East; thence West Eighty-four and Nine tenths (84.9) feet to the place of beginning.

Excepting Therefrom: Forty (40) feet in width North and South taken off and from the entire South end for Donmoyer Avenue.

Also excepting therefrom: Forty (40) feet at right angles with the center line of Prairie Avenue of the already established highway known as Prairie Avenue.

Being described in a survey as: That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as:

Commencing at the West Quarter corner of Section 22, said point being a found Harrison Monument and referenced as a St. Joseph County Remonumentation corner, Station Number 425; thence North 89°20′04″ East (Deeded East) on the South line of the Northwest Quarter of said Section 22 a distance of 580.11 feet (Deeded 579.4 feet in Warranty Deed recorded in Instrument No. 8313990) to a ¾″ pinch pipe 6″ above the surface; thence North 00°03′03″ West (Deeded North) 40.00 feet to a ⅝″ rebar with cap #20800148 and the point of beginning of the land herein described; thence South 89°20′04″ West (Deeded West) parallel with and 40 feet North of said South line 84.90 feet to a ⅝″ rebar with cap #20800148; thence North 00°03′03″ West (Deeded North) 656.81 feet to a ⅝″ rebar with cap #20800148 on the Southeasterly Right of Way line of Prairie Avenue (State Road 23); thence North 58°20′40″ East on said Southeasterly Right of Way line 99.68 feet to a ⅝″ rebar with cap #20800148; thence South 00°03′03″ East (Deeded South) 708.13 feet to the point of beginning. Said in survey to contain 1.33 acres, more or less.

Subject to legal highways.

TPN: 018–8153–5506

Hutchins

A part of the Southwest Quarter of the Northwest Quarter of Section No. 22, in Township 37 North, Range 2 East, described as follows:

Beginning at a point 664.3 feet East of the West Quarter corner of Section 22, Township 37 North, Range 2 East; thence North 846.63 feet to the center line of Prairie Avenue; thence Northeasterly 100 feet along said center line of Prairie Avenue; thence South 898.01 feet to the East and West center line of said Section 22; thence West 84.9 feet to the place of beginning, *excepting* 40 feet in width, north and south taken off and from the entire south end for Donmoyer Avenue. *Also excepting* 40 feet at right angles with the center line of Prairie Avenue of the already established Highway known as Prairie Avenue.

Also Lot Numbered Six (6) being a part of the Southwest Quarter of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, described as follows:

Beginning at a point 579.4 feet East of the West quarter corner of Section 22, Township 37 North, Range 2 East; thence North 795.25 feet to the center line of Prairie Avenue; thence Northeasterly 100 feet along said center line of Prairie Avenue; thence South 846.63 feet to the East and West center line of said Section 22, Township 37 North, Range 2 East; thence West 84.9 feet to the place of beginning. *Excepting* 40 feet in width, north and south taken off and from the entire south end for Donmoyer Avenue. *Also excepting* 40 feet at right angles with the center line of Prairie Avenue of the already established highway known as Prairie Avenue.

Excepting from the above two tracts: A part of the Southwest Quarter of the Northwest Quarter of Section 22, Township 37 North, Range 2 East in St. Joseph County, Indiana, described as follows:

Commencing at the Southwest corner of said Quarter Quarter section; thence North 89°07′35″ East (assumed bearing) 579.4 feet along the south line of said Southwest Quarter of the Northwest Quarter to the southwest corner of land belonging to Herman C. Mutchler as described in Book 767, Page 169, in the Office of the Recorder, St. Joseph County, Indiana; thence North 00°09′02″ West 730.74 feet along the west line of said Mutchler land to the Point of

Beginning; thence continuing North 00°09′02″ West 64.66 feet along said west line to the centerline of State Road 23, also being the northern boundary of said Mutchler land; thence North 58°07′20″ East 199.62 feet along said centerline to the east line of said Mutchler land; thence South 00°09′02″ East 64.66 feet along said east line; thence South 58°07′20″ West 199.62 feet to the point of beginning.

Subject to legal highways.

Also being described by survey as follows: That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at the West Quarter corner of said Section 22, said point being a found Harrison Monument and referenced as a St. Joseph County Remonumentation Corner, Station Number 425; thence North 89°20′04″ East (deeded East) on the East and West Quarter Line of said Section 22 a distance of 580.11 feet (deeded 579.4 feet) to a found ¾″ pinched pipe; thence North 00°03′03″ West (deeded North) 40.00 feet to a found 5/8″ rebar with cap number 20800148 and the point of beginning of the land herein described; thence continuing North 00°03′03″ West (deeded north) 690.52 feet to a set ⅝″ rebar with cap number 20800148; thence north 58°20′40″ east (deeded north 58°07′20″ East) parallel with the centerline of prairie avenue 199.36 feet (deeded 199.62 feet) to a set ⅝″ rebar with cap number 20800148; thence south 00°03′03″ east (deeded south) 793.17 feet to a found ⅜″ capped rebar; thence south 89°20′04″ west parallel with and 40.00 feet north of said east and west quarter line 169.80 feet to the point of beginning.

TPN: 018–8153–5503

Jacobs

That part of the Southeast Quarter of Section 21, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at the East Quarter Corner of said Section 21, said point being a found Harrison Monument and referenced as a St. Joseph County Remonumentation Corner, Station Number 425; thence North 89°35′39″ West on the North line of said Southeast Quarter (line being between a found Harrison Marker at the center of Section and said East Quarter Corner) 660.03 feet to the East line of the West half of the Northeast Quarter of the Southeast Quarter of said Section 21; thence South 00°20′11″ East on said East line 100.85 feet to a ⅝″ rebar with cap #22436 marking the Northwest corner of lot 2A of the Plat of First Amended Plat of Locust Meadows First Replat and the point of beginning of the land herein described; thence continuing South 00°20′11″ East (platted 00°36′50″ West) on said East line and the West line of said Locust Meadows First Replat 907.19 feet to a set ⅝″ rebar with cap #20800148 on the Northeasterly Right of Way line of US Highway 31/State Road 20; thence North 39°49′12″ West (deeded North 40°30′ West) on said Northeasterly Right of Way line 568.40 feet to a set ⅝″ rebar with cap #20800148; thence North 09°06′36″ West (deeded North 10°10′ West) on said Northeasterly Right of Way line 137.20 feet (deeded 132.7 feet) to a set ⅝″ rebar with cap #20800148 at the Southeasterly Right of Way line of Prairie Avenue (State Road 23); thence North 45°58′ 12″ East (deeded North 45°30′ East) on said Southeasterly Right of Way line 84.30 feet a set ⅝″ rebar with cap #20800148; thence Northeasterly 422.99 feet on said Southeasterly Right of Way line and on a 3811.50 foot radius curve to the right whose chord bears North 49°08′ 47″ East 422.77 feet to the point of beginning. Said in survey to contain 4.50 acres, more or less.

TPN: 018–8152–5497

Janzi

That part of the Southwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at an aluminum cap with dimple marking the center of said Section 22; thence South 00°15′29″ West on the east line of the Southwest Quarter of said Section 22 a distance of 514.49 feet (deeded south 515.625 feet); thence South 89°07′21″ West (deeded west) 30.01 feet to a capped rebar on the west right of way line of Locust Road and the point of beginning of the land herein described; thence South 00°15′29″ West on said west right of way line and parallel with said east line 96.00 feet to a capped rebar; thence South 89°07′21″ West (deeded west) 300.00 feet to a 1'' pinch pipe; thence North 00°15′29″ East (deeded north) parallel with said east line 96.00 feet to a ⅝″ rebar with cap #20800148 on the south line of Locust Meadows First Replat, Document Number 0620937; thence North 89°07′21″ East (deeded east, platted North 88°49′44″ East) on said south line and said south line extended 300.00 feet to the point of beginning.

Subject to legal highways.

Address: V/L Locust Road, South Bend, IN 46614

TPN: 018–8155–5576

Jones

That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at the West Quarter corner of said Section 22, said point being a found Harrison monument and referenced as a St. Joseph County remonumentation corner, station number 425; thence North 89°20′04″ East (deeded East) on the south line of the Northwest Quarter of said Section 22 a distance of 749.91 feet (deeded 749.2 feet) to an iron pipe; thence North 00°03′03″ West (deeded north) 40.00 feet to a ⅜″ capped rebar and the point of beginning of the land herein described; thence continuing North 00°03′03″ West (deeded North) 810.78 feet to the southeasterly right of way line of Prairie Avenue (State Road 23); thence North 58°20′40″ East on said southeasterly right of way line 99.68 feet to a ¾″ pinch pipe inside a 2′ iron pipe; thence South 00°03′03″ East (deeded South) 862.11 feet to a ⅜″ inch capped rebar on the north line of an exception for Donmoyer Avenue; thence South 89°20′04″ West (deeded West) parallel with and 40 feet north of said south line 84.90 feet to the point of beginning.

Subject to legal highways.

TPN: 018–8153–5508

Jurgonski

That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at the west quarter corner of said Section 22, said point being a found Harrison monument and referenced as a St. Joseph County remonumentation corner, station number 425; thence north 89°20′04″ East (deeded east) on the south line of the Northwest Quarter of said Section 22 a distance of 70.00 feet to a ⅝″ rebar with cap #20800148; thence North 00°05′32″ West (deeded north) parallel with the west line of the Northwest Quarter of said Section 22 a distance of 40.00 feet to a ⅝″ rebar with cap #20800148 and the point of beginning of the land herein described; thence continuing North 00°05′32″ West (deeded north) parallel with said west line 381.47 feet to a ⅝″ rebar with cap #20800148; thence North 58°20′24″ East 200.30 feet (deeded North 58°07′20″ East 199.14 feet) to a ⅝″ rebar with cap #20800148; thence South 00°05′32″ East (deeded south) parallel with said west line 484.62 feet to a ⅝″ rebar with cap #20800148 on the north line of an exception of Donmoyer Avenue; thence

South 89°20′04″ West (deeded west) parallel with and 40 feet north of said south line 170.67 feet to the point of beginning. Containing 1.70 acres, more or less.

Subject to legal highways.

TPN: 018–8155–5507

Miltenberger

That part of the East Half of the Northeast Quarter of the Southeast Quarter of Section 21, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as follows: Commencing at the East Quarter corner of said Section 21; thence South 00 degrees 19 minutes 53 seconds East (deeded south) on the east line of said Section 21 a distance of 530.19 feet (deeded 528.7); thence North 89 degrees 38 minutes 11 seconds West (deeded west) 30.00 feet to a rebar with cap #22436 on the west right of way line of South Maple Road and the *point of beginning* of the land herein described; thence South 00 degrees 19 minutes 53 seconds East on said west right of way line and parallel with said east section line 100.00 feet to a ⅝″ rebar with cap #20800148; thence North 89 degrees 38 minutes 11 seconds West (deeded west) parallel with and 100.00 feet south of the south line of Lot 2A Locust Meadows First Replat, Document Number 0620937 a distance of 435.60 feet to a ⅝″ rebar with cap #20800148; thence North 00 degrees 19 minutes 53 seconds West (deeded north) parallel with said east section line 100.00 feet to a ⅝″ rebar with cap #20800148 on said south line; thence South 89 degrees 38 minutes 11 seconds East (deeded east, platted South 89 degrees 55 minutes 48 seconds East) on said south line 435.60 feet to the point of beginning. Said in survey to contain 1.03 acre, more or less.

Together with the west half of vacated Maple Road as adopted by South Bend City Ordinance 10093–11 lying east and adjacent to above described parcel. Maple Road was vacated by the passage of Ordinance 10093–11 (recorded as Instrument 1334492) on June 13, 2011 by the Common Council of the City of South Bend.

Subject to legal highways.

Address: 3125 S Maple, South Bend, IN 46625.

TPN: 018–8152–5501

Santana

That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as:

Beginning at the West Quarter corner of said Section 22, said point being a found Harrison monument and referenced as a St. Joseph County remonumentation corner, station number 425; thence North 00 degree 05 minutes 32 seconds West on the west line of the Northwest Quarter of said Section 22 a distance of 397.25 feet to a ⅝″ rebar with cap #20800148 at the intersection of the east right of way line of Maple Road with the southeasterly right of way line of Prairie Avenue (State Road 23); thence North 58 degrees 20 minutes 40 seconds East on said southeasterly right of way line 82.15 feet to a ⅝″ rebar with cap #20800148; thence South 00 degrees 05 minutes 32 seconds East parallel with said west line 439.55 feet to a ⅝″ rebar with cap #20800148 on the south line of the Northwest Quarter of said Section 22; thence South 89 degrees 20 minutes 04 seconds West (platted South 89 degrees 01 minutes 35 seconds West) on said south line 70.00 feet to the point of beginning.

Together with the east half of vacated Maple Road as adopted by South Bend City Ordinance Number 10093–11, lying in the Northeast Quarter of Section 21, Township 37 North, Range 2 East, City of South Bend Portage Township, St. Joseph County, Indiana and lying west and adjacent to the above described real estate. Maple Road was vacated by the passage of Ordinance 10093–11 (recorded as Instrument 1334492) on June 13, 2011 by the Common Council of the City of South Bend.

Subject to legal highways.

TPN: 018–8153–5504

Sedam

A part of the Southwest Quarter of the Northwest Quarter of Section 22 Township 37 North, Range 2 East, described as follows: Beginning at a point 282 feet in a Northeasterly direction from the intersection of the West line of said Section with the center line of Prairie Avenue referred to as point ''A''; thence 300 feet in a Northeasterly direction along the said center line of Prairie Avenue to a point referred to a point ''B''; from a line drawn between points ''A'' and ''B'' comprising the north line of the property, the property lines extend from points ''A'' and ''B'' Southward to the north property line of Donmoyer Avenue, which property line comprises the south line of the property herein sold, said in previous deeds to comprise 3.44 acres, more or less.

Except A part of the Southwest Quarter of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, in St. Joseph County, Indiana, described as follows:

Commencing at the southwest corner of said Southwest Quarter of the Northwest Quarter; thence North 89°07′35′ East (assumed bearing) 239.8 feet along the South line of said Southwest Quarter; thence North 00°22′40″ West 523.80 feet along the west line of land formerly belonging to Herman C. Mutchler as described in Book 369, Page 599, in the Office of the Recorder, St. Joseph County, Indiana, to the Point of Beginning; thence continuing North 00°22′40″ West 64.50 feet along said West line to the centerline of State Road 23, also being the Northern line of said Mutchler land; thence North 58°07′20″ East 302.17 feet along said centerline to the east line of said Mutchler land; thence South 00°09′02″ East 64.66 feet along said east line; thence South 58°07′20″ West 301.87 feet to the point of beginning.

Being described in a survey as: That part of the Northwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as:

Commencing at the West Quarter corner of said Section 22, said point being a found Harrison Monument and referenced as a St. Joseph County Remonumentation corner, Station Number 425; thence North 89°20′04″ East on the South line of the Northwest Quarter of said Section 22 a distance of 240.67 feet to a 3/4'' iron pipe; thence North 00°05′32″ West parallel with the West line of said Section 22 a distance of 40.00 feet to a ⅝″ rebar with cap #20800148 and the point of beginning of the land herein described; thence continuing North 00°05′32″ West 484.62 feet to a ⅝″ rebar with cap #20800148; thence North 58°20′40″ East 299.30 feet (deeded North 58°07′20″ East 301.87 feet) to a ⅝″ rebar with cap #20800148; thence South 00°03′03″ East 638.74 feet to a ⅝″ rebar with cap #20800148; thence South 89°20′04″ West parallel with and 40.00 feet North of said South line 254.57 feet to the point of beginning.

Subject to legal highways.

TPN: 018–8153–5505

Shafer

That part of the Southwest Quarter of Section 22, Township 37 North, Range 2 East, City of South Bend, Portage Township, St. Joseph County, Indiana, described as: Commencing at an aluminum cap with dimple marking the center of said Section 22; thence South 00°15′29″ West (deeded south) on the east line of the Southwest Quarter of said Section 22 a distance of 610.49 feet;

thence South 89°11′00″ West 30.01 feet to a capped rebar on the westerly right of way line of Locust Road and the point of beginning of the land herein described; thence South 00°15′29″ West (deeded south) on said west right of way line and parallel with said east line 80.01 feet to a ⅝″ rebar with cap #20800148; thence South 89°11′00″ West (deeded west) 298.76 feet to a 1″ pinch pipe; thence South 00°15′29″ West (deeded south) parallel with said east line 80.00 feet to a 1″ pinch pipe; thence North 89°11′00″ East (deeded east) 298.76 feet to a ⅝″ rebar with cap #20800148 on said west right of way line; thence South 00°15′29′ West (deeded south) on said west right of way line and parallel with said east line 12.41 feet to a ⅝″ rebar with cap #20800148; thence South 89°20′36″ West (deeded west) 1285.44 feet to a 1″ iron pipe on the west line of the east half of the Southwest Quarter of said Section 22, said line also being the east line of Locust Meadows First Replat, Document Number 0620937; thence North 00°02′40″ West (deeded north, platted North 00°19′32″ West) on said west line and on said east subdivision line 263.41 feet to a rebar with cap #22436; thence North 89°07′21″ East (deeded east, platted North 88°49′44″ East) on the south line of said Locust Meadows First Replat 988.15 feet to a ⅝″ rebar with cap #20800148; thence South 00°15′29″ West (deeded south) parallel with said east line 95.65 feet (deeded 96.00 feet) to a 1″ pinch pipe; thence North 89°11′00″ East (deeded east) 298.76 feet to the point of beginning.

Subject to legal highways.

TPN: 018–8155–5575

Dated: December 5, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–29746 Filed 12–9–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Indian Gaming; Approval of an Amendment to a Tribal-State Class III Gaming Compact in the State of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Nottawaseppi Huron Band of the Potawatomi and State of Michigan negotiated a Second Amendment to the Gaming Compact governing Class III gaming; this notice announces approval of the Second Amendment.

DATES: Effective December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Section 11 of the Indian Gaming Regulatory Act (IGRA) requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts that are for the purpose of engaging in Class III gaming activities on Indian lands. *See* Public Law 100–497, 25 U.S.C. 2701 *et seq.* All Tribal-State Class III compacts, including amendments, are subject to review and approval by the Secretary under 25 CFR 293.4. The Second Amendment does not change the revenue sharing requirements under the existing compact, but rather adjusts the destination of a portion of the Tribe's annual payment to be deposited into the Michigan Native American Heritage Fund, establishes a Heritage Fund Board and allows the Local Revenue Sharing Board to approve distributions in advance. The Second Amendment is approved. *See* 25 U.S.C. 2710(d)(8)(A).

Dated: November 28, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–29744 Filed 12–9–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB010000. L16100000. DP0000. MO 4500094302.]

Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the Missoula Field Office, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Missoula Field Office intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for BLM public lands and resources managed by the Missoula Field Office in western Montana (Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders counties) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP with the associated EIS. Comments on issues may be submitted in writing until February 10, 2017. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/mt/st/en/fo/missoula_field_office.html.* In order to be included in the analysis, all comments must be received prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Resource Management Plan and Associated EIS for the Missoula Field Office at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804, during regular business hours from 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays, or online at *http://www.blm.gov/mt/st/en/fo/missoula_field_office.html.* Documents pertinent to this proposal may be examined at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Maggie Ward, RMP Project Manager, Missoula Field Office, at (406) 329–3914 or by email: *blm_mt_MissoulaRMP@blm.gov* to have your name added to our mailing list. 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: This document provides notice that the BLM Field Office, Missoula, Montana intends to prepare a revised RMP with associated EIS, for the Missoula Field Office, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The area to be covered under the Missoula RMP/EIS is located in the western part of Montana in Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell,

Ravalli, and Sanders counties. The Missoula RMP planning area comprises approximately 156,000 acres of BLM-managed surface lands and 268,660 acres of BLM-administered Federal minerals. Over 99 percent of the BLM-managed surface lands are in the Granite, Missoula, and Powell counties. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders.

Preliminary management concerns and planning criteria have been identified by BLM personnel and other agencies. The information in this NOI represents the BLM's knowledge to date regarding the existing issues and concerns with current land management to replace the existing Garnet Resource Area RMP, dated May 1986, as amended. The preliminary issues and themes that will be addressed in this planning effort include:

• *Vegetation Management*—How should BLM-administered lands be managed, temporally and spatially, to provide for ecological resiliency for fish and wildlife habitat and provide a supply of forest products that contribute to the economic stability of communities?

• *Wildland Fire and Fuels*—How should BLM-administered lands be managed to reduce the risk of wildfires to communities and integrate fire back into the ecosystem?

• *Threatened and Endangered Species Habitats*—How should BLM-administered lands be managed to contribute to the recovery of the Canadian lynx, grizzly bear, and bull trout?

• *Watershed Management*—How should BLM-administered lands be managed to contribute to restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters, as well as a safe drinking water supply?

• *Cultural and Heritage*—How should BLM-administered lands be managed to contribute to the cultural and heritage values of the communities?

• *Economics and Community*—How should BLM-administered lands be managed to contribute to local economies and infrastructure needs through recreation opportunities, rights-of-ways, mineral exploration and mining, livestock grazing, and forest products?

• *Recreation*—Where and to what extent should the BLM manage developed recreation sites, identify new recreation sites, and improve recreation opportunities and beneficial outcomes; and direct use away from areas of conflict? How should BLM-administered lands be managed to meet the demand for off-highway vehicle use while protecting other resources and resource uses?

• *Lands, Realty, Access*—How should the BLM-administered lands improve public access and resource management through retention, exchange, or disposal?

• *Special Management Area Designations*—How should the BLM consider nominations for new areas of critical environmental concern (ACECs) and any comments specific to the three existing ACECs including Rattler Gulch Limestone Cliffs ACEC, Bear Creek Flats ACEC, and Phil Wright Rock ACEC; evaluate and determine wild and scenic river suitability of the six eligible river segments (Belmont Creek, Rock Creek, Gallagher Creek, and three segments on the Blackfoot); and consider appropriate management consistent with laws and policies for the Lewis and Clark National Historic Trail; three Wilderness Study Areas (WSA) including Wales Creek WSA, Hoodoo Mountain WSA, and Quigg West WSA; and the Garnet Range Back Country Byway.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or by using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 60-day scoping period or within 15 days after the last public meeting, whichever is later. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved in the revised plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this revised plan.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will use an interdisciplinary approach to address a variety of land management issues, such as rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Jamie Connell,

State Director.

[FR Doc. 2016–29553 Filed 12–9–16; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L14400000.ET0000. 16XL1109AF; HAG 16–0170; OR50483]

Public Land Order No. 7858; Extension of Public Land Order No. 7233, Rogue River; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 7233 for an additional 20-year period, which would otherwise expire on January 1, 2017. Public Land Order No. 7233 withdrew 2,090 acres of National Forest System lands within the Rogue River-Siskiyou National Forest from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws. This extension is necessary to continue to protect the Rabbit Ears-Falcon Wildlife Area, Rogue River Wild and Scenic Corridor, Union Creek Historic District, Abbot Creek and Mill Creek Recreation Sites, and the Prospect Ranger Station Administrative Site.

DATES: This Public Land Order is effective on January 2, 2017.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, Bureau of Land Management, Oregon/Washington State Office, 503–808–6225. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to reach the above individual. 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 purpose for which the withdrawal was first made requires this extension to continue to protect a wildlife area, wild and scenic river corridor, historic district, two recreational sites, and a ranger station administrative site. The lands will remain open to such forms of disposition as may be authorized on National Forest System lands and to mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 7233 (62 FR 104 (1997)), which withdrew 2,090 acres of National Forest System Lands within the Rogue River-Siskiyou National Forest in Oregon from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, is hereby extended for an additional 20-year period. The withdrawal extended by this order will expire on January 1, 2037, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, the Secretary determines that the withdrawal shall be further extended.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–29721 Filed 12–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–22453]; 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 November 12, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 27, 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 November 12, 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.

CALIFORNIA

Los Angeles County

Woman's Club of Hollywood, 1741–1749 N. La Brea Ave., Los Angeles, 16000883

Riverside County

Coachella Valley Savings No. 1, (Architecture of E. Stewart Williams MPS), 383 S. Palm Canyon Dr., Palm Springs, 16000884

Coachella Valley Savings No. 2, (Architecture of E. Stewart Williams MPS), 499 S. Palm Canyon Dr., Palm Springs, 16000885

Edris House, (Architecture of E. Stewart Williams MPS), 1030 W. Cielo Dr., Palm Springs, 16000886

Kenaston House, (Architecture of E. Stewart Williams MPS), 39767 Desert Sun Dr., Rancho Mirage, 16000887

Koerner House, (Architecture of E. Stewart Williams MPS), 1275 S. Calle de Maria, Palm Springs, 16000888

Palm Springs Aerial Tramway Mountain Station, (Architecture of E. Stewart Williams MPS), 1 Tram Way, Idyllwild, 16000889

Palm Springs Desert Museum, (Architecture of E. Stewart Williams MPS), 101 Museum Dr., Palm Springs, 16000890

Palm Springs Unified School District Educational Administrative Center, (Architecture of E. Stewart Williams MPS), 333 S. Farrell Dr., Palm Springs, 16000891

Santa Fe Federal Savings and Loan Association, (Architecture of E. Stewart Williams MPS), 300 S. Palm Canyon Dr., Palm Springs, 16000892

Sinatra, Frank, House, (Architecture of E. Stewart Williams MPS), 1145 E. Via Colusa Rd., Palm Springs, 16000893

Williams, E. Stewart and Mari, House, (Architecture of E. Stewart Williams MPS), Address Restricted, Palm Springs, 16000894

ILLINOIS

Cook County

Brainerd Bungalow Historic District, (Chicago Bungalows MPS), Roughly bounded by 89th, S. May, 95th & S. Loomis Sts., Chicago, 16000895

Brigham, Edmund D., House, 790 Sheridan Rd., Glencoe, 16000900

Du Page County

Sloane, William and Jennette, House, 248 S. Arlington Ave., Elmhurst, 16000896

Kane County

Central Geneva Historic District (Boundary Increase and Additional Documentation), 0–200, 300–500 blks. S. 6th, 11–13 S. 7th, 600 blks. of State, James, Campbell, Fulton & South, 9,11 N. 2nd Sts., Geneva, 16000897

North Geneva Historic District (Boundary Decrease and Additional Documentation), 100–200 N. River Ln., Geneva, 16000898
Potter and Barker Grain Elevator, 1N298 La Fox Rd., La Fox, 16000899

Peoria County

Marquette Apartments, 701 Main St., Peoria, 16000901

St. Clair County

Turkey Hill Grange Hall, 1375 E. IL 15, Belleville, 16000902

INDIANA

Elkhart County

Baugo Township Gymnasium, (Indiana's Public Common and High Schools MPS), NE. side of Cty. Rd. 22, approx. 165 ft. NW. of Cty. Rd. 3, Elkhart, 16000903

Knox County

Mont Clair, 3890 E. Johnson Farm Rd., Vincennes, 16000904

La Porte County

Scott—Rumley House, 211 Rose St., La Porte, 16000905

Martin County

Shoals Historic District, Roughly bounded by White R., 7th, 1st & High Sts., Shoals, 16000906

Miami County

Converse Commercial Historic District, 4 blks. along Jefferson between Marion & 1st Sts. & 1 blk. of E. Railroad St., Converse, 16000907

Rush County

Henley, Henry, Public Library, 103 N. Main St., Carthage, 16000908

MARYLAND

Baltimore Independent City

St. Brigid's School and Convent, 900 S. East Ave., Baltimore (Independent City), 16000909

MICHIGAN

Washtenaw County

Metcalf, Robert C. and Bettie J. (Sponseller), House, 1052 Arlington Blvd., Ann Arbor, 16000910
Muschenheim, William and Elizabeth (Bodanzky), House, 1251 Heather Way, Ann Arbor, 16000911

NEVADA

Washoe County

Newlands Historic District, Bounded by Truckee R., Arlington & Marsh/Keystone Aves., Arlington & Monroe Sts., Reno, 16000912

NORTH CAROLINA

Lenoir County

Midtown Motor Lodge, 501 N. Herritage St., Kinston, 16000913

OREGON

Lincoln County

Franck, Joseph T., House, 304 NE. San Bay-O Cir., Newport, 16000914

TEXAS

Dallas County

Hughes Brothers Manufacturing Company Building, 1401 S. Ervay St., Dallas, 16000915
St. Paul Methodist Episcopal Church, 1816 Routh St., Dallas, 16000916

Harris County

Medical Towers, 1709 Dryden Rd., Houston, 16000918

Potter County

Levine's Department Store, 800 S. Polk St., Amarillo, 16000917

VERMONT

Washington County

Lareau Farmstead, (Agricultural Resources of Vermont MPS), 48 Lareau Rd., Waitsfield, 16000919

Authority: 60.13 of 36 CFR part 60.

Dated: November 18, 2016.

Robie Lange,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–29627 Filed 12–9–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–22371; 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 November 5, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 27, 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 November 5, 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

Baldwin County

Jenkins Farm and House, 29040 Jenkins Farm Rd., Loxley, 16000862

Mobile County

Oakleigh Garden Historic District (Boundary Decrease), Government, Broad, Texas & S. Ann Sts., Mobile, 16000863

CALIFORNIA

Alameda County

St. Joseph's Home for the Aged, 2647 International Blvd., Oakland, 16000864

Marin County

Marinship Machine Shop, 25 Liberty Ship Way, Sausalito, 16000865

COLORADO

El Paso County

Glen Eyrie (Boundary Increase), 3820 N. 30th St., Colorado Springs, 16000866

CONNECTICUT

Hartford County

Mansuy and Smith Automobile Showroom Building, 38–42 Elm St., Hartford, 16000867

IOWA

Montgomery County

Red Oak Downtown Historic District, (Iowa's Main Street Commercial Architecture MPS) Roughly bound by E. Hammond, N. 5th, N. 1 Sts., E. Washington Ave., Red Oak, 16000868

MARYLAND

Montgomery County

New Mark Commons, (Subdivisions by Edmund Bennett and Keyes, Lethbridge and Condon in Montgomery County, MD, 1956–1973, MPS) Bounded by Maryland Ave., Argyle & Monroe Sts., Tower Oaks, I 270, Rockville, 16000869

MASSACHUSETTS

Essex County

Sargent—Robinson House, 972 & 974 Washington St., Gloucester, 16000870

Plymouth County

Howard Home for Aged Men, 940 Belmont St., Brockton, 16000871

MINNESOTA

St. Louis County

Bridge No. L6113, (Reinforced-Concrete Highway Bridges in Minnesota MPS) E. 4th St. over Tischer Cr., Duluth, 16000872

Bridge No. L8515, (Reinforced-Concrete Highway Bridges in Minnesota MPS) Lewis St. over Tischer Cr., Duluth, 16000873

MONTANA

Lewis and Clark County

Fort Harrison Veterans' Hospital Historic District, 2 mi. NW. of Helena, Helena, 16000874

Missoula County

Maclay Bridge, Milepost. 1 on North Ave., Missoula, 16000875

NORTH CAROLINA

Buncombe County

Vance, Kate and Charles Noel, House, 178 Sunset Dr., Black Mountain, 16000876

Forsyth County

Oak Creek Historic District, 1141–1537 Polo & Fred's Rds., Friendship, Cape Myrtle & Rosedale Circles, Idlewilde Dr., Harmon Ave., Hobart St, Winston-Salem, 16000877

Gaston County

Seaboard Air Line Railway Depot, 105 N. Depot St., Cherryville, 16000878

Mecklenburg County

Charlotte Fire Station No. 4, 420 W. 5th St., Charlotte, 16000879

Wake County

Jones, Dr. Calvin, House, (Wake County MPS) 414 N. Main St., Wake Forest, 16000880

OREGON

Jackson County

Camp White Station Hospital Administration Building, 8495 Crater Lake Hwy., White City, 16000881

WASHINGTON

Lewis County

Jackson, John R. and Matilda, House (Additional Data) On Jackson Hwy, 500 ft. S. of jct. with US 12, Chehalis, 74001968

Authority: 60.13 of 36 CFR part 60.

Dated: November 7, 2016.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–29628 Filed 12–9–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Flash Memory Devices and Components Thereof, DN 3186* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Memory Technologies, LLC on December 6, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory devices and components thereof. The complaint names as respondents SanDisk Corporation of Milpitas, CA; SanDisk LLC of Milpitas, CA; Western Digital Corporation of Irvine, CA; Western Digital Technologies, Inc. of Milpitas, CA; SanDisk Limited of Japan; SanDisk Storage Malaysia Sdn. Bhd of Malaysia; and SanDisk SemiConductor (Shanghai) Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3186'') in a prominent place on the cover page and/

or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation 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 or a related proceeding, 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29715 Filed 12–9–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

DEPARTMENT OF JUSTICE

[Docket No. ODAG 166]

Notice of Federal Advisory Committee Meeting

AGENCY: Department of Justice.

ACTION: Notice of Federal Advisory Committee Meeting. Request for Public Comment.

SUMMARY: The National Commission on Forensic Science will hold meeting twelve at the time and location listed below.

DATES: (1) Public Hearing. The meeting will be held on January 9, 2017 from 9:00 a.m. to 5:15 p.m. and January 10, 2017 from 8:30 a.m. to 4:30 p.m.

(2) Written Public Comment. Written public comment regarding National Commission on Forensic Science meeting materials can be submitted through *www.regulations.gov* starting on December 23, 2016. Any comments should be posted to *www.regulations.gov* no later than January 25, 2017.

Location: Office of Justice Programs, 3rd Floor Main Conference Room, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Ph.D., Senior Policy Analyst at the National Institute of Justice and NCFS Designated Federal Officer, 810 7th Street NW., Washington, DC 20531, by email at *Jonathan.McGrath@usdoj.gov* or by phone at (202) 514–6277.

SUPPLEMENTARY INFORMATION:

Agenda: Open Meeting: The Commission will meet on January 9, 2017, 9:00 a.m. to 5:15 p.m. and January 10, 2017, 8:30 a.m. to 4:30 p.m. On January 9, 2017, the Commission will receive Subcommittee status reports, an update on DOJ forensic science initiatives from the DOJ Office of Legal Policy, and briefings on Scientific Foundations. On January 10, 2017 the Commission will receive Subcommittee status reports, an update regarding forensic science surveys from the DOJ Bureau of Justice Statistics, a briefing on Jury Understanding of Statistics, and briefings on extramural and Federal agency forensic science research initiatives. *Note:* Agenda items, including designation of presentation dates are subject to change. A final agenda will be posted to the Commission's Web site in advance of the meeting.

Meeting Accessibility: Pursuant to 41 CFR 102–3.140 through 102–3.165 and the availability of space, the meeting scheduled for January 9, 2017, 9:00 a.m. to 5:15 p.m. and January 10, 2017, 8:30 a.m. to 4:30 p.m. at the Office of Justice Programs is open to the public and webcast. Seating is limited and pre-registration is strongly encouraged. Media representatives are also encouraged to register in advance.

Written Comments: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written comments to the Commission in response to the stated agenda and meeting material. Meeting material, including work products, will be made available on the Commission's Web site: *http://www.justice.gov/ncfs*.

Oral Comments: In addition to written statements, members of the public may present oral comments at 5:00 p.m. on January 9, 2017 and at 4:15 p.m. on January 10, 2017. Those individuals interested in making oral comments should indicate their intent through the on-line registration form and time will be allocated on a first-come, first-served basis. Time allotted for an individual's comment period will be limited to no more than 3 minutes. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled public comment periods, written comments can be submitted through *www.regulations.gov* in lieu of oral comments.

Registration: Individuals and entities who wish to attend the public meeting are strongly encouraged to pre-register for the meeting on-line by clicking the registration link found at: *https://www.justice.gov/ncfs/term-2-meetings-8-15#s12*. Online registration for the meeting must be completed on or before 5:00 p.m. (EST), Friday, December 30, 2016.

Additional Information: The Department of Justice welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations, please indicate your requirements on the online registration form.

Dated: December 1, 2016.

Victor W. Weedn,

Senior Forensic Advisor to the Deputy Attorney General, National Commission on Forensic Science.

[FR Doc. 2016–29725 Filed 12–9–16; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 11, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0170.

Title: Fidelity Bond and Insurance Coverage for Federal Credit Unions 12 CFR part 713.

Abstract: The Federal Credit Union Act (at 12 U.S.C. 1761(b)(2)) requires that the boards of federal credit unions (FCU) arrange for adequate fidelity coverage for officers and employees having custody of or responsibility for handling funds.

The regulation contains a number of reporting requirements where a credit union seeks to exercise flexibility under the regulations. These requirements enable NCUA to monitor the FCU's financial condition for safety and soundness purposes and helps to assure that FCUs are properly and adequately protected against potential losses due to insider abuse such as fraud and embezzlement.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 7.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 29, 2016.

Dated: December 7, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–29695 Filed 12–9–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, December 15, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Corporate Stabilization Fund Quarterly Report.
2. NCUA's Rules and Regulations, Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises.
3. NCUA's Rules and Regulations, Freedom of Information Act.
4. Revised Texas Member Business Loan Rule.
5. Board Briefing, NGN Legacy Asset Disposition Strategy.

RECESS: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Thursday, December 15, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeal. Closed pursuant to Exemption (6).
2. Request for Approval under Section 205(d). Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–29884 Filed 12–8–16; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0252]

Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing regulatory guide (RG) 1.25, ''Assumptions used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors.'' This document is being withdrawn because the guidance contained in RG 1.25 has been superseded and is now incorporated into RG 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' and RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors.''

DATES: The effective date of the withdrawal of RG 1.25, ''Assumptions used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors'' is December 12, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0252 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–2016–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then

select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The withdrawal notice for RG 1.25 is available in ADAMS under accession No. ML16105A081.

• *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: John Parillo, Office of Nuclear Reactor Regulation, telephone 301–415–1344; email *John.Parillo@nrc.gov* or Mark Orr, Office of Nuclear Regulatory Research, telephone: 301–415–6003; email: *Mark.Orr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: Regulatory guides may be withdrawn by the NRC when their guidance no longer provides useful information, or is superseded by technological innovations, congressional actions, or other events. The withdrawal of an RG should be thought of as the final revision of the guide.

The NRC issued RG 1.25, ''Assumptions used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors,'' in March 1972 to provide guidance for the evaluation of the design basis fuel handling accident to demonstrate compliance with the NRC's regulations in part 100 of Title 10 of the *Code of Federal Regulations.* The NRC is withdrawing RG 1.25 because the guidance contained in RG 1.25 has been superseded by more current guidance, which has been incorporated into RG 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' and RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light-Water Nuclear Power Reactors.'' The information in RG 1.183 provides guidance for new and existing light-water reactor (LWR) plants that have adopted the alternative source term (AST), and RG 1.195 provides guidance for those LWR plants that have not adopted the AST.

The withdrawal of RG 1.25 does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments to RG 1.25. Although RG 1.25 is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. However, RG 1.25 should not be used in future requests or applications for NRC licensing actions.

Dated at Rockville, Maryland, this 5th day of December, 2016.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–29661 Filed 12–9–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2016–0253]

Duke Energy Florida, Inc., LLC; Crystal River Unit 3 Nuclear Generating Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption from three record keeping requirements in its regulations in response to a September 14, 2016, request from Duke Energy Florida, (DEF, or the licensee). Specifically, the licensee requested that the Crystal River Unit 3 Nuclear Generating Plant (CR–3), be granted a partial exemption from regulations that require retention of records for certain systems, structures, and components.

DATES: The exemption was issued on November 30, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0253 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–2016–0253. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

• *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: John Hickman, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017; email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The CR–3 facility is a decommissioning power reactor located in Citrus County, Florida. The licensee, DEF, is the holder of CR–3 Facility Operating License No. DPR–72. The CR–3 has been shutdown since September 26, 2009. Subsequently, the licensee determined that issues with containment integrity could not be satisfactorily resolved and decided not to attempt to restart the facility. On May 28, 2011, DEF completed the removal of fuel from the reactor vessel at CR–3. By letter dated February 20, 2013 (ADAMS Accession No. ML13056A005), DEF submitted to the NRC a certification in accordance with section 50.82(a)(1)(i) of title 10 of the *Code of Federal Regulations* (10 CFR), indicating it would permanently cease power operations, and with § 50.82(a)(1)(ii) that it had permanently defueled the reactor vessel at CR–3. Because CR–3 is a permanently shutdown and defueled facility, and in accordance with § 50.82(a)(2), DEF is no longer authorized to operate the reactor or emplace nuclear fuel into the reactor vessel. The licensee is still authorized to possess and store irradiated (*i.e.,* spent) nuclear fuel. The spent fuel is currently being stored onsite in a spent fuel pool (SFP).

II. Request/Action

By letter dated September 14, 2016 (ADAMS Accession No. ML16258A058), DEF filed a request for NRC approval of an exemption from the record retention requirements of: (1) 10 CFR part 50, appendix B, Criterion XVII, which requires certain records be retained consistent with other regulatory requirements; (2) § 50.59(d)(3), which requires certain records be maintained until termination of a license issued

pursuant to 10 CFR part 50; and (3) § 50.71(c), which requires certain records be maintained consistent with various elements of the NRC regulations, facility technical specifications, and other licensing basis documents.

The licensee is requesting an exemption from the requirement to retain these records when the following conditions are satisfied: (1) The CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective. The licensee cites record retention exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (76 FR 39134), Millstone Power Station, Unit 1, (72 FR 5755), and Haddam Neck Plant (70 FR 54587), as examples of the NRC granting similar requests.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the exemption request, and would be retained as decommissioning records until the termination of the CR–3 license. In addition, the licensee did not request an exemption from 10 CFR part 50, appendix A, Criterion 1, which requires certain records to be maintained ''throughout the life of the unit,'' because CR–3 is not a general design criteria facility. Nor did DEF request an exemption associated with any record keeping requirements for storage of spent fuel at the CR–3 ISFSI under 10 CFR part 50, the general license requirements of 10 CFR part 72, or for the other requirements of 10 CFR part 50 or Facility Operating License No. DPR–72 applicable to the decommissioning and dismantlement of the CR–3 plant.

III. Discussion

Pursuant to § 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in § 50.12(a)(2).

According to the Final Safety Analysis Report, revision 38, submitted May 25, 2016 (ADAMS Accession No. ML16172A182), the majority of plant components at CR–3 no longer meet the definition of safety related in § 50.2.

The September 14, 2016 (ADAMS Accession No. ML16258A058) exemption application states that the CR–3 nuclear steam supply system and balance of plant SSCs will be abandoned in place pending dismantlement. These SSCs are no longer operable or maintained except as required to support safe storage of spent fuel in the SFP or those that are needed to meet other regulatory requirements or are needed to support other site facilities (*e.g.,* radioactive waste handling, Heating, Ventilation, and Air Conditioning (HVAC), etc.). The licensee's justification for eliminating records is that these SSCs have been (or will be) removed from service under the NRC license, dismantled or demolished, and that therefore maintenance of these records will not serve any function regulated by the NRC.

While DEF stated that it would retain the records required as the project transitions from current plant conditions to a plant with spent fuel only in dry storage, the transition will remove the safety and business need for the maintenance of most records. As the SSCs are removed from the licensing basis and the need for the associated records is eliminated, the licensee proposes that they be exempted from the records retention requirements for SSCs and historical activities associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, thereby eliminating the associated regulatory and economic burdens of creating alternative storage locations, relocating records, and retaining irrelevant records.

The exemption request states that all records necessary for spent fuel and spent fuel storage SSCs and activities have been, and will continue to be, retained for the SFP throughout its functional life. Similar to other plant records, once the SFP is emptied of fuel, drained and ready for demolition, there will be no safety-significant function or other regulatory need for retaining certain SFP-related records.

The DEF stated that some records related to the nuclear steam supply system, balance of plant, and SFP will continue to be maintained under NRC regulations due to residual radioactivity. The radiological and other necessary programmatic controls (such as security and quality assurance) for the facility and decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the updated Final Safety Analysis Report and Technical Specifications. These programmatic elements and their associated records would be unaffected by the requested exemption.

The Exemption Is Authorized by Law

The NRC has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or other Commission regulations. Therefore, the exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.

The Exemption Presents No Undue Risk to Public Health and Safety

Removal of the underlying SSCs associated with the records for which DEF has requested an exemption from record keeping requirements will not have adverse public health and safety impact because the subject SSCs would no longer have a safety function at the permanently shutdown facility, would be removed from the licensing basis by the license, and will be disposed of by the licensee when active decommissioning begins. Elimination of records associated with the removed SSCs therefore would not have an impact on public health and safety.

The requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for records associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, is administrative in nature and will have no impact on

any remaining decommissioning activities or on radiological effluents. The exemption will only advance the schedule for disposition of the specified records, which would otherwise be retained until license termination requiring the expenditure of resources by the licensee.

The Exemption Is Consistent With Common Defense and Security

The elimination of the record keeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records, which would otherwise be retained until license termination. This allows the licensee to not expend resources maintaining records that have no benefit or safety purpose. Therefore, the partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types records associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective, is consistent with the common defense and security.

Special Circumstances

Section 50.12(a)(2) states, in part: ''The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever: . . . (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted . . . .''

Criterion XVII of 10 CFR part 50, appendix B, states in part: ''Sufficient records shall be maintained to furnish evidence of activities affecting quality.''

Section 50.59(d)(3) states in part: ''The records of changes in the facility must be maintained until the termination of an operating license issued under this part. . . .''

Section 50.71(c), states in part: ''Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license . . . .''

In the Statements of Consideration (SOC) for the final rulemaking, ''Retention Periods for Records'' (53 FR 19240; May 27, 1988), in response to public comments received during the rulemaking process, the NRC stated that records must be retained ''for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.'' In the SOC the Commission also explained that requiring licensees to maintain adequate records assists the NRC ''in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident.''

These regulations apply to licensees in decommissioning despite the fact that, during the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem which would adversely impact public health and safety.

The records subject to removal under the requested exemption are those associated with SSCs that had been important to safety during power operation or operation of the SFP, but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, given their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then certain records associated with these SSCs would not be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

Retention of certain records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Accordingly, special circumstances are present which the NRC may consider, pursuant to § 50.12(a)(2)(ii), to grant the requested exemption permitting the disposal of records associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective.

Records that continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to the regulations in 10 CFR part 50 and 10 CFR part 72. The retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, which continue to be required for eventual decommissioning; security, emergency planning and quality assurance, programs which remain in effect; as well as records associated with the Independent Spent Fuel Storage Installation and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and

examining facts following an incident, as discussed previously in this notice.

However, the cost of retaining operational phase records beyond the operations phase until the termination of the license may not have been fully considered when the records retention rule was put in place. As such, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Accordingly, special circumstances are present which the NRC may consider, pursuant to § 50.12(a)(2)(iii), to grant the requested exemption.

Environmental Considerations

Pursuant to § 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at the decommissioning CR–3 does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety (§ 50.92(c)). Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (*i.e.,* potential amount of radiation involved in an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves record keeping requirements (§ 51.22(c)(35)(vi)(A)), as well as reporting requirements (§ 51.22(c)(35)(vi)(B)).

Therefore, pursuant to § 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC has determined that the requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security. The NRC has determined that the destruction of the identified records does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the record keeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility is understood, documented, preserved and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the CR–3 SSCs that were safety-related or important to safety during operations have been or will be removed from the licensing basis and removed from the plant, the staff finds that the records associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that, pursuant to § 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and that special circumstances are present. Therefore, the Commission hereby grants Duke Energy Florida a one-time partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the Crystal River Unit 3 Nuclear Generating Plant to allow removal of records associated with (1) the CR–3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures and components (SSCs) that are no longer effective (*i.e.,* removed from the Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms); or (2) for SSCs associated with safe storage of fuel in the SFPs when spent fuel has been completely removed from the SFPs, and the associated licensing bases are no longer effective.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security, emergency planning, spent fuel management and quality assurance are not affected by the exemption request and are required to be retained consistent with regulatory existing requirement as decommissioning records until the termination of the CR–3 license.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of November 2016.

For the Nuclear Regulatory Commission.

Andrea Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–29712 Filed 12–9–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387, 50–388, and 72–28; NRC–2016–0187]

In the Matter of Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Order Approving Indirect Transfer of Facility Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of licenses; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving an application filed by Susquehanna Nuclear, LLC (Susquehanna Nuclear), on behalf of itself and Riverstone Holdings, LLC (Riverstone), on June 29, 2016, as supplemented by letter dated November 14, 2016. The application sought NRC approval of the indirect transfer of Susquehanna Nuclear's interests in Renewed Facility Operating License Nos. NPF–14 and NPF–22 for the Susquehanna Steam Electric Station, Units 1 and 2 (SSES), respectively, as well as the general license for the SSES Independent Spent Fuel Storage Installation (ISFSI), from the ultimate parent, Talen Energy Corporation (Talen), to Riverstone. The NRC's approval of the indirect license transfer is subject to certain conditions, which are described in the order. The order is effective upon issuance.

DATES: The order was issued on November 30, 2016, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2016–0187 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–2016–0187. 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 for documents related to this action 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: Tanya E. Hood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387; email: *Tanya.Hood@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Order

The text of the order is attached.

II. Availability of Documents

Documents related to this action, including the indirect license transfer application and other supporting documentation, are available to interested persons as indicated.

Document	ADAMS Accession Nos.
Letter from Susquehanna Nuclear, LLC to the U.S. Nuclear Regulatory Commission, ''Susquehanna Steam Electric Station Request for Order Approving Indirect Transfer of Control PLA–7500,'' dated June 29, 2016.	ML16181A414 (package)
Letter from Susquehanna Nuclear, LLC to the U.S. Nuclear Regulatory Commission, ''Susquehanna Steam Electric Station Supplemental Information Relating to Proposed License Transfer PLA–7538,'' dated November 14, 2016.	ML16320A436
Email from Tanya Hood to Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2, Acceptance of Requested Licensing Action Re: Request for Order Approving Indirect Transfer of Control, dated July 29, 2016.	ML16211A356
Letter from the U.S. Nuclear Regulatory Commission to Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2—Request For Withholding Information from Public Disclosure (CAC Nos. MF8056 and MF8057), dated August 26, 2016.	ML16215A008
Letter from the U.S. Nuclear Regulatory Commission to Susquehanna Nuclear, LLC, Re: Susquehanna Steam Electric Station, Units 1 and 2—Notice of Consideration of Approval of Transfer of Licenses and Opportunity for a Hearing, and Petition for Leave to Intervene; Order (CAC Nos. MF8056 and MF8057), dated September 16, 2016.	ML16239A424
Federal Register notice dated September 28, 2016; Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Consideration of Indirect License Transfer published on October 4, 2016 (81 FR 68462).	ML16243A388
Email from Sabatini Monatesti to the U.S. Nuclear Regulatory Commission, dated October 11, 2016	ML16312A431
U.S. Nuclear Regulatory Commission Staff Response to Request for Access to Sensitive Unclassified Non-Safeguards Information Related to the Application for Indirect Transfer of the Susquehanna Steam Electric Station, dated October 20, 2016.	ML16294A385
Establishment of Atomic Safety and Licensing Board, dated October 26, 2016	ML16300A413
NON-PROPRIETARY—Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Indirect Transfer of Renewed Facility Operating Licenses from Talen Energy Corporation to Riverstone Holdings, LLC, Re: Susquehanna Steam Electric Station, Units 1 and 2, dated November 30, 2016.	ML16320A080
U.S. Nuclear Regulatory Commission Letter with Order Approving Indirect Transfer of Licenses Related to Susquehanna Steam Electric Station, Units 1 and 2 (CAC Nos. MF8056 and MF8057), dated November 30, 2016.	ML16320A078

Dated at Rockville, Maryland, this 6th day of December, 2016.

For the Nuclear Regulatory Commission.

Tanya E. Hood,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Indirect Transfer of Facility Operating Licenses

In the Matter of Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Order Approving Indirect Transfer of Facility Operating Licenses [Docket Nos. 50–387, 50–388, and 72–28; NRC–2016–0187] (Effective Upon Issuance).

I.

Susquehanna Nuclear, LLC (Susquehanna Nuclear, or the applicant) and Allegheny Electric Cooperative, Inc. (Allegheny), are the holders of Renewed Facility Operating License Nos. NPF–14 and NPF–22, and the general license for the Independent Spent Fuel Storage Installation (ISFSI), which authorize the possession, use, and operation of the Susquehanna Steam Electric Station (SSES or the facility), Units 1 and 2, including the SSES ISFSI. The facility and its ISFSI are located in Luzerne County, Pennsylvania.

II.

By letter dated June 29, 2016, as supplemented by letter dated November 14, 2016, Susquehanna Nuclear, on behalf of itself and Riverstone Holdings, LLC (Riverstone), submitted an application to the U.S. Nuclear Regulatory Commission (NRC or the Commission), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section

50.80 (10 CFR 50.80), requesting approval of the indirect transfer of control of Susquehanna Nuclear's interests in Renewed Facility Operating License Nos. NPF–14 and NPF–22, as well as the general license for the SSES ISFSI. Future reference to SSES, Units 1 and 2 include the general license for the SSES ISFSI. Susquehanna Nuclear is licensed as the sole operator and has a 90 percent undivided ownership interest in SSES, Units 1 and 2. The proposed indirect transfer of licenses does not involve Allegheny, the other (10 percent) owner of the units and a nonoperating licensee for SSES, Units 1 and 2.

The indirect transfer of control results from the ultimate parent of Susquehanna Nuclear's interests in the licenses, Talen Energy Corporation (Talen), becoming wholly owned by the portfolio companies of Riverstone, which currently holds 35 percent in the aggregate of the outstanding common stock of Talen. As a result, all of the common stock of Talen will become privately held by affiliates of Riverstone, and Susquehanna Nuclear will become indirectly controlled by the portfolio companies of Riverstone.

The proposed indirect transfer of control will result in no change to the role of Susquehanna Nuclear as the licensed operator of the units, no change to its technical qualifications, and no change to its ownership interest or that of Allegheny. No changes will be made to the units or their licensing bases as a result of the transfer, and the transfer will not involve any changes to the principal officers, managers, or staff of Susquehanna Nuclear or to the day-to-day management and operations of the units.

Approval of the indirect transfer of the renewed facility operating licenses was requested by the applicant. A notice of the request for approval, the opportunity to comment, and the opportunity to request a hearing was published in the **Federal Register** on October 4, 2016 (81 FR 68462). One public comment was received regarding the proposed license transfers. The NRC staff addressed the comment in the Safety Evaluation dated November 30, 2016, supporting this Order. A request for access to sensitive unclassified non-safeguards information (SUNSI) made pursuant to the Order Imposing Procedures for Access to SUNSI for Contention Preparation, included with the **Federal Register** notice, was received on October 11, 2016, from Mr. Sabatini Monatesti of Berwick, Pennsylvania. On October 20, 2016, the NRC staff denied this access request. On October 24, 2016, Mr. Monatesti appealed the NRC staff's denial of his access request. On November 21, 2016, an Atomic Safety and Licensing Board affirmed the NRC staff's denial.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the licensee's application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that the portfolio companies of Riverstone are qualified to hold the ownership interests in the facility previously held by Talen. The NRC staff has also determined that Susquehanna Nuclear remains qualified to hold the operating authority under the licenses, and that the indirect transfer of ownership interests in the facility to Riverstone, as described in the application, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission, pursuant thereto. The findings set forth above are supported by the NRC Safety Evaluation dated November 30, 2016.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended (the Act); 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed indirect license transfers to the portfolio companies of Riverstone is approved, subject to the following conditions:

1. Susquehanna Nuclear, LLC shall not take any action that would cause Riverstone or any other direct or indirect parent of Susquehanna Nuclear, LLC or other entity, to void, cancel, or diminish the commitment to fund an extended plant shutdown, as represented in the application for approval of the indirect transfer of the licenses for SSES, Units 1 and 2, as applicable.

2. The transaction will not alter the Support Agreement and the Support Agreement will remain in effect in accordance with license conditions in Appendix C of the SSES licenses.

It is further ordered that Susquehanna Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer, no later than 2 business days prior to the date of the closing of the indirect transfer. Should the indirect transfer of the licenses not be completed within 1 year of this Order's date of issue, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated June 29, 2016 (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML16181A414), as supplemented by letter dated November 14, 2016 (ADAMS Accession No. ML16320A436), and the non-proprietary Safety Evaluation dated November 30, 2016, (ADAMS Accession No. ML16320A080), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of November 2016.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–29716 Filed 12–9–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment and exemption to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Submit comments by January 11, 2017. Requests for a hearing or petition for leave to intervene must be filed by February 10, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ruth C. Reyes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–3249; email: *Ruth.Reyes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated November 4, 2016, and supplemented by letter dated November 16, 2016 are available in ADAMS under Accession Nos. ML16319A120 and ML16321A416, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to SNC and Georgia Power Company for operation of the VEGP Units 3 and 4, located in Burke County, Georgia. An individual **Federal Register** notice was published on June 6, 2014 (79 FR 32771) providing an opportunity to comment, request a hearing, and petition for leave to intervene for a License Amendment Request (LAR 13–024) with the same subject for the VEGP combined licenses. The licensee withdrew its request in a letter dated December 17, 2015.

The proposed changes would revise the Combined Licenses to reflect an increase in the efficiency of the return of condensate utilized by the passive core cooling system (PXS) to the in-containment refueling water storage tank (IRWST) to support the capability for long-term cooling. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with section 52.63(b)(1) of title 10 of the *Code of Federal Regulations* (10 CFR).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed containment condensate flow path changes provide sufficient condensate return flow to maintain In-containment Refueling Water Storage Tank (IRWST) level above the top of the Passive Residual Heat Removal Heat Exchanger (PRHR HX) tubes long enough to prevent PRHR HX performance degradation from that considered in the UFSAR Chapter 15 safety analyses.

The added components are seismically qualified and constructed of only those materials appropriately suited for exposure to the reactor coolant environment as described in UFSAR Section 6.1. No aluminum is permitted to be used in the construction of these components so that they do not contribute to hydrogen production in containment.

The proposed changes clarify the design basis for the PRHR HX, which removes decay heat from the Reactor Coolant System (RCS) during a non-loss of coolant accident (non-LOCA). With operator action to avoid unnecessary Automatic Depressurization System (ADS) actuation based on RCS conditions, PRHR HX operation can be extended longer than is maintained automatically by the protection and safety monitoring system. Though analysis shows significantly greater capacity, the extent of capability of the PRHR HX in the licensing basis is changed from operating indefinitely to operating for at least 72 hours. If PRHR HX capability was exhausted after 72 hours, the ADS is actuated, which could result in significant containment floodup. However, the probabilistic analysis shows that the probability of design basis containment floodup after PRHR HX operation during a non-LOCA event is significantly lower than the probability of a small break LOCA, for which comparable containment floodup is anticipated. Therefore, the probability of significant containment floodup is not increased.

The proposed changes do not affect components whose failure could initiate an event, thus the probabilities of the accidents previously evaluated are not affected. The affected equipment does not adversely affect or interact with safety-related equipment or another radioactive material barrier. The proposed changes clarify the post-accident performance requirements for the PRHR HX. However, the proposed changes do not prevent the engineered safety features from performing their safety-related accident mitigating functions. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the UFSAR accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The long-term safe shutdown analysis results show that the PRHR HX continues to meet its acceptance criterion, *i.e.,* to cool the

Reactor Coolant System (RCS) to below 420 °F in 36 hours. The added equipment does not adversely interface with any component whose failure could initiate an accident, or any component that contains radioactive material. The modified components do not incorporate any active features relied upon to support normal operation. The downspout and gutter return components are seismically qualified to remain in place and function during seismic and dynamic events. The containment condensate flow path changes do not create a new fault or sequence of events that could result in a radioactive material release.

The proposed change quantifies the duration that the PRHR HX is capable of maintaining adequate core cooling, and specifies that if the PRHR HX cooling capability is exhausted, the ADS is actuated. This involves the possibility of opening the ADS valves after the IRWST water level has decreased below the spargers, which promote steam condensation in the IRWST. During this condition, the loads on the IRWST, spargers, and any internal structures or components in the IRWST are still less than their limiting loads, and these SSCs are not adversely affected or cause a different mode of operation. Therefore, no new type of accident could be created by this condition.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not reduce the redundancy or diversity of any safety-related function. The added components are classified as safety-related, seismically qualified, and are designed to comply with applicable design codes. The proposed containment condensate flow path changes provide sufficient condensate return flow to maintain adequate IRWST water level for those events using the PRHR HX cooling function. The long-term Shutdown Temperature Evaluation results in UFSAR Appendix 19E show the PRHR HX continues to meet its acceptance criterion. The UFSAR Chapters 6 and 15 analyses results are not affected, thus margins to their regulatory acceptance criteria are unchanged. The former design basis, which stated the PRHR HX could bring the plant to 420 °F within 36 hours is changed to state the heat exchanger can establish safe, stable conditions in the reactor coolant system after a design basis event. Such safe, stable conditions may not coincide with a core average temperature of 420 °F. However, the PRHR HX is able to bring the RCS to a sufficiently low temperature such that RCS conditions are comparable to those achieved at 420 °F—peak cladding temperatures and departure from nucleate boiling are maintained within acceptable limits of the evaluation criteria with adequate margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, the Commission will publish a notice of issuance in the **Federal Register**. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. 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, 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 at 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 shall 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 those specific sources and documents of which the petitioner is aware and 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 shall 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 these requirements 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 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).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

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 February 10, 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. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate 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.

IV. 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 request to intervene 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.

For further details with respect to this action, see the application for license amendment dated November 4, 2016.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Dated at Rockville, Maryland, this 2nd day of December 2016.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–29713 Filed 12–9–16; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amends Section 202(t) of the Social Security Act, effective January 1, 1985, the Tier I or the overall minimum (O/M) portion of an annuity, and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21.

RRB Form G–45, *Supplement to Claim of Person Outside the United States,* is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (81 FR 69873 on October 7, 2016) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR).

Title: Supplement to Claim of Person Outside the United States.

OMB Control Number: 3220–0155.

Form(s) submitted: G–45.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Public Law 98–21, the Tier I or the overall minimum portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the United States may be withheld. The collection obtains the information needed by the Railroad Retirement Board to implement the benefit withholding provisions of Public Law 98–21.

Changes proposed: The RRB proposes no changes to Form G–45.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–45	100	10	17

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Brian D. Foster,

Clearance Officer.

[FR Doc. 2016–29596 Filed 12–9–16; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Closed Meeting

Notice is hereby given that the Railroad Retirement Board will hold a closed meeting on December 22, 2016 beginning at 9:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Closed meeting notice:

(1) Chief Financial Officer Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 8, 2016.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–29862 Filed 12–8–16; 4:15 pm]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Notice of Closed Meeting; Sunshine Act

Notice is hereby given that the Railroad Retirement Board will hold a closed meeting on December 21, 2016 beginning at 9:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Closed meeting notice:

(1) Chief Financial Officer Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 8, 2016.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–29861 Filed 12–8–16; 4:15 pm]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Placement Service; OMB 3220–0057.

Section 12(i) of the Railroad Unemployment Insurance Act (RUIA), authorizes the RRB to establish, maintain, and operate free employment offices to provide claimants for unemployment benefits with job placement opportunities. Section 704(d) of the Regional Railroad Reorganization Act of 1973, as amended, and as extended by the Consolidated Omnibus Budget Reconciliation Act of 1985, required the RRB to maintain and distribute a list of railroad job vacancies, by class and craft, based on information furnished by rail carriers to the RRB. Although the requirement under the law expired effective August 13, 1987, the RRB has continued to obtain this information in keeping with its employment service responsibilities under Section 12(k) of the RUIA. Application procedures for the job placement program are prescribed in 20 CFR 325. The procedures pertaining to the RRB's obtaining and distributing job vacancy reports furnished by rail carriers are described in 20 CFR 346.1.

The RRB currently utilizes four forms to obtain information needed to carry out its job placement responsibilities. Form ES–2, *Central Register Notification,* is used by the RRB to obtain information needed to update a computerized central register of separated and furloughed railroad employees available for employment in the railroad industry. Forms ES–21, *Referral to State Employment Service,* and ES–21c, *Report of State Employment Service Office,* are used by the RRB to provide placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI–35, Field Office Record of Claimant Interview, is used primarily by the RRB to conduct in-person interviews of claimants for unemployment benefits.

Completion of these forms is required to obtain or maintain a benefit. In addition, the RRB also collects Railroad Job Vacancies information received voluntarily from railroad employers. No changes are proposed to any of the data collection instruments associated with the information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
ES–2	3,750	.25	16
ES–21	80	.68	0.9
ES–21c	25	1.50	0.6
UI–35 in person	6,300	7.00	735
UI–35 by mail	700	10.50	123
Job Vacancies	470	10.00	78
Total	11,325		953

2. Title and purpose of information collection: Certification Regarding Rights to Unemployment Benefits; OMB 3220–0079.

Under Section 4 of the Railroad Unemployment Insurance Act (RUIA), an employee who leaves work voluntarily is disqualified for unemployment benefits unless the employee left work for good cause and is not qualified for unemployment benefits under any other law. RRB Form UI–45, *Claimant's Statement—Voluntary Leaving of Work,* is used by the RRB to obtain the claimant's statement when the claimant, the claimant's employer, or another source indicates that the claimant has voluntarily left work.

Completion of Form UI–45 is required to obtain or retain benefits. One response is received from each respondent. The RRB proposes no changes to Form UI–45.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–45	200	15	50
Total	200		50

3. Title and purpose of information collection: Self-Employment and Substantial Service Questionnaire; OMB 3220–0138.

Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop nonrailroad work or self-employment.

The RRB considers some work claimed as ''self-employment'' to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These circumstances are prescribed in 20 CFR 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a ''Last Pre-Retirement Nonrailroad Employer'' (LPE). However, Section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from the ''LPE.''

The ''LPE'' is defined as the last person, company, or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. If a spouse never worked for a railroad, the LPE is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire,* to obtain information needed to determine if the work the applicant claims is self-employment is really self-employment or work for an LPE or railroad service. If the work is self-employment, the questionnaire identifies any month in which the applicant did not perform substantial service. One response is requested of each respondent. Completion is voluntary. However, failure to complete the form could result in the nonpayment of benefits. The RRB proposes no changes to Form AA–4.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–4 (With assistance)	570	40	380
AA–4 (Without assistance)	30	70	35
Total	600		415

4. Title and purpose of information collection: Designation of Contact Officials; 3220–0200.

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117a, *Designation of Contact Officials.* Form G–117a is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters.

Completion is voluntary. One response is requested from each respondent. The RRB proposes no changes to Form G–117a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–117a	100	15	25
Total	100		25

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or

Dana.Hickman@RRB.GOV. Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@RRB.GOV.* Written comments should be received within 60 days of this notice.

Brian D. Foster,

Clearance Officer.

[FR Doc. 2016–29602 Filed 12–9–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79478; File No. SR–NYSE–2016–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Exchange Would Not Be Required To Report to The Securities Information Processor an Official Closing Price, as Defined Under Rule 123C(1)(e)(i), as an ''M'' Sale Condition

December 6, 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 23, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 this rule change to provide that the Exchange would not be required to report to the securities information processor an Official Closing Price, as defined under Rule 123C(1)(e)(i), as an ''M'' sale condition. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 is proposing to provide that the Exchange would not be required to report to the securities information processor (''SIP'') an Official Closing Price, as defined under Rule 123C(1)(e)(i), as an ''M'' sale condition.[4] This proposed rule change would not change how the Official Closing Price would be determined and disseminated if the Exchange is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, as described in Rules 123C(1)(e)(ii)–(iv).

As set forth in the SIP Specifications, a price reported to the SIP by an exchange under the ''M'' sale condition, which is called the ''Market Center Official Close,'' is not used for purposes of determining a consolidated last sale price or the high or low price of a security and does not include any volume information. Each exchange determines what price could be reported to the SIP as its ''Market Center Official Close.'' To date, the Exchange has not reported to the SIP a price with an ''M'' sale condition.

By contrast, a trade reported to the SIP as a Market Center Closing Trade with a ''6'' sale condition includes volume information, is included in the consolidated last sale, and is included in the high or low price of a security. The Exchange reports to the SIP closing auction trades of a round lot or more with a ''6'' sale condition.[5]

Recently, the Exchange amended Rule 123C(1)(e) to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.[6] In that Filing, the Exchange noted that once it implemented changes to how the Exchange determines the Official Closing Price, the Exchange ''will disseminate to the SIP the Official Closing Price as an ''M'' value.'' [7]

With this proposed rule change, the Exchange is modifying this statement to permit, but not require, the Exchange to report a price with an ''M'' sale condition to the SIP when the Official Closing Price is determined under Rule 123C(1)(e)(i). Specifically, the Exchange does not believe that it should publish an Official Closing Price to the SIP as an ''M'' value if there has not been a last-sale eligible trade in a security on a trading day. For example, based on feedback from industry participants, the Exchange understands that certain market participants, such as index providers and mutual funds, follow a different method of determining a security's closing price when there have not been any last-sale eligible trades on a trading day. Under these circumstances, the Exchange understands that an Official Closing Price reported to the SIP as an ''M'' sale condition that differs from how an industry market participant may determine such value for its own purposes could lead to confusion if a market participant's systems read the ''M'' value published by the SIP that differs from their calculation.

Accordingly, this proposed rule change is intended to provide that the Exchange would not be required to publish an Official Closing Price, as defined in Rule 123C(1)(e)(i), as an ''M'' sale condition to the SIP. And, as noted above, this proposed rule change would not alter how the Official Closing Price

[4] For a description of all sale conditions that are reportable to the SIP, including the ''M'' and ''6'' sale conditions, see the Consolidated Tape System Participant Communications Interface Specification, dated September 15, 2016, at 87 (''SIP Specifications''), available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.*

[5] For example, under Rule 123C(1)(e)(i), if there were no closing transaction in a security or if a closing transaction is less than one round lot, the Exchange's Official Closing Price will be the most recent last-sale eligible trade on the Exchange in such security on that trading day. By contrast, on NYSE Arca, Inc., under the same circumstances, the Official Closing Price will be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. *See* NYSE Arca Equities, Inc. Rule 1.1(gg)(1)(A).

[6] *See* Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSE–2016–18; SR–NYSEMKT–2016–31) (Approval Order) and 77305 (March 7, 2016), 81 FR 12977 (March 11, 2016) (Notice of Filing).

[7] *See id.* at 12978. *See also* Securities Exchange Act Release No. 76598 (December 9, 2015), 80 FR 77688 (December 15, 2015) (SR–NYSE–2015–62) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to define the term ''Official Closing Price'').

would be disseminated under Rules 123C(1)(e)(ii)–(iv).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency that the Exchange's is not required to report a price to the SIP as an ''M'' sale condition. The Exchange believes that the proposed rule change is consistent with the Act because the ''M'' sale condition does not contribute to the consolidated last sale price for a security, the high or low price of a security, or reported volume for a security, and therefore is an informational value. The Exchange further believes that this proposed rule change is consistent with the protection of investors and the public interest because it would reduce confusion by eliminating publication to the SIP of a price that may conflict with how an index provider or mutual fund determines that value for a security if there are no last-sale eligible trades on a trading day. Finally, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would apply only when the Exchange is fully operational. If the Exchange is unable to conduct a closing transaction due to a systems or technical issue, current Rule 123C(1)(ii)—(iv) would govern, with no change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to specify that the Exchange would not be required to report an Official Closing Price to the SIP as an ''M'' sale condition if there has not been a last-sale eligible trade on a trading day.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the operative delay would be consistent with the protection of investors and the public interest because it would make transparent that the Exchange would not report an ''M'' sale condition to the SIP for a security if there has not been a last-sale eligible trade on a trading day. The Exchange further believes that the proposed rule change is consistent with the protection of investors and the public interest because it would not change how an Official Closing Price would be disseminated under Exchange Rule 123C(1)(e)(ii)–(iv). The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest because it clarifies the Exchange's reporting practices while maintaining its procedures for reporting and disseminating an Official Closing Price. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–75. 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

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–75 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29650 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79480; File No. SR–NYSEArca–2016–130]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending NYSE Arca Equities Rules 7.35 (Auctions), 7.10 (Clearly Erroneous Executions), 7.31 (Orders and Modifiers), and 7.11 (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility)

December 6, 2016.

On October 4, 2016, NYSE Arca, Inc. (''NYSE Arca'') 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 amend NYSE Arca Equities Rules 7.35 (Auctions), 7.10 (Clearly Erroneous Executions), 7.31 (Orders and Modifiers), and 7.11 (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility). The proposed rule change was published for comment in the **Federal Register** on October 24, 2016.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 8, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 22, 2017 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–130).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29652 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79107 (October 18, 2016), 81 FR 73159.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79486; File No. SR–BOX–2016–54]

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

December 6, 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 23, 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. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on December 1, 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

[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).

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 to amend Section IV. of the BOX Fee Schedule, Eligible Orders Routed to an Away Exchange.

Currently, BOX uses third-party broker-dealers to route orders to other exchanges and incurs charges for each order routed to and executed at an away market, in addition to the transaction fees charged by other exchanges. To offset the fees charged to the Exchange for orders routed to other exchanges, the Exchange charges a $0.60 per contract fee for customer accounts. However, the Exchange charges no fee for non-Professional, Public Customer Directed Orders when: (i) Less than 45% of a Participants' monthly executions for such orders are routed to and executed at an Away Exchange; and (ii) 33% or more of a Participants' monthly executions for such orders occur through the PIP.[5]

The Exchange is now proposing to amend Section IV of the BOX Fee Schedule. Specifically, the Exchange proposes to delete the exception to Section IV which does not charge non-Professional, Public Customer Directed orders as discussed above.

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 that proposed changes to Section IV of the BOX Fee Schedule are reasonable, equitable and not unfairly discriminatory. Presently, the Exchange charges customer accounts $0.60 per contract executed on away exchanges and exempts non-Professional, Public Customer accounts from the routing fee for orders received by BOX via Directed Order when certain execution thresholds are met. The Exchange notes that it is not proposing to change the fee amount. The Exchange believes that the current fee amount is reasonable and appropriate as it is in line with what is currently charged by the industry.[7] Additionally, the Exchange believes the proposed changes are equitable and not unfairly discriminatory, as the routing fee will now apply to all customer orders routed away from the Exchange. The Exchange notes that no other exchanges make this routing fee distinction based on execution thresholds as discussed above.[8] Therefore, the Exchange believes that the proposed changes will simplify the Fee Schedule resulting in less investor confusion.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing and would consider future adjustments to the routing fee to the extent it was recouping a significant profit or loss from routing to away options exchanges.

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.

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[9] and Rule 19b–4(f)(2) thereunder,[10] 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–2016–54 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–2016–54. 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

[5] *See* Securities Exchange Act Release No. 68149 (November 5, 2012), 77 FR 67693 (November 13, 2012) (Notice of Filing and Immediate Effectiveness SR–BOX–2012–017).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *See* International Securities Exchange (''ISE'') Fee Schedule Section IV (f). The Exchange notes that ISE charges the same fee for Market Makers, Non-ISE Market Makers, Broker Dealers/Firm Proprietaries, and Professional Customers. Priority Customers, however, are assessed a lower fee. BOX proposes to assess the same per contract fee for all account types. *See also* NYSE Arca (''Arca'') Fee Schedule.

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–54, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29659 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79475; File No. SR–NYSEMKT–2016–113]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 67—Equities To Modify the Web Site Data Publication Requirements Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

December 6, 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 30, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 Rule 67—Equities to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan''). 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.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, New York Stock Exchange LLC, NYSE Arca, Inc., the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (''BZX''), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, and the Nasdaq Stock Market LLC (collectively ''Participants'') filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[8] The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[9] On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.[10] Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[12] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Rule 67(b)(2)—Equities provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 67—Equities, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 67(b)(3)(C)—Equities, provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 67—Equities, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .70 to Rule

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[9] *See* Approval Order at 27533 and 27545.

[10] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

[11] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; *see also* Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[12] *See* Securities Exchange Act Release No. 77478 (March 30, 2016), 81 FR 19665 (April 5, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSEMKT–2016–40); *see also* Securities Exchange Act Release No. 78817 (September 12, 2016), 81 FR 63811 (September 16, 2016) (Immediate Effectiveness of Proposed Rule Change to Amend Rule 67-Equities to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSEMKT–2016–84); *see also* Letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE MKT, dated April 4, 2016.

67—Equities provides, among other things, that the requirement that the Exchange or their DEA make certain data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

The Exchange is proposing amendments to Rule 67(b)(2)—Equities (regarding Appendix B.I and B.II data) and Rule 67(b)(3)(C)—Equities (regarding Appendix B.IV data), to provide that data required to be made available on the Exchange's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .70 to Rule 67—Equities would provide that, notwithstanding the provisions of paragraphs (b)(2), (b)(3)(C) and (b)(5), the Exchange shall make data for the Pre-Pilot period publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan by February 28, 2017.[13]

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.[14]

Finally, the Exchange is proposing an amendment to Rule 67(b)(5)—Equities (regarding data described in Item III of Appendix B) to add a provision identical to Rule 67(b)(2)—Equities (as amended above pursuant to the proposed changes described above to such Rule), which shall require the Exchange to make the data described in Item III of Appendix B publicly available on the Exchange Web site within 120 calendar days following month end at no charge and shall not identify the member organization that generated the data. The Exchange is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.[15]

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The Exchange notes that the proposal does not alter the information required to be submitted to the SEC.

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 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)[18] of the Act and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby

[13] With respect to data for the Pilot Period, the requirement that the Exchange or their DEA make data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or DEA's Web site by February 28, 2017, which is 120 days following the end of October 2016.

[14] *See supra* note 11.

[15] *See* Section VII of the Plan.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

waives the 30-day operative delay and designates the proposed rule change to be operative as of November 30, 2016.[22]

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.[23] 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–NYSEMKT–2016–113 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–NYSEMKT–2016–113. 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 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–NYSEMKT–2016–113, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29647 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79476; File No. SR–NYSEARCA–2016–159]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.46 to Modify the Web Site Data Publication Requirements Relating To the Regulation NMS Plan To Implement a Tick Size Pilot Program

December 6, 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 30, 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 Rule 7.46 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan''). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, New York Stock Exchange LLC, NYSE MKT LLC, the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (''BZX''), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, and the Nasdaq Stock Market LLC (collectively ''Participants'') filed with the Commission, pursuant to Section 11A of the Act [4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[8] The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[9] On November 6, 2015, the SEC exempted the Participants from implementing the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[9] *See* Approval Order at 27533 and 27545.

Pilot until October 3, 2016.[10] Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[12] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Rule 7.46(b)(2) provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 7.46, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 7.46(b)(3)(C), provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 7.46, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .70 to Rule 7.46 provides, among other things, that the requirement that the Exchange or their DEA make certain data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

The Exchange is proposing amendments to Rule 7.46(b)(2) (regarding Appendix B.I and B.II data) and Rule 7.46(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on the Exchange's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .70 to Rule 7.46 would provide that, notwithstanding the provisions of paragraphs (b)(2), (b)(3)(C) and (b)(5), the Exchange shall make data for the Pre-Pilot period publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan by February 28, 2017.[13]

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.[14]

The proposed rule change also will provide that, with respect to Appendix C data, The Corporation, as DEA, shall collect the data required by Item I of Appendix C to the Plan for those ETP Holders that are Market Makers for which the Corporation is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. The Corporation, as DEA, shall also make the data collected pursuant to subparagraph (4) of Rule 7.46(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA Web site pursuant to FINRA Rules.[15] The Corporation is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.[16]

Finally, the Corporation is proposing an amendment to Rule 7.46(b)(5) (regarding data described in Item III of Appendix B) to add a provision identical to Rule 7.46(b)(2) (as amended above pursuant to the proposed changes described above to such Rule), which shall require the Corporation to make the data described in Item III of Appendix B publicly available on the Corporation Web site within 120 calendar days following month end at no charge and shall not identify the ETP Holder that generated the data. The Corporation is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.[17]

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

[10] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

[11] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; *see also* Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[12] *See* Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 4, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSEARCA–2016–52); *see also* Securities Exchange Act Release No. 78814 (September 12, 2016), 81 FR 63818 (September 16, 2016) (Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.46 to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSEARCA–2016–124); *see also* Letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE Arca, dated April 4, 2016.

[13] With respect to data for the Pilot Period, the requirement that the Exchange or their DEA make data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or DEA's Web site by February 28, 2017, which is 120 days following the end of October 2016.

[14] *See supra* note 10.

[15] FINRA will make this data publicly available on the FINRA Web site within 120 calendar days following month end at no charge and will not identify the Market Makers that generated the data or the individual securities. *See* FINRA Rule 6191(b)(4).

[16] *See* Section VII of the Plan.

[17] *See supra* note 14.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The Exchange notes that the proposal does not alter the information required to be submitted to the SEC.

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 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) [20] of the Act and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of November 30, 2016.[24]

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.[25] 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–NYSEArca–2016–159 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–NYSEArca–2016–159. 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 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–2016–159, and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29648 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(3)(C).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79485; File No. SR–BX–2016–066]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Titles of Equities Rule 7015 and Options Chapter XV, Section 3, and To Make Related Changes

December 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rename the title of rules that assess fees for connectivity to systems operated by the Exchange or FINRA under Equities Rule 7015 and Options Chapter XV, Section 3, and to make related changes to other rules that reference the renamed rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rename related text in Rule 7015 and Chapter XV Section 3 to more accurately reflect the services being provided and eliminate an outdated term. Both Rule 7015 and Chapter XV, Section 3, include connectivity to the TradeInfo[3] service, which is not related to connecting to the Exchange trading system. As a consequence, the Exchange believes that it is appropriate to rename the title of Rule 7015 as ''Ports and other Services'' and rename the title of Chapter XV, Section 3, as ''BX Options Market—Ports and other Services,'' which the Exchange believes more accurately describe the services provided to members under those rules.

The Exchange is also proposing to amend reference to the title of Rule 7015 in Rule 7011(a), which is titled ''Collection of Exchange Fees and Other Claims and Billing Policy,'' and is also amending reference to the title of Chapter XV, Section 3, found under Section 7(c)(2) of Chapter XV to reflect the amended titles of Rule 7015 and Chapter XV, Section 3. Last, the Exchange is deleting ''OMX'' from the name of the Exchange in references to the Exchange in Rules 7011 and 7015. The Exchange removed ''OMX'' from its name effective January 9, 2016,[4] and thus the change corrects the reference in the rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed 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, by clarifying applicability of rules whose current titles could confuse market participants. Specifically, the Exchange is eliminating the term ''Access'' and replacing it with the phrase ''Ports and other'' because the new titles will more accurately describe the depth and breadth of services provided to members under Rule 7015 and Chapter XV, Section 3. As explained above, Rule 7015 and Chapter XV, Section 3, include the TradeInfo service, which is not related to connecting to the equity or options markets. Last, the Exchange is making technical changes to Rules 7011 and 7015 to remove ''OMX'' from references to the Exchange thereunder. As noted above, the Exchange removed ''OMX'' from its name effective January 9, 2016. Thus, the changes proposed herein do not impact the fees, connectivity or services described under Rule 7015 and Chapter XV, Section 3, but rather merely clarify and harmonize the terminology used to better align it with what is provided under the rules.

[3] TradeInfo is an Internet-based tool that, among other things, allows users to view all of the BX order and execution information for their entire firm for both equities and options through a single interface. TradeInfo may be subscribed to under both Rule 7015 and Chapter XV, Section 3.

[4] *See* Securities Exchange Release Act [sic] No. 76656 (December 15, 2015), 80 FR 79381 (December 21, 2016) (SR–BX–2015–080).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

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 believes that, to the extent it has any impact on competition, the proposed change will promote competition by making it clear to all market participants and exchange competitors what is provided under Rule 7015 and Chapter, XV Section 3.

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

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)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[9] permits the Commission to designate a shorter time if such action

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative on filing. The Exchange stated that the proposed rule change promotes the protection of investors and the public interest by clarifying and harmonizing the terminology used in the Exchange's rules. Waiver of the operative delay would allow the Exchange, without delay, to rename the rules to make clear what the rules cover, therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–066 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–BX–2016–066. 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 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–BX–2016–066 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29658 Filed 12–9–16; 8:45 am]

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[10] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79488; File No. SR–DTC–2016–003]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Impose Deposit Chills and Global Locks and Provide Fair Procedures to Issuers

December 6, 2016.

I. Introduction

On May 27, 2016, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2016–003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published in the **Federal Register** on June 9, 2016.[3] The Commission received 10 comment letters to the proposed rule change from five commenters, including three response letters from DTC.[4] Pursuant to Section 19(b)(2) of the Act,[5] on July 21, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On July 29, 2016, DTC filed Amendment No. 1 to the proposed rule change. On September 6, 2016, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

Section II below provides an overview and brief description of both DTC and the proposed rule change. Section III provides a summary of the comments received and DTC's response to those comments. Section IV provides a discussion of the proposed rule change,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232 (June 9, 2016) (SR–DTC–2016–003) (''Notice'').

[4] *See* letter from Charles V. Rossi, Chairman, The Securities Transfer Association (''STA''), Inc. Board Advisory Committee, dated June 30, 2016, to Brent J. Fields, Secretary, Commission (''STA Letter I''); letter from Dorian Deyet, dated June 30, 2016 (''Deyet Letter''); letter from Ann K. Shuman, Managing Director and Deputy General Counsel, DTC, dated July 21, 2016, to Brent J. Fields, Secretary, Commission (''DTC Letter I''); letter from Harvey Kesner (''Kesner''), Sichenzia, Ross, Friedman, Ference, dated August 11, 2016, to Brent J. Fields, Secretary, Commission (''Kesner Letter I''); letter from Isaac Montal, Managing Director and Deputy General Counsel, DTC, dated August 22, 2016, to Brent J. Fields, Secretary, Commission (''DTC Letter II''); letter from Charles V. Rossi, Chairman, STA Board Advisory Committee, dated August 29, 2016, to Brent J. Fields, Secretary, Commission (''STA Letter II''); letter from Kesner, Sichenzia, Ross, Friedman, Ference, dated August 30, 2016, to Brent J. Fields, Secretary, Commission (''Kesner Letter II''); letter from Norman B. Arnoff (''Arnoff''), dated September 4, 2016 to Secretary Fields (''Arnoff Letter''); letter from Charles V. Rossi, Chairman, STA Board Advisory Committee, dated October 3, 2016, to Brent J. Fields, Secretary, Commission (''STA Letter III''); and letter from Ann K. Shuman, Managing Director and Deputy General Counsel, DTC, dated October 17, 2016, to Brent J. Fields, Secretary, Commission (''DTC Letter III''). *See* comments on the proposed rule change (SR–DTC–2016–003), *https://www.sec.gov/comments/sr-dtc-2016-003/dtc2016003.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78379 (July 21, 2016), 81 FR 49309 (July 27, 2016). The Commission designated September 7, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 78774 (September 6, 2016), 81 FR 62775 (September 12, 2016).

the comments received, and details the Commission's findings with respect to the proposed rule change. Finally, Section V concludes that, for the reasons discussed below in Sections II through IV, the Commission is granting approval of the proposed rule change, as modified by Amendment No.1.

II. Description of the Proposed Rule Change

A. Background

1. DTC

DTC plays a critical function in the national clearance and settlement system. It is the nation's central securities depository, registered as a clearing agency under Section 17A of the Act,[9] and its deposit and book-entry transfer services help facilitate the operation of the nation's securities markets. As a registered holder of trillions of dollars of securities, DTC processes enormous volumes of securities transactions facilitated by book-entry movement of interests, without transferring physical certificates. The Financial Stability Oversight Council, pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[10] designated DTC as a Systemically Important Financial Market Utility.[11]

DTC's participants (''Participants'') are primarily broker-dealers and banks, but as the nation's central securities depository, its role and actions also affect issuers and investors.[12] Participants agree to be bound by the Rules, By-Laws, and Organization Certificate of DTC, and other rules and procedures (collectively, ''Rules'').[13] DTC performs various services for Participants, including maintaining accounts that list Participants' securities holdings and allowing Participants to present securities to be made eligible for DTC's depository and book-entry services. If a security is accepted by DTC as meeting DTC's eligibility requirements for services[14] and is deposited with DTC for credit to the securities account of a Participant, it becomes an ''Eligible Security.'' Thereafter, Participants may deposit shares of that Eligible Security (''Deposited Securities'') into their respective DTC accounts.

To facilitate book-entry transfers and other services that DTC provides for its Participants, Deposited Securities are generally registered on the books of the issuer of the Eligible Security (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. DTC maintains Deposited Securities that are eligible for book-entry services in ''fungible bulk,'' meaning that each Participant whose securities of an issue have been credited to its securities account has a *pro rata* (proportionate) interest in DTC's entire inventory of that issue, but none of the securities on deposit are identifiable to or ''owned'' by any particular Participant.[15]

2. Overview of DTC's Prior Practice With Respect to Service Restrictions

As detailed in a proposed rule change previously filed by DTC on December 5, 2013,[16] DTC currently imposes two types of service restrictions: (i) A ''Deposit Chill'' whereby DTC refuses to accept further deposits of an Eligible Security but continues to provide book-entry services for existing shares of that Eligible Security already on deposit with DTC; or (ii) a more stringent ''Global Lock'' whereby DTC not only refuses to accept further deposits of an Eligible Security, but also ceases to provide all book-entry services for existing shares of that Eligible Security already on deposit with DTC.[17]

Prior to filing the current proposed rule change, DTC's practice was to impose a Deposit Chill upon detecting suspiciously large deposits of a thinly-traded Eligible Security.[18] According to DTC, such large deposits often were a red flag that could indicate a ''pump and dump'' scheme or other illegal distribution related to that security, and a Deposit Chill was necessary to maintain the status quo and avoid allowing DTC's services to be used in furtherance of improper activity.[19] An issuer could obtain the release of a Deposit Chill by providing to DTC a satisfactory legal opinion from independent counsel establishing that the Eligible Security fulfilled DTC's requirements for eligibility.[20] If an issuer were non-responsive to DTC's requests for information or otherwise refused or was unable to provide the required legal opinion, a Deposit Chill could remain in effect for years.[21]

Similarly, DTC's former practice was to impose a Global Lock if it became aware of a judicial or administrative proceeding alleging a violation of Section 5 of the Securities Act of 1933 (''Securities Act'') with respect to an Eligible Security on deposit with DTC.[22] According to DTC, such allegations in a formal legal proceeding provided a concrete indication that Eligible Securities could have been involved in an illegal distribution, making a Global Lock necessary to maintain the status quo and avoid allowing DTC's services to be used in furtherance of improper activity. Because of the gravity of the allegations and the risk to DTC and its Participants of potentially allowing DTC's services to be used in furtherance of improper activity, a Global Lock would be released only when (i) the underlying action was withdrawn, (ii) dismissed on the merits with prejudice, or (iii) otherwise resolved in a final, non-appealable judgment in favor of the defendants allegedly responsible for the violations of federal securities laws. Because many actions are only resolved after several years,[23] a Global Lock also could be maintained for years.

B. Proposed Rule Change

DTC withdrew its prior proposed rule change regarding Deposit Chill and Global Lock procedures, as described

[9] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (600–1).

[10] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[11] *See* Financial Stability Oversight Council, 2012 Annual Report, Appendix A, *available at https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf.*

[12] *See In re International Power Group, Ltd.* (''*IPWG*''), Securities Exchange Act Release No. 66611 (March 15, 2012), 2012 SEC LEXIS 844 at *24 (March 15, 2012) (Admin. Proc. File No. 3–13687).

[13] *Available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[14] *See* Rule 5, *supra* note 13; DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), January 2012 (the ''Operational Arrangements''), Section 1, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[15] *See* Securities Exchange Act Release No. 19678 (April 15, 1983), 48 FR 17603, 17605, n.5 (April 25, 1983) (describing fungible bulk); *see also* ≤N.Y. Uniform Commercial Code, § 8–503, Off. Cmt 1 (''. . . all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds'').

[16] *See* Securities Exchange Act Release No. 71132 (December 18, 2013); 78 FR 77755 (December 24, 2013) (SR–DTC–2013–11). The filing was in response to the Commission's opinion and order in *IPWG,* which directed DTC to ''adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H)'' of the Act.

[17] *See* Notice, 81 FR at 37232; *see also* SEC Investor Bulletin: DTC Chills and Freezes, *https://www.sec.gov/investor/alerts/dtcfreezes.pdf.*

[18] *See* Notice, 81 FR at 37233.

[19] *See* DTC Service Restrictions on Certain Book-Entry Securities—Procedures for Affected Issuers (September 2013), *http://www.stai.org/pdfs/dtc-whitepaperresericesrestrictionsandissuerfairprocess.pdf.*

[20] *See* Operational Arrangements, Section I.A, *supra* note 14.

[21] Notice, 81 FR at 37233.

[22] *Id.*

[23] *See, e.g., SEC* v. *Kahlon,*12–CV–517 (E.D. Tex., filed August 14, 2012); *SEC* v. *Bronson,* 12–cv–06421–KMK (S.D.N.Y., filed August 22, 2012). As of the date of this filing, neither case has been resolved.

above, on August 18, 2014.[24] Since that time, according to DTC, its prior practice of imposing Deposit Chills and Global Locks is no longer effective at preventing the harms those restrictions were originally intended to prevent, including, maintaining the status quo and preventing DTC's book-entry services from being used in furtherance of improper activity.[25] In May 2016, DTC filed the current proposed rule change. Based in part on DTC's determination that the prior process for imposing Deposit Chills and Global Locks (together, ''Restrictions'') is no longer effective at preventing or affecting the violative behavior the Restrictions were originally designed to combat, DTC now proposes to make significant changes to its processes and procedures for imposing Restrictions. As discussed more fully below, DTC now proposes, with certain limited exceptions as provided in Section 1(d) of the proposed rule change, to limit the circumstances in which it would impose a Restriction to the occurrence of a Financial Industry Regulatory Authority, Inc. (''FINRA'') halt, Commission suspension, or if DTC is ordered to impose the Restriction by a court of competent jurisdiction.[26] According to DTC, limiting Restrictions primarily to these three occurrences would be more effective in preventing DTC's services from being used in furtherance of improper activities.

Accordingly, as modified by Amendment 1, DTC's proposal would add Rule 33 to DTC's Rules to establish the limited circumstances under which DTC would impose a Restriction, as well as the fair procedures for the issuer to receive notice and an opportunity to challenge the Restriction and the standards DTC would apply to determine when to release a Restriction. Section 1 of the proposed rule would establish the four specific circumstances in which DTC may impose either a Deposit Chill or a Global Lock. Section 2 would require DTC to send written notice of the Restriction to the issuer of the Eligible Security detailing the basis for the Restriction and the specific procedures for the issuer to follow to challenge the Restriction. If an issuer chooses to challenge a Restriction under Section 2, Section 3 of the proposed rule establishes DTC's obligations with respect to providing a written decision from an independent Review Officer in response to that challenge. Section 4 identifies the specific bases upon which DTC would release a Restriction, even in the absence of a challenge by an issuer. Finally, Section 5 would clarify and limit the scope and applicability of the proposed rule. Each section of the proposed rule change is discussed in more detail below.

1. Section 1: The Specific Conditions Under Which DTC Could Impose a Restriction

Section 1 of the proposed rule establishes the conditions and the type of Restriction that DTC would impose under various circumstances. Under Section 1(a), DTC would impose a Global Lock if an Eligible Security is the subject of a trading halt imposed by the FINRA. Under Section 1(b), DTC would impose a Global Lock if an Eligible Security is the subject of a trading suspension imposed by the Commission. The proposed rule provides, however, that DTC would be permitted to decline to impose a Global Lock under Sections 1(a) and (b) of the proposed rule change if DTC reasonably determines that the Global Lock would not further the regulatory purpose of the trading halt or suspension.[27] For example, DTC could decline to impose a Global Lock if the reason for a FINRA halt is to pause the market to give market participants time to assess news of a pending event that may affect the security's price,[28] or the sole reason for a Commission suspension is the lack of current and accurate information about the company because it failed to file certain periodic reports with the Commission.[29]

Under Section 1(c) of the proposed rule change, DTC would impose a Restriction if ordered to do so by a court of competent jurisdiction. DTC would impose the particular Restriction imposed by court, or if no Restriction is specified, DTC would impose a Global Lock. According to DTC, Restrictions would be necessary in the circumstances described in Sections 1(a)–(c) to prevent settlement of trades that continue despite the halt or suspension, and prevent the liquidation of a halted or suspended position through DTC,[30] and because DTC's facilities should not be available to settle transactions otherwise prohibited by the Commission, FINRA, or a court of competent jurisdiction.[31]

Lastly, under Section 1(d) of the proposed rule change, DTC would be permitted to impose a Restriction, either Deposit Chill or Global Lock, if it identifies or otherwise becomes aware of a need for immediate action to avert an imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further deposits of, or continued book-entry services with respect to, an Eligible Security. This provision would provide DTC with flexibility to address unforeseen risks to DTC and its Participants, which would not be addressed by the more narrow conditions enumerated in Sections 1(a)–(c). DTC asserts that Section 1(d) would be invoked rarely, and only if such a Restriction would be necessary to avoid a significant material harm to DTC or one or more of its Participants.[32]

2. Section 2: Timing and Procedural Requirements for Written Notice of Restrictions and Opportunity To Object to Restrictions

Section 2 of the proposed rule would establish the timing and procedural requirements for DTC to provide an issuer with notice of a Restriction and for the issuer to object to that Restriction. First, DTC would be required to send a written ''Restriction Notice'' to the issuer of the Eligible Security within three business days of the imposition of the Restriction.[33] Section 2(a) would require DTC to include the following information in the Restriction Notice: (i) A statement of the basis for the Restriction under Section 1, which would be required to be set forth with reasonable specificity; (ii) the date the Restriction was imposed; and (iii) that within 20 days of receiving the Restriction Notice, the issuer may submit a written ''Restriction Response'' setting forth its objection to the Restriction and the basis for that objection under Section 4 of the proposed rule (discussed below). If an issuer submits a Restriction Response, Section 2(b) would permit DTC to request reasonable additional information or documentation from the issuer. Section 2(c) specifies that an issuer who fails to comply with a deadline required under Section 2 would waive its right to make the submission required by the deadline.

[24] *See* Securities Exchange Act Release No. 72860 (August 18, 2014), 79 FR 49825 (August 22, 2014) (SR–DTC–2013–11).

[25] Notice, 81 FR at 37233.

[26] *Id.*

[27] *Id.* at 37233–34.

[28] The Commission notes that imposing a halt on this basis is, in most instances, outside the scope of FINRA's trading halt authority for unlisted securities. *See* FINRA Rule 6440.

[29] DTC Letter III at 3.

[30] *Id.*

[31] *Id.*

[32] *Id.; see also* Notice, 81 FR at 37234.

[33] The Restriction Notice would be send by overnight courier to (i) the issuer's last known business address, and (ii) the last known business address of the issuer's transfer agent, if any, on record with DTC.

3. Section 3: Timing and Procedural Requirements for DTC's Review of and Written Response to an Issuer's Objection to a Restriction

Section 3 of the proposed rule change establishes the process for DTC to issue a Restriction Decision when, under Section 2, it receives a Restriction Response. Specifically, Section 3 provides that DTC shall provide the issuer with a written ''Restriction Decision'' within 10 business days of receipt of the Restriction Response.[34] Under Section 3(a), the Restriction Decision would be required to be made by a ''Review Officer'' who did not have responsibility for the imposition of the Restriction, or his delegate. The Review Officer would be required to be an officer of DTC as defined in DTC's By-Laws.[35] In conducting his or her review, the Review Officer would be required to look to the standards of review set forth in Section 4 of the proposed rule (discussed below) to determine whether reasonable adequate cause to release the Restriction exists.

After receiving the Restriction Decision, an issuer would have 10 business days to submit a supplemental written response (''Supplement''). However, a Supplement could only be submitted for the purpose of establishing that DTC made a clerical mistake or mistake arising from an oversight or omission in reviewing the Restriction Response. If the issuer submits a Supplement, the Review Officer would provide a Supplement Decision within 10 business days after the Supplement was delivered. Section 3(d) of the proposed rule specifies that, taken together, the Restriction Notice, the Restriction Response, the Restriction Decision, the Supplement, the Supplement Decision, and any other documents submitted in connection with the proposed procedures would constitute the record for purposes of any appeal to the Commission.

4. Section 4: Standards For Determining Whether Adequate Cause Exists for Release of a Restriction

Section 4 of the proposed rule establishes the specific grounds upon which DTC would be required to release a Restriction imposed pursuant to Section 1 of the proposed rule, even in the absence of a Restriction Response from an issuer, by establishing when adequate cause for the release of the Restriction would be deemed to exist. For Global Locks imposed pursuant to Sections 1(a) or (b) of the proposed rule change (*i.e.,* when FINRA issues a trading halt or the Commission issues a trading suspension), adequate cause to release the Global Lock would exist when the halt or suspension was lifted. According to DTC, because trading would no longer be prohibited by FINRA or the Commission, there should not be any settlement restrictions at DTC, other than operational restrictions imposed in the ordinary course of business as otherwise provided for in DTC's Rules. Similarly, under Section 4(c) of the proposed rule change, for a Restriction imposed pursuant to Section 1(c) of the proposed rule change (*i.e.,* an order from a court of competent jurisdiction), adequate cause would exist to release the Restriction when a court of competent jurisdiction orders DTC to release the Restriction. DTC explains that if the court no longer required the Restriction, there would be no reason for DTC to continue to impose it.

As noted above, Section 1(d) of the proposed rule change is intended to provide DTC with necessary flexibility to address unforeseen risks to it and its Participants, and thus DTC notes it is impossible to outline with specificity all of the scenarios that could give rise to a release of a Restriction under Section 1(d). However, to provide a workable standard for evaluating when the release of a Restriction imposed under Section 1(d), DTC provides that ''adequate cause'' for the release of the Restriction would exist when DTC reasonably determines that the release of the Restriction would not pose a threat of imminent adverse consequences to DTC or its Participants—typically meaning that the conditions underlying original basis for the Restriction have abated. For example, a Section 1(d) Restriction would be released when DTC determines that the perceived harm has passed or is significantly remote, or when the basis for the Restriction no longer exists.[36] DTC also notes that, for Global Locks in effect today that were originally imposed based on a judicial or administrative proceeding under the prior procedures described above in Section II.A.2, Section 4(d) of the proposed rule change would require DTC to release the Global Lock, provided there currently is no indication that illegally distributed securities are about to be deposited.[37]

Lastly, Section 4(e) of the proposed rule change would require DTC to release a Restriction if DTC reasonably determined that its imposition of the Restriction was based on a clerical mistake.

5. Section 5: Clarification and Limitation of Scope and Applicability of Proposed Rule 33

Section 5 of the proposed rule change clarifies the scope and applicability of the proposed rule change. Section 5(a) specifies that the proposed rules would not affect DTC's ability to lift or modify a Restriction, thus preserving DTC's flexibility to release or modify a Restriction based on the needs of DTC and its Participants. Section 5(b) clarifies that the proposed rules do not affect DTC's ability to operationally restrict book-entry services, Deposits, or other services in the ordinary course of business pursuant to other provisions of the DTC Rules, as such restrictions would not constitute Restrictions under the proposed rule change. Sections 5(c) and (d) would permit DTC to communicate with the issuer or its transfer agent or representative, if any, provided that substantive communications are memorialized in writing to be included in the record for purposes of any appeal to the Commission, and to send out a Restriction Notice prior to the imposition of a Restriction (thus giving the issuer or its transfer agent advance notice of the Restriction), respectively.

III. Summary of Comments Received

The Commission received 10 comment letters in response to the proposed rule change.[38] One comment letter generally supports the proposed rule change.[39] Five comment letters by two commenters, STA and Kesner, object to the proposed rule change.[40] Three comment letters from DTC respond to the objections raised by STA and Kesner,[41] and one comment letter does not specifically comment on any aspect of the proposed rule change.[42]

A. Supporting Comment

One commenter generally endorses the proposed rule change, stating that the proposed procedures for fair notice and opportunity to challenge would

[34] The deadline may be extended for a reasonable period if DTC has requested additional information or documentation from the issuer pursuant to Section 2(b) of the proposed rule change, or by consent of the issuer, the issuer's transfer agent, if any, or the issuer's authorized representatives, if any.

[35] An officer is defined under the DTC By-Laws to be the Executive Chairman of the Board, Chief Executive Officer, Chief Operating Officer, or a Managing Director or other senior officers or employees of DTC elected or appointed by the DTC Board pursuant to the DTC By-Laws. *See supra,* note 13.

[36] Notice, 81 FR at 37234.

[37] *Id.*

[38] *See supra* note 4.

[39] *See* Arnoff Letter.

[40] *See* STA Letters I, II, and III and Kesner Letters I and II.

[41] *See* DTC Letters I and II.

[42] *See* Deyet Letter.

prevent and mitigate harm to both issuers and innocent shareholders.[43]

B. Objecting Comments

STA and Kesner express general concerns with DTC, which STA and Kesner claim functions as a monopoly in the clearance and settlement of securities, exercising discretion to deny access to its services.[44] More specifically, STA and Kesner argue that the proposed rule change is inconsistent with Section 17A(b)(3)(F) of the Act because it is not designed to protect investors and the public interest, and that it is inconsistent with Section 17A(b)(3)(H) of the Act because the procedures for notice of and opportunity to challenge restrictions imposed by DTC are not fair.[45]

1. The Proposed Rule Change is Not Designed To Protect Investors and Public Interest as Required by Section 17A(b)(3)(F) of the Act

STA and Kesner argue that the proposed rule change is inconsistent with the Act for the following reasons: (i) The proposed basis for the imposition of Restrictions is vague and discretionary and inconsistent with the intent of Section 19 of the Exchange Act; (ii) the proposed basis for imposition of Restrictions would hurt issuers and shareholders; and (iii) Congress did not intend for DTC to be a fraud regulator. Each argument is discussed below.

(i) Proposed Basis for Imposition of Restrictions Is Vague and Discretionary and Inconsistent With the Intent of Sections 17A and 19 of the Act and Rule 19b–4 Thereunder

Commenters were generally supportive of the proposed basis for imposing Restrictions under Sections 1(a), (b), and (c) of the proposed rule change,[46] but some commenters raise objections to Section 1(d) of the proposed rule change. Specifically, STA asserts that the authority to impose Restrictions under Section 1(d) of the proposed rule change is overly broad, arbitrary, permits DTC to exercise unfettered discretion, and would allow DTC to take action without any real evidence of the likelihood of actual harm or violation of objective standards.[47] STA further claims that the authority to impose Restrictions under Section 1(d) is so vague that the Commission has no way of knowing whether DTC is attempting to regulate matters not related to (i) the purposes of Section 17A of the Act, (ii) the administration of the clearing agency, or (iii) consistent with the requirements of the Act, as required by Sections 17A(b)(3)(F) and 19(b)(2)(C) of the Act.[48] Likewise, STA states that the authority to impose Restrictions under Section 1(d) of the proposed rule change is inconsistent with the intent of Section 19 of the Act and Rule 19b–4 thereunder, which encourages transparency by requiring a clearing agency to seek approval of a stated policy, practice, or interpretation.[49] Therefore, STA argues that the proposal is contrary to the openness envisioned by Congress.[50]

Similar to STA, Kesner expresses concern that Section 1(d) of the proposed rule change would give authority to DTC to impose Restrictions merely upon the initiation of an investigation or enforcement proceeding where it concludes a threat is imminent requiring immediate action.[51] Kesner states that the Commission has not directed DTC to adopt rules to protect DTC or DTC's financial institution owners and DTC has not articulated how exercising discretionary authority satisfies its obligation for a fair process.[52]

According to Kesner, DTC's previous imposition of Restrictions, in many cases, were only based upon ''flimsy legal footing, notice of commencement of an investigation or inquiry, anecdotal observations or even unproven news stories.'' [53] Kesner states that the proposed rule change does not address the ''unfortunate results that befall innocents caught up by a [Restriction], nor the immensity of the costs and burdens placed on issuers and investors seeking to clear a [Restriction].'' [54] Kesner states that small issuers do not have the resources to defend themselves and even with the potential of an appeal Restrictions cause irreparable damage.[55] Rather, the imposition of Restrictions would best be left to exchanges and other ''regulatory bodies'' that have sufficient resources and could direct DTC to impose a service restriction when warranted.[56]

(ii) Proposed Basis for Imposition of Restrictions Would Hurt Issuers and Shareholders

STA contends that the proposed rule change was not a ''good faith attempt'' by DTC to comply with the Commission's order in *IPWG* and is inconsistent with Section 17A(b)(3)(F) of the Act [57] because imposition of Restrictions would hurt issuers and innocent investors.[58] Specifically, STA asserts that the authority to impose Restrictions under Section 1(d) of the proposed rule change should balance the effect of DTC's actions on innocent shareholders because a Restriction could have a devastating effect on investors and could cause trading in the shares of an issuer to come to a virtual stop.[59] Therefore, innocent investors may find that their shares are virtually valueless during the period the Restriction is in place.[60]

(iii) Congress Did Not Intend DTC To Be a Fraud Regulator

STA states that the proposed rule change is inconsistent with Section 17A(b)(3)(F) of the Act [61] because Congress did not intend DTC to act as a fraud regulator or to enforce laws unrelated to clearance and settlement.[62] Specifically, STA asserts that the authority to impose Restrictions under Section 1(d) of the proposed rule change is inconsistent with Section 17A(b)(3)(F) of the Act,[63] which requires, among other things, that the rules of the clearing agency are not designed to regulate by virtue of any authority conferred by the Act matters not related to the purposes of Section 17A of the Act or the administration of the clearing agency.[64] STA states that the authority for fraud regulation is conferred under other sections of the Act on the Commission and different self-regulatory organizations with respect to their members.[65] Thus, STA contends that DTC does not have the authority to implement the proposed rule change.[66]

[43] *See* Arnoff Letter.

[44] STA Letter I at 1; Kesner Letter I at 1.

[45] *See id.*

[46] *See, e.g.,* Kesner states that the basis for imposing Restrictions under Sections 1(a), (b), and (c) of the proposed rule change is consistent with the approach of DTC being directed by a regulator or court. Kesner Letter I at 6. Meanwhile, STA states that it applauds the certainty afforded by the Sections 1(a), (b), and (c) of the proposed rule change. *See* STA Letter I at 3.

[47] STA Letter I at 1–3; *see also* STA Letter II at 2.

[48] STA Letter III at 2.

[49] *Id.*

[50] *Id.*

[51] Kesner Letter I at 6.

[52] Kesner Letter I at 2, 3; Kesner Letter II at 1.

[53] Kesner Letter I at 2.

[54] *Id.* at 2, 3; Kesner Letter II at 1.

[55] Kesner Letter I at 2.

[56] *Id.* at 6.

[57] 15 U.S.C. 78q–1(b)(3)(F).

[58] STA Letter I at 3. STA Letter III at 2.

[59] STA Letter III at 2.

[60] *Id.*

[61] 15 U.S.C. 78q–1(b)(3)(F).

[62] STA Letter III at 2.

[63] 15 U.S.C. 78q–1(b)(3)(F).

[64] STA Letter III at 2.

[65] *Id.*

[66] *Id.*

2. The Proposed Rule Change Does Not Provide Fair Procedure With Respect to Restrictions Imposed by DTC as Required by Section 17A(b)(3)(H) of the Act

Commenters object to the proposed rule change on the basis that they do not believe that it is consistent with either Section 17A(b)(3)(H) of the Act [67] or the Commission's order in *IPWG.* First, Kesner argues that DTC cannot be ''fair'' and cannot satisfy the requirements set forth in *IPWG* if DTC sets its own standards and acts on its own accord to impose a Restriction not directed by a traditional regulator or court because DTC does not have the resources, technical expertise, or ''commitment to fairness'' to undertake such an expansive role in the substantive regulation of securities issuers or to become a ''super-gatekeeper.'' [68]

Second, Kesner states that DTC's imposition of Restrictions under Section 1(d) of the proposed rule change, if approved, should include specific methods by which an issuer can successfully appeal and require DTC to remove the Restriction (or provide for automatic removal after a short period) that are fair and reasonable and that do not burden smaller issuers with excessive costs or delays during the denial of the DTC's essential services.[69] Kesner argues that to do otherwise would hurt innocent investors and shareholders.[70]

Third, STA contends that Section 3 of the proposed rule change as originally proposed (*i.e.,* before DTC filed Amendment 1) was procedurally deficient because there were no time periods specified in the proposed rule change for the DTC Review Officer's review to be completed. Thus, in some cases issuers and investors could be harmed for an indefinite period while waiting for DTC to reach a decision.[71] Specifically, STA asserts that DTC should limit its Restriction, under Section 1(d) of the proposed rule change, to only a single 10-day period, with any ''fair process'' occurring during that 10-day Restriction.[72] DTC could resolve concerns based on a ''misunderstanding'' or inform the Commission or FINRA of its concerns, allowing either organization to take further action to protect DTC, its Participants, or investors from the imminent harm.[73] STA also asserts that notice of a Restriction should occur prior to or, at least, contemporaneously with imposition of the Restriction, particularly in the case of a Restriction imposed based on DTC's assessment of imminent harm, under Section 1(d) of the proposed rule change, not three days after the Restriction is imposed.[74]

Fourth, STA expresses concern that the Review Officer tasked with reviewing a Restriction Response could be located in an office near the person that imposed the Restriction, could have been involved in imposing the Restriction, and could be charged with overturning the decision made by a colleague.[75] Similarly, Kesner questions the independence of the Review Officer and asserts that *IWPG* requires that appeals should be heard by parties independent of DTC and suggests that ''representatives of the securities bar, [STA], transfer agents, clearing and settlement firms, auditors, and business people, under the guidance of the DTC General Counsel, should constitute the panel of hearing officers making recommendations for imposition and removal of [Restrictions], continuations and appeals whenever DTC acts.'' [76]

Finally, commenters raise other points that either did not pertain to the proposed rule change, or did not suggest how such issues would make the proposed rule change inconsistent with the Act.[77] As such, those points are beyond the scope of the proposed rule change and, therefore, are not further summarized or discussed in this order.

C. DTC's Response

As discussed more fully below, DTC argues that the proposed rule change is consistent with the Act in that it is consistent with Section 17A(b)(3)(F) of the Act because it is designed to protect investors and the public interest, and it provides fair procedures as required by Section 17A(b)(3)(H) of the Act.

1. The Proposed Rule Change Is Designed To Protect Investors and the Public Interest as Required by Section 17A(b)(3)(F) of the Act

(i) Response to Comments That the Proposed Basis for Imposition of Restrictions Is Vague and Discretionary and Inconsistent With the Intent of Sections 17A and 19 of the Act and Rule 19b–4 Thereunder

In response to STA's comment that the basis for imposition of Restrictions under the proposed rule change is vague, DTC asserts that Sections 1(a)–(c) of the proposed rule change provide specific, objective trigger events for imposing Restrictions and would be the primary focus of the Restriction program going forward.[78] Further, while DTC acknowledges that it cannot anticipate each circumstance under which immediate action could be needed under Section 1(d) to prevent harm to DTC or its Participants,[79] it provides specific examples of such circumstances, including: (i) If DTC receives information from an authorized officer of the issuer that another company has usurped the identity of the company and issued unauthorized shares; (ii) if DTC has corroborated and plausible information that forged securities are being deposited at DTC; (iii) a foreign regulatory authority raises credible concerns about an Eligible Security; or (iv) there is a material recordkeeping issue that raises questions about the Eligibility of a specific security.[80] DTC also asserts that STA's position that the Commission should not approve the proposed rule change if it includes Section 1(d) would deny DTC the flexibility to impose Restrictions that could be necessary to avoid imminent harm to DTC or its Participants,[81] thereby subjecting DTC and its Participants to significant

[67] 15 U.S.C. 78q–1(b)(3)(H).

[68] Kesner Letter I at 2, 4–5; Kesner also stated that the Commission has not ''direct[ed] DTC to adopt[ ] rules to protect DTC or DTC's financial institution owners and DTC has not articulated how exercising discretionary authority satisfies its obligation for a fair process.'' Kesner Letter II at 1; *see also* STA Letter II at 3; STA Letter III at 2.

[69] Kesner Letter I at 6.

[70] *Id.*

[71] STA Letter I at 4.

[72] *Id.*

[73] *Id.* at 4.

[74] STA Letter I at 4.

[75] *Id.*

[76] Kesner Letter II at 2.

[77] Examples of points raised by the commenters about the proposed rule change that did not address whether the proposed rule change is or is not consistent with the Act include STA stating that the proposal should also apply to transfer agents seeking initial access to DTC's facilities (STA Letter I at 4), and Kesner stating that (i) the Commission should not act on the proposal without specific comments from major exchanges and OTCLink regarding coordination with DTC and the Commission concluding that DTC's actions under the proposal would not interfere with the objectives of exchanges and other regulators and not hamper the functioning of the markets; (ii) DTC would need to give up its immunity from lawsuits in order for there to be a potentially fair process in the imposition and appeal of Restrictions; (iii) investors should have standing to appeal a Restriction; and (iv) the Commission should require DTC to undertake a study and submit all of its statistics surrounding Restrictions. Kesner Letter I at 4, 6; Kesner Letter II at 3. Similarly, Arnoff asserted that the proposal should clarify that DTC should not be immune from civil liability, particularly if DTC cannot establish that it acted in good faith and with reasonable judgment, because DTC is not acting in a governmental capacity in the settlement and clearance process. Arnoff Letter. Moreover, Arnoff stated that because DTC is not infallible and the risk of error always exists, DTC should be required to purchase ''errors and omissions insurance'' to protect innocent issuers and investors and to add an ''additional dimension of loss prevention.'' Arnoff Letter.

[78] DTC Letter I at 2.

[79] DTC Letter I at 3; DTC Letter III at 3.

[80] DTC Letter III at 3.

[81] *Id.* at 2; DTC Letter III at 3.

potential harm. DTC states that it needs such flexibility to protect itself and its Participants from an imminent harm that may not warrant or be covered by a trading halt or suspension.[82]

In response to Kesner's comment that Section 1(d) of the proposed rule change would give authority to DTC to impose Restrictions merely upon the initiation of an investigation or enforcement proceeding where DTC concludes a threat is imminent and requires immediate action, DTC asserts that the Commission recognized in *In re Atlantis Internet Group* (''*Atlantis*'')[83] and *IPWG* that DTC has such authority and that it is critical to the self-regulatory function of DTC to retain discretion to avert imminent harm, including the discretion to take action before providing notice to the issuer, if necessary.[84] DTC states that Section 1(d) of the proposed rule change would be used only for urgent situations and exercised rarely, such as in the example scenarios listed above.[85]

(ii) Response to Comments That the Proposed Basis for Imposition of Restrictions Would Hurt Issuers and Shareholders

DTC states, generally, that the proposed rule change would assure the safeguarding of securities by providing a mechanism for DTC to act quickly and efficiently to screen out prior to deposit, or restrict after deposit, securities that pose an imminent harm to DTC or its Participants, or for which trading has been prohibited by a court or applicable regulator.[86] Specifically, DTC states that Sections 1(a) and (b) of the proposed rule change provide objective trigger events for imposing Restrictions when the Commission imposes a trading suspension or FINRA impose a trading halt.[87] DTC explains that, although trading activity takes place outside of DTC, DTC provides a settlement location for market traders or other transfers of interests in securities.[88] Thus, absent a DTC Restriction, other book-entry transfers might continue (*e.g.,* pledges, repos, or securities lending), notwithstanding a Commission suspension or FINRA halt.[89] A Restriction would freeze these Participant activities, which DTC believes would further the regulatory purpose of the Commission suspension or FINRA halt.[90]

Further, DTC emphasizes that it would not impose a Restriction if DTC believes that the suspension or halt does not implicate concerns that DTC believes should lead to a Restriction.[91] For example, under Section 1 of the proposed rule change, DTC could decline to impose a Global Lock if (i) in the case of a FINRA halt, if the reason for the halt is to pause the market to give market participants time to assess news of a pending event that may affect the security's price; or (ii) in the case of a Commission suspension, if the sole reason for the suspension is the lack of current and accurate information about the company because it failed to file certain periodic reports with the Commission.[92]

With respect to Section 1(d) of the proposed rule change, DTC asserts that it believes that Section 1(d) is consistent with the Act because it would provide DTC with the flexibility it needs to protect its fungible bulk, which it holds on behalf of its Participants, from imminent harm that could arise from circumstances that would neither justify nor be affected by a trading halt or suspension,[93] while still providing sufficient notice of the types of circumstances that could trigger a Restriction under Section 1(d). DTC also reiterates that it does not anticipate imposing Restrictions pursuant to Section 1(d) of the proposed rule change frequently,[94] and has provided specific examples of circumstances under which imminent harm could arise in the future, as described above.[95]

(iii) Response to Comments That DTC Would Be Acting as a Fraud Regulator

In response to comments that Congress did not intend DTC to act as a fraud regulator or to enforce laws unrelated to clearance and settlement, DTC asserts that Sections 1(a)–(c) of the proposed rule change would further the regulatory purpose behind a Commission, FINRA, or court action by stopping the flow of questionable securities in other book-entry transfers that may continue despite other regulatory action.[96]

With respect to Section 1(d), DTC states that there are situations that would require DTC to impose a Restriction that might not require a Commission suspension or FINRA halt.[97] For instance, DTC could impose a Restriction (i) if DTC receives information from an authorized officer of the issuer that another company has usurped the identity of the company and issued unauthorized shares; (ii) if DTC has corroborated and plausible information that forged securities are being deposited at DTC; (iii) a foreign regulatory authority raises credible concerns about an eligible security; or (iv) there is a material recordkeeping issue that raises questions about the eligibility of a specific security. The Commission also notes that, as discussed below, a Restriction could be necessary to prevent DTC's services from being used to facilitate an unregistered distribution or other violation of the securities laws.

2. The Proposed Rule Change Does Provide Fair Procedure With Respect to Restrictions Imposed by DTC on Access to Its Book-Entry Services by Issuers and Shareholders as Required by Section 17A(b)(3)(H) of the Act

DTC states that the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act[98] and *IPWG.* Specifically, in response to STA's and Kesner's comments that the proposed rule change does not provide for fair procedures nor satisfy the requirements of *IPWG,* DTC highlights that the Commission's decisions in both *Atlantis* and *IPWG*[99] recognize that DTC must retain discretion to avert imminent harm, including the discretion to take action before providing notice to the issuer, if necessary.[100]

In response to STA's specific claim that the proposal is procedurally deficient because it lacks a stated time period for the Review Officer to complete the review, DTC submitted Amendment No.1 to Section 3 of the proposed rule change, which, as described above, establishes a 10 business-day deadline, with limited extension, for the Review Officer to complete its review of the Restriction Response and for DTC to provide a Restriction Decision.[101]

Similarly, in response to both STA's and Kesner's comments that Restrictions imposed under Section 1(d) of the

[82] DTC Letter I at 3; DTC Letter III at 3.

[83] *Atlantis,* Securities Exchange Act Release. No. 75168 at 7–8, 2015 SEC LEXIS 2394 (June 12, 2015) (Admin. Proc. File No. 3–15432).

[84] DTC Letter I at 3; DTC Letter II at 2.

[85] DTC Letter III at 3.

[86] *See* Notice, 81 FR 37235.

[87] DTC Letter III at 2.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.* at 2, 3.

[92] *Id.* at 3.

[93] DTC Letter I at 2; DTC Letter III at 3.

[94] DTC Letter III at 3.

[95] *Id.*

[96] *Id.* at 2, 3.

[97] *Id.* at 3.

[98] 15 U.S.C. 78q–1(b)(3)(H).

[99] *Atlantis,* 2015 SEC LEXIS 2394 at *7, 8.

[100] DTC Letter I at 3.

[101] Prior to filing Amendment No. 1, DTC also contended in its first response letter that a reasonable review by the Review Officer in a timely manner is implicit in the proposed process, recognizing that DTC is bound to perform a prompt review, and to do otherwise may conflict with its obligations under Section 17A of the Act. DTC Letter I at 4; 15 U.S.C. 78q–1.

proposed rule change should be automatically removed after a short period or expire after 10 days, DTC states that it would not be effective, reasonable, or practical for DTC to premise its proposed rule change on the assumption that the Commission or FINRA would or could take action quickly enough to protect DTC, its Participants, or investors.[102] DTC explains further that imminent harm to DTC or its Participants could arise from circumstances that may not be addressed by or may not justify a trading halt or suspension, such as the impending deposit of illegally distributed securities at DTC.[103] DTC also reiterates that it does not anticipate imposing Restrictions pursuant to Section 1(d) of the proposed rule change frequently.[104]

In response to STA's and Kesner's comments on the independence of the Review Officer, and STA's comment that notice of a Restriction should be at least contemporaneously with the imposition of the Restriction, DTC states that it believes the proposed rule change is sufficiently clear to require that the Review Officer not be conflicted and that the Review Officer's decision would be unbiased and independent,[105] and that both *Atlantis* and *IPWG* recognize that DTC must retain discretion to take action before providing notice to the issuer, if necessary.[106]

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization.[107] After carefully considering the proposed rule change, the comments received, and DTC's responses thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission finds that the proposed rule change is consistent with Sections 17A(b)(3)(F) and 17A(b)(3)(H) of the Act, as discussed in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of the clearing agency are designed to assure the safeguarding of securities in the custody or control of the clearing agency and, in general, protect investors and the public interest.[108]

Sections 1(a) and (b) of the proposed rule change, respectively, would authorize DTC to impose a Global Lock where FINRA has issued an order for the halt of trading of an Eligible Security or the Commission has issued an order for the suspension of trading of an Eligible Security. Section 1(c) of the proposed rule change would authorize DTC to impose a Restriction when ordered to do so by a court of competent jurisdiction. In such a situation, DTC would impose the Restriction specified by the court, or a Global Lock if no Restriction was specified. As noted above, commenters are generally supportive of the proposed basis for imposing Restrictions under Sections 1(a), (b), and (c) of the proposed rule change.[109] A halt, suspension, or court order would raise questions as to whether the security at issue would continue to meet the eligibility criteria set forth in DTC's Rules. The Commission therefore agrees that DTC should have the authority under its Rules to place a Restriction on such securities if doing so will help prevent potentially ineligible securities from tainting DTC's fungible bulk, thereby protecting DTC and DTC's Participants from facilitating wrongful activities, and investors from having Eligible Securities tainted by securities of the same issue that do not meet DTC's eligibility criteria. The Commission also agrees that providing DTC with authority to impose a Restriction on securities that are the subject of a FINRA halt or Commission suspension would help protect investors and possibly stop further wrongdoing, because the Restriction would stop deliveries, redemptions, pledges, lending, deposits, and other types of transfers and settlements made via DTC's book-entry services that may not be addressed by the trading halt or suspension.

The proposed rule change would provide DTC the discretion to *not* impose a Global Lock, even if FINRA or the Commission issued a halt or suspension of trading of an Eligible Security, if such a Restriction would not further the regulatory purpose of the halt or suspension. For example, if a halt or suspension was imposed for a reason unrelated to the eligibility of the security for DTC's book-entry services,[110] DTC would not be required to impose a Restriction. This provision protects issuers and investors from the burdens of unnecessary Restrictions by providing DTC with flexibility to avoid imposing a Global Lock if doing so would not be in the interest of protecting DTC, DTC's Participants, issuers, or investors.

Section 1(d) of the proposed rule change would authorize DTC to impose a Restriction upon identifying or becoming aware of a need to take such action to avoid imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further deposits of, or continued book-entry services to, a particular Eligible Security. As described above, commenters generally raise three objections to Section 1(d): (i) Section 1(d) is impermissibly vague, thereby granting DTC unfettered discretion to impose Restrictions under it; (ii) issuers and investors would be harmed by Restrictions imposed under this provision, including because it would stop all book-entry services for that security, possibly affecting the value of the security;[111] and (iii) by exercising its discretion under Section 1(d), DTC would be improperly acting as a fraud regulator. With respect to the first objection, one commenter also states that the need to impose a Restriction under Section 1(d) of the proposed rule change should be balanced with the interests of shareholders of the security.[112]

The Commission does not find that Section 1(d) of the proposed rule change is impermissibly vague, or that it would grant DTC unfettered discretion to impose Restrictions without a proper basis or adequate protections for issuers. First, Section 1(d) is not impermissibly vague because it establishes specific criteria for imposing a Restriction and would require DTC to meet a high standard before it would be permitted to do so under that provision. Specifically, DTC would be required to identify (i) a need for *immediate* action (ii) to avert an *imminent,* (iii) harm, injury, or other such *material* adverse consequence, (iv) to DTC or its Participants, (v) that could arise from further deposits of, or

[102] DTC Letter I at 3; *see also* DTC Letter II at 2.

[103] *Id.*

[104] *Id.*

[105] DTC Letter I at 4.

[106] *Id.* at 3.

[107] 15 U.S.C. 78s(b)(2)(C).

[108] 15 U.S.C. 78q–1(b)(3)(F).

[109] *See supra* Section III.B.1.i at note 46.

[110] For example, DTC states that it would not impose a Restriction where an alleged improper issuance of shares were deposited at DTC several years earlier, or the chief executive officer of a company was convicted of a corporate crime that had no apparent effect on the eligibility of the company's securities at DTC. DTC Letter III at 4.

[111] STA Letter III at 2.

[112] *Id.*

continued book-entry services to, an Eligible Security. As such, DTC's discretion to impose restrictions under Section 1(d) would be constrained. Indeed, in light of the standards set forth in Section 1(d), DTC acknowledges that Restrictions under this section would only be imposed in rare and exigent circumstances,[113] where imminent harm is present.[114] DTC's discretion would also be limited by Section 19(g) of the Act, which requires DTC, as a registered clearing agency and self-regulatory organization, to administer all of its rules in a manner consistent with its obligations of compliance with the federal securities laws and other applicable laws.[115]

Regarding DTC's discretion under proposed Section 1(d), the Commission agrees that it would be impossible for DTC to predict and codify every possible circumstance that could taint DTC's fungible bulk, and thus harm DTC, its Participants, issuers, and investors. Without Section 1(d) of the proposed rule change, DTC would not have the authority or discretion to impose a Restriction when a significant concern arises that would not fall under Sections 1(a)–(c) because it is not related to a halt, suspension, or court order.[116] The Commission finds that such discretion is necessary to allow DTC to protect not only itself and its Participants, but also investors and issuers who, but for a Restriction imposed by DTC, could be unwilling participants in fraudulent activity, or victims of improper conduct.[117] For example, in the event that DTC becomes aware that all or some portion of the fungible bulk of an Eligible Security may have been sold or distributed in violation of Section 5 of the Securities Act, it could be necessary for DTC to limit further deposits and/or book-entry services for that security to prevent DTC and its Participants from participating in or otherwise facilitating an ongoing Section 5 violation. Without the authority and discretion granted by proposed Section 1(d), DTC might not have the authority under its Rules to take such action. Likewise, the discretion provided by proposed Section 1(d) would enable DTC to protect current shareholders from potential fraudulent deposits of securities that could compromise the value of their securities of the same issue.

The Commission also does not find that the potential harm that could be caused to issuers and investors by Restrictions imposed under Section 1(d) outweighs the benefits to DTC, DTC's Participants, issuers, and investors gained by permitting DTC to impose Restrictions in the limited circumstances, and subject to the processes and procedures, that would be established by the proposed rule change. Any such potential harm would be mitigated not only by the issuer's ability under the proposed rule change to challenge a Restriction with DTC, but also by the issuer's ability to then appeal DTC's Restriction Decision to the Commission. Further, DTC, DTC's Participants, issuers, and investors could all be harmed if DTC did not have the authority to impose a Restriction in the circumstances described in Sections 1(a)–(d). Rather, the Commission finds that Section 1(d) of the proposed rule change is necessary to provide DTC with adequate flexibility and authority to prevent and avoid imminent harm to DTC and its Participants, as well as issuers and investors, that could arise as a result of unforeseen and unpredictable events outside DTC's ability to predict or control. In addition, the Commission believes that DTC's flexibility to impose a Restriction under Section 1(d) is appropriately balanced with the interests of issuers and shareholders of the security by Section 4(d) of the proposed rule change, which would require DTC to release the Restriction when it reasonably determines that the original basis for the Restriction has abated, and release of the Restriction would no longer pose a threat of imminent harm, injury, or other such material adverse consequent to DTC or its Participants.[118]

Finally, with respect to commenters' third objection, that Section 1(d) of the proposed rule change is inconsistent with Section 17A(b)(3)(F) of the Act because Congress did not intend DTC to act as a fraud regulator or to enforce laws unrelated to clearance and settlement,[119] the Commission finds that the proposed rule change is directly related to DTC's administration of its book-entry clearing and settlement services, which are directly related to the purposes of Section 17A of the Act, including the establishment of the national system for clearance and settlement of securities transactions.[120] As the Commission noted in both *Atlantis* and *IPWG,* one of the reasons DTC's book-entry clearing and settlement services are fundamentally important services is because any suspension by DTC of its clearance and settlement services with respect to an issuer's securities means that all trades in that issuer's stock would then require physical transfer of the stock certificates.[121] As the central depository of securities in the United States, DTC has an obligation to ensure that by allowing book-entry services on deposited shares, it is not facilitating the illegal distribution of unregistered shares or helping to perpetrate a fraud, in violation of Section 5 of the Securities Act. Such actions are necessary to help assure the safeguarding of securities in the custody or control of DTC, and, in general, protect investors and the public interest. Further, DTC is a registered clearing agency and self-regulatory organization under Section 19 of the Act. As such, the Commission previously concluded in *Atlantis* and *IPWG* that DTC has the authority to impose restrictions on its book-entry services.[122]

Based on the above, the Commission finds that the proposed rule change, is designed to help assure the safeguarding of securities in the custody or control of DTC, and, in general, protect investors and the public interest, as required by Section 17A(b)(3)(F) of the Act.

B. Consistency With Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act requires, among other things, that the rules of a clearing agency are in accordance with the provisions of Section 17A(b)(5)(B) of the Act, and, in general, provide a fair procedure with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.[123] Section 17A(b)(5)(B) of the Act[124] requires that, in any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give that person an opportunity to be heard, the specific

[113] *See* DTC Letter I at 2.

[114] *See* Notice, 81 FR at 37234.

[115] 15 U.S.C. 78s(g).

[116] For example, DTC could have a concern about a foreign issuance, but FINRA or the Commission may not share that same concern and may not impose a trading halt or suspension; yet, DTC may believe it necessary to impose a Restriction to protect DTC and its Participants. *See* DTC Letter III at 3.

[117] For example, as DTC suggests, if DTC became aware of a current corporate hijacking, it would be able to impose a Restriction immediately, under Section 1(d) of the proposed rule. *See* DTC Letter III at 3.

[118] *See* Notice, 81 FR 37234.

[119] STA Letter III at 3.

[120] 15 U.S.C. 78q–1.

[121] *Atlantis,* 2015 SEC LEXIS 2394 at *7–8 n.4; *IPWG,* 2012 SEC LEXIS 844 at *24.

[122] *Atlantis,* 2015 SEC LEXIS 2394 at *7–8 n.4; *IPWG,* 2012 SEC LEXIS 844 at *24.

[123] 15 U.S.C. 78q–1(b)(3)(H).

[124] 15 U.S.C. 78q–1(b)(5)(B).

grounds for denial or prohibition or limitation under consideration and keep a record.[125] A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.[126]

In *Atlantis* and *IPWG,* the Commission concluded that issuers are ''persons'' under Section 17A(b)(3)(H) of the Act, and, thus, are entitled to Commission review of DTC's actions that deny or limit issuers access to DTC services.[127] The Commission further found that, to comply with Section 17A(b)(3)(H) of the Act,[128] DTC must provide the issuer with notice of DTC's determination to impose a Restriction, specifying the basis for DTC's action, and that DTC must also provide an issuer with an opportunity to be heard,[129] but that a formal hearing is not required.[130] The Commission stated that DTC may design fair procedures in accordance with its own internal needs and circumstances.[131]

The Commission also held in *Atlantis* and *IPWG* that if DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities, in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so,[132] provided that, in such circumstances, the process to impose such a suspension should balance the identifiable need for emergency action with the issuer's right to fair procedures under Section 17A(b)(3)(H) of the Act.[133] Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.[134]

The Commission finds that the proposed rule change appropriately addresses the Commission's findings in *IPWG* and *Atlantis* by, among other things, limiting Restrictions primarily to circumstances in which there would be objective external criteria for the Restriction of which the issuer would clearly be on notice (*i.e.,* a FINRA halt, Commission suspension, or Court order under Sections 1(a)–(c)), or where the Restriction would be necessary to avoid a specific imminent harm to DTC or one or more of DTC's Participants. Sections 2 and 3 of the proposed rule change would establish a clear, unambiguous framework for providing issuers with notice of a Restriction and an opportunity to be heard and object to the Restriction, as well as DTC's obligations to review and provide a response to any such objection. Under Section 2(a) of the proposed rule change, DTC would be required to provide the issuer with notice of a Restriction within three business days after imposition of the Restrictions. The Restriction Notice would be required to set forth with reasonable specificity (i) the basis for the Restriction; (ii) the date the Restriction was imposed; and (iii) the timing and procedural requirements for the issuer to object to the Restriction. The issuer would be permitted to submit a Restriction Response to DTC within 20 business days of receiving the Restriction Notice, setting forth its objection to the Restriction and detailing the reasons that the Restriction should be released pursuant to Section 4(d). Under Section 3 of the proposed rule change, DTC would then have 10 business days to provide the issuer with a Restriction Decision, which would be required to be made by an independent Review Officer, defined as an officer of DTC under DTC's By-Laws. Under Section 3(b) of the proposed rule change, in response to the Restriction Decision, the issuer would be permitted to submit a Supplement within 10 business days to establish that DTC made a clerical mistake or an oversight in reviewing the Restriction Response. Finally, DTC would be required to provide the issuer with a Supplement Decision within 10 business days of receiving the Supplement.

As described above, commenters' concerns with the notice and objection procedures that would be established by the proposed rule change were as follows: (i) The proposed rule change could not be fair and could not satisfy the requirements set forth in *IPWG* if DTC is permitted to set its own standards and act on its own accord to impose a Restriction under Section 1(d) of the proposed rule change;[135] (ii) DTC should limit any Restriction under Section 1(d) of the proposed rule change to only a single 10 day period with any fair process occurring during that 10 day period;[136] and (iii) questions regarding whether the Review Officer would be sufficiently independent,[137] including an assertion by one commenter that IPWG requires that appeals should be heard by parties independent of DTC.[138] In addition, one commenter asserted that the proposed rule change fails to establish fair procedures as required by Section 17A(b)(3)(H) of the Act and the Commission's decision in *IPWG* because there is no stated time period for the Review Officer to complete its review of the issuer's Restriction Response and issue a Restriction Decision.[139] This comment is obviated by DTC's Amendment No. 1 to the proposed rule change,[140] which modified the initial proposed rule change to add a 10 business-day time period for the Review Officer to complete the review and issue a Restriction Decision.

The Commission believes that the limited discretion provided to DTC under Section 1(d) of the proposed rule change does not render the proposed rule change unfair or unable to satisfy the requirements of Section 17A(b)(3)(H) of the Act and the Commission's decision in *IPWG.* As the Commission previously articulated in *IPWG,* DTC may design fair procedures in accordance with its own internal needs and circumstances.[141] Similarly, if DTC believes that circumstances exist that justify imposing a Restriction, even in advance of notifying the issuer of the Restriction, it may do so, as long as DTC's process for imposing the emergency Restriction balances the identifiable need with the issuer's right to fair procedures under the Act.[142] Here, as discussed above, Section 1(d) strikes the appropriate balance between providing DTC with sufficient flexibility to address unforeseen harms and issuers and investors rights with respect to their securities. It also establishes a high standard for imposing a Restriction, and DTC's discretion under that provision is limited.

Further, although Section 1(d) of the proposed rule change would authorize DTC to impose a Restriction to avert an imminent harm, DTC could not maintain the Restriction indefinitely without providing expedited fair

[125] *Id.*

[126] *Id.*

[127] *Atlantis,* 2015 SEC LEXIS 2394 at *7, 8 n.4; *IPWG,* 2012 SEC LEXIS 844 at *24.

[128] 15 U.S.C. 78q–1(b)(3)(H).

[129] *Atlantis,* 2015 SEC LEXIS 2394 at *7, 8 n.4; *IPWG,* 2012 SEC LEXIS 844 at *24.

[130] *Atlantis,* 2015 SEC LEXIS 2394 at *19; *IPWG,* 2012 SEC LEXIS 844 at *30 n.36.

[131] *Atlantis,* 2015 SEC LEXIS 2394 at *19; *IPWG,* 2012 SEC LEXIS 844 at *24.

[132] *Atlantis,* 2015 SEC LEXIS 2394 at *18 n.9; *IPWG,* 2012 SEC LEXIS 844 at *29.

[133] 15 U.S.C. 78q–1(b)(3)(H); *Atlantis,* 2015 SEC LEXIS 2394 at *18 n.9; *IPWG,* 2012 SEC LEXIS 844 at *29.

[134] *Atlantis,* 2015 SEC LEXIS 2394 at *18 n.9; *IPWG,* 2012 SEC LEXIS 844 at *29.

[135] Kesner Letter at 6.

[136] STA Letter I at 3.

[137] *See, e.g.,* STA Letter I at 4

[138] Kesner Letter II at 2.

[139] STA Letter I at 3.

[140] *See* Securities Exchange Act Release No. 78774 (September 6, 2016), 81 FR 62775 (September 12, 2016).

[141] 2012 SEC LEXIS 844 at *30 n.36.

[142] *Id.* at *32.

process to the affected issuer under Sections 2 and 3 of the proposed rule change. Further, to impose a Restriction under Section 1(d) of the proposed rule change, DTC would be required to identify or become aware of the need to avoid an imminent harm that could arise from further deposits or book-entry services, and would be required to provide the issuer notice and opportunity to appeal the Restriction pursuant to the specific procedures set forth in Sections 2 and 3 of the proposed rule change. As described above, these procedures establish a process to require DTC to promptly notify the issuer of a Restriction and give the issuer an opportunity to be heard upon the specific grounds for the Restriction, all within specified periods of time.

With respect to the independence of the Review Officer, Section 3 of the proposed rule change requires an officer of DTC, as defined in DTC's By-Laws, who did not have responsibility for the initial imposition of the Restriction, to review the Restriction Response and provide the Restriction Decision to the issuer. As the Commission previously articulated in *IPWG,* DTC may comply with the Act by designing fair procedures in accordance with its own internal needs and circumstances.[143] The Commission finds that having a DTC officer who was not involved in imposing the Restriction review a Restriction Response is a fair procedure. This is consistent with similar procedures by other clearing agencies supervised by the Commission. For instance, the Commission has approved as a fair procedure the Options Clearing Corporation's (''OCC's'') use of a panel of OCC officers and a director of OCC in the review of suspension decisions.[144]

The Commission believes that the proposed rule change establishes clear, consistent, and fair procedures for the imposition of Restrictions and for providing issuers with notice of Restrictions and opportunity to be heard. Section 1 identifies the specific circumstances under which a Restriction will be imposed, Sections 2 and 3 would establish clear, policies, procedures, and specific requirements for providing issuers with notice of Restrictions and an opportunity to be heard, and Section 4 of the proposed rule change would establish clear standards for determining when adequate exists to release a Restriction. The Commission therefore finds that the proposed rule change, as modified by Amendment No. 1, provides for fair procedures with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency, as required by Section 17A(b)(3)(H) of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[145] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2016–003, as modified by Amendment No. 1, be, and hereby is, *Approved.*[146]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[147]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29668 Filed 12–9–16; 8:45 am]

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[143] 2012 SEC LEXIS 844 at *30 n.36.

[144] *See* Rule 1110, OCC Rules, *available at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.*

[145] 15 U.S.C. 78q–1.

[146] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[147] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79474; File No. SR–CHX–2016–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change in Connection With the Proposed Transaction Involving CHX Holdings, Inc. and North America Casin Holdings, Inc.

December 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change in connection with a Transaction (''Transaction'') whereby Exchange Acquisition Corporation (''Merger Sub''), a corporation organized under the laws of the State of Delaware and wholly-owned subsidiary of North America Casin Holdings, Inc. (''NA Casin Holdings''), a corporation organized under the laws of the State of Delaware,[3] would merge with and into CHX Holdings, Inc. (''CHX Holdings''), a corporation organized under the laws of the State of Delaware,[4] with CHX Holdings continuing as the surviving corporation. Pursuant to the Transaction, the Exchange will remain a wholly-owned subsidiary of CHX Holdings and CHX Holdings will become a wholly-owned subsidiary of NA Casin Holdings.

The text of the proposed Third Amended and Restated Certificate of Incorporation of CHX Holdings (''CHX Holdings Certificate'') is attached as Exhibit 5A.[5] The text of the proposed amended Bylaws of CHX Holdings (''CHX Holdings Bylaws'')[6] is attached as Exhibit 5B.[7] The text of the proposed Amended and Restated Certificate of Incorporation for CHX (''CHX Certificate'') is attached as Exhibit 5C.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NA Casin Holdings was incorporated in the State of Delaware on January 4, 2016.

[4] CHX Holdings was incorporated in the State of Delaware on January 26, 2005.

[5] The original CHX Holdings Certificate was filed with the Delaware Secretary of State on January 26, 2005 and was last amended on July 26, 2006 to modify the ownership limitations applicable to Participants and other persons or entities and increased the number of shares of common stock that CHX Holdings is authorized to issue. *See* Securities Exchange Act Release No. 54213 (June 26, 2006), 71 FR 43547 (August 1, 2006) (order approving SR–CHX–2006–22); *see also* CHX Article 1, Rule 1(s) defining ''Participant.''

[6] Reference to a ''current'' governing document (*e.g.,* ''current CHX Holdings Bylaws'') is to the version of the governing document that is currently operative, whereas reference to a ''proposed'' governing document (*e.g.,* ''proposed CHX Holdings Bylaws'') is to the version of the governing document that would be in effect pursuant to this proposed rule change.

[7] The CHX Holdings Bylaws were last amended on November 23, 2009 to eliminate an age restriction for CHX Holdings Directors. *See* Securities Exchange Act Release No. 61053 (November 23, 2009), 74 FR 62861 (December 1, 2009).

[8] The original Certificate of Incorporation for CHX was filed with the Delaware Secretary of State on March 15, 1972 and was last amended on February 9, 2005 in connection with the demutualization of the CHX. *See* Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

The text of the proposed amended Bylaws of the CHX (''CHX Bylaws'') is attached as Exhibit 5D.[9] The text of the proposed amendments to the Rules of the CHX (''CHX Rules'') is attached as Exhibit 5E. The text of the proposed Amended and Restated Certificate of Incorporation of NA Casin Holdings (''NA Casin Holdings Certificate'') is attached as Exhibit 5F. The text of the proposed Amended and Restated Bylaws of NA Casin Holdings (''NA Casin Bylaws'') is attached as Exhibit 5G. The text of a resolution of the Board of Directors of CHX Holdings dated November 22, 2016 to waive certain ownership and voting limitations to permit the Transaction (''Resolutions'') is attached as Exhibit 5H. The text of the Stockholders' Agreement of NA Casin Holdings (''NACH Stockholders' Agreement'') is herein attached as Exhibit 5I. The text of the Amended and Restated Put Agreement by and among North America Casin Group, Inc. (''NA Casin Group''), NA Casin Holdings, and Saliba Ventures Holdings, LLC (''Saliba'') (''Saliba Put Agreement'') is herein attached as Exhibit 5J. The text of the Amended and Restated Put Agreement by and among NA Casin Group, NA Casin Holdings, and Raptor HoldCo LLC (''Raptor'') (''Raptor Put Agreement'') is herein attached as Exhibit 5K.

The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/regulatory-operations/rule-filings/,* 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.

[9] The CHX Bylaws were last amended on April 16, 2014 to modify the process by which the CHX Vice Chairman is nominated and elected. *See* Securities Exchange Act Release No. 71954 (April 16, 2014), 79 FR 22557 (April 22, 2014).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to adopt and amend rules and other relevant corporate governing documents in order to permit the Exchange and CHX Holdings to effect the Transaction.

Current Ownership Structure

Since February 8, 2005, CHX has been a wholly-owned subsidiary of CHX Holdings.[10] CHX Holdings is the record and beneficial owner of 1,000 shares of CHX, par value $.01 per share, which represents all of the issued and outstanding shares of capital stock of CHX. CHX Holdings is also the sole member of CHXBD, LLC (''CHXBD''), the Exchange's affiliated routing broker.

CHX Holdings is beneficially owned by 193 firms or individuals, including Participants [11] or affiliates of Participants, many of whom were former seat holders on the Exchange prior to its demutualization in 2005.[12] Moreover, four firms hold Series A Preferred Stock and seven individuals hold Series B Preferred Stock. No firm, individual, or group of affiliated firms or individuals beneficially own 10 percent or more of CHX Holdings on an as-converted basis.

Proposed Ownership Structure

Pursuant to the terms of a Merger Agreement dated February 4, 2016 (''Merger Agreement'') by and among NA Casin Holdings, Merger Sub, Chongqing Casin Enterprise Group Co., LTD. (''Chongqing Casin''), a limited company organized under the laws of the People's Republic of China (''PRC''), Richard G. Pane solely in his capacity as the Stockholders Representative thereunder, and CHX Holdings, Merger Sub will merge into CHX Holdings,[13] which will then become a wholly-owned direct subsidiary of NA Casin Holdings. Current CHX Holdings stockholders will receive the right to receive cash in exchange for their shares. Consummation of the Transaction (''Closing'') is subject to satisfaction of customary conditions for a transaction of this nature, including approval of this proposed rule change by the Commission.[14]

Upon the Closing, all of the outstanding and issued shares of NA Casin Holdings will be held by the following firms and individuals (''Indirect Upstream Owners'' and with NA Casin Holdings ''Upstream Owners'') in the following percentages: [15]

- *Non-U.S. Indirect Upstream Owners:*
  - NA Casin Group, a corporation incorporated under the laws of the State of Delaware and wholly-owned by Chongqing Casin—20%
  - Chongqing Jintian Industrial Co., Ltd. (''Chongqing Jintian''), a corporation incorporated under the laws of the PRC—15%
  - Chongqing Longshang Decoration Co., Ltd. (''Chongqing Longshang''), a corporation incorporated under the laws of the PRC—14.50%
- *U.S. Indirect Upstream Owners:*
  - Castle YAC Enterprises, LLC (''Castle YAC''), a limited liability company organized under the laws of the State of New York, the sole member of which is Mr. Jay Lu, a U.S. citizen and Vice President of NA Casin Group—19%

[10] CHX became a wholly-owned subsidiary of CHX Holdings pursuant to the Exchange's demutualization as approved by the Commission in February 2005. *See* Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (order approving SR–CHX–2004–26 and Amendment No. 1 and accelerated approval of Amendment No. 3).

[11] A ''Participant'' is a ''member'' of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s).

[12] *See supra* note 10.

[13] Under the terms of the Merger Agreement, the CHX Holdings Certificate and Bylaws in effect immediately prior to the effective time of the Transaction, which shall be prior to the Closing, shall be the Certificate and Bylaws of the surviving corporation, as amended by this proposed rule change.

[14] Conditions precedent to Closing are formal requirements set forth in the Merger Agreement that must be satisfied or waived on or prior to the Closing date. These conditions include any (i) filing and consents under the Securities Act of 1933, the Exchange Act and the rules and regulations promulgated thereunder, and any other filings required to be made with and consents required be obtained from the SEC, confirming the approval of the SEC of the Transaction, (ii) filings required to be made with and consents required be obtained from any self-regulatory organizations, (iii) filings and consents necessary to comply with foreign and state securities and ''blue sky'' laws, (iv) receipt of Committee on Foreign Investment in the United States (''CFIUS'') Approval, and (v) receipt of the PRC consent, the absence of any of which would prohibit the consummation of the Transaction.

[15] Pursuant to Rule 6a–2 under the Act, the Exchange will, within 10 days after the Closing, amend its Form 1 (APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT) filed with the Commission. Exhibit K of Form 1, which is applicable only to ''. . . exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange . . .'', requires the Exchange to provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Exchange. As noted above, the Exchange proposes that 100% of the issued and outstanding shares of CHX will be directly owned by CHX Holdings.

- Raptor, a limited liability company organized under the laws of the State of Delaware—11.75%
- Saliba, a limited liability company organized under the laws of the State of Illinois—11.75%
- Xian Tong Enterprises, Inc. (''Xian Tong''), a corporation incorporated under the laws of the State of New York—6.94%
- Equity Incentive Shares to five members of the CHX Holdings management team, all U.S. citizens—0.88%
- Cheevers & Co., Inc. (''Cheevers''), a corporation incorporated under the laws of the State of Illinois—0.18%

The Exchange submits the following regarding the Indirect Upstream Owners: [16]

- The only Related Persons [17] among the Indirect Upstream Owners are Castle YAC and NA Casin Group.[18]
- There are no other Related Persons among the Indirect Upstream Owners.
- None of the Indirect Upstream Owners directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a governmental entity or any political subdivision thereof.

As Related Persons, NA Casin Group and Castle YAC would own a combined 39% voting interest in NA Casin Holdings and, by extension, CHX Holdings, which is within the proposed 40% Concentration Limitation of NA Casin Holdings and CHX Holdings, as described below.[19] However, NA Casin Group and Castle YAC will not be permitted to exercise their collective voting interest in excess of the proposed 20% Voting Limitations of NA Casin Holdings and CHX Holdings, as described below.[20]

The Exchange submits that execution of the proposed NACH Stockholders' Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations of NA Casin Holdings and CHX Holdings (''Ownership and Voting Limitations''). Generally, the proposed NACH Stockholders' Agreement includes provisions governing the relationship between the Indirect Upstream Owners, which are intended to protect the ownership interests of the respective individual Indirect Upstream Owners. While the proposed NACH Stockholders' Agreement includes various transfer of shares provisions,[21] the agreement does not contain any provisions, such as lock-up, drag-along or tag-along rights, which could result in the Indirect Upstream Owners becoming Related Persons.[22] [23] Accordingly, the Exchange believes that the NACH Stockholders' Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations.

The Exchange further notes that execution of the Saliba Put Agreement or the Raptor Put Agreement would not result in any Indirect Upstream Owners becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations. Specifically, the Saliba Put Agreement grants Saliba a put option (''Saliba Put Option'') that, if exercised by Saliba, would compel NA Casin Holdings (and not another Indirect Upstream Owner) to purchase, or arrange for an unspecified third-party to purchase, a specified amount of Saliba's equity interest in NA Casin Holdings. Similarly, the Raptor Put Agreement grants Raptor a put option (''Raptor Put Option'') that, if exercised by Raptor, would compel NA Casin Holdings (and not another Indirect Upstream Owner) to purchase, or arrange for an unspecified third-party to purchase, a specified amount of Raptor's equity interest in NA Casin Holdings. Accordingly, the Exchange submits that execution of the Saliba Put Agreement or the Raptor Put Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations.[24] The Exchange also notes that the exercise of the put options under either the Saliba Put Agreement or the Raptor Put Agreement would be subject to, among other things, compliance with the proposed Ownership and Voting Limitations.[25]

Following the Closing, CHX will remain a Delaware for-profit stock corporation, with authority to issue 1,000 shares of common stock, all of which will remain owned by CHX Holdings.[26] Moreover, CHX Holdings shall have the authority to issue 1,000 shares of common stock, all of which will be owned by NA Casin Holdings.[27] CHX will also remain registered as a national securities exchange under Section 6 of the Act [28] and a self-regulatory organization (''SRO'') as defined in Section 3(a)(26) of the Act.[29] CHX Rules will remain in full force and effect as of the date of the instant rule filing, will continue to govern the activities of CHX up to and after the Closing and CHX will continue to

[16] An opinion of counsel in support of each of these assertions has been provided to the Commission by outside counsel for the Exchange.

[17] As used herein, ''Related Persons'' shall mean: (1) With respect to any Person, any executive officer (as such term is defined in Rule 3b–7 under the Securities Exchange Act of 1934 (''Exchange Act'')), director, general partner, manager or managing member, as applicable, and all ''affiliates'' and ''associates'' of such Person (as those terms are defined in Rule 12b–2 under the Exchange Act), and other Person(s) whose beneficial ownership of shares of stock of the Corporation with the power to vote on any matter would be aggregated with such first Person's beneficial ownership of such stock or deemed to be beneficially owned by such first Person pursuant to Rules 13d–3 and 13d–5 under the Exchange Act; and (2) in the case of any Person constituting a member (as that term is defined in Section 3(a)(3)(A) of the Exchange Act) of CHX (defined in the Rules of the Chicago Stock Exchange, Inc. (''CHX Rules''), as such rules may be amended from time to time, as a ''Participant'') for so long as CHX remains a registered national securities exchange, such Person and any broker or dealer with which such Person is associated; and (3) any other Person(s) with which such Person has any agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation; and (4) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person or who is a director or officer of the Corporation or any of its parents or subsidiaries. *See* Section (b) of Article FOURTH of the proposed CHX Holdings Certificate; *see also* Section (4) of Article IX of the proposed NA Casin Holdings Certificate.

[18] Mr. Jay Lu, the sole member of Castle YAC, is associated with an affiliate of Chongqing Casin and is also the son of Mr. Shengju Lu, the Chairman of Chongqing Casin.

[19] *See* Section (9) of Article IX of the proposed NA Casin Holdings Certificate; *see also* Article FOURTH, paragraph (c)(i) of the proposed CHX Holdings Certificate. As described in detail below, the Exchange proposes to adopt similar Ownership and Voting Limitations for NA Casin Holdings and CHX Holdings.

[20] *See* Section (5) of Article IX of the proposed NA Casin Holdings Certificate; *see also* Article FOURTH, paragraph (b)(i) of the proposed CHX Holdings Certificate.

[21] *See* Sections 4.02 (Right of First Offer), 4.03 (Rights to Acquire Interest Upon Change of Control), Section 6.02 (Right to Purchase New Securities) of the proposed NACH Stockholders' Agreement.

[22] Specifically, the Right of First Offer, Rights to Acquire Interest Upon Change of Control and the Right to Purchase New Securities contained in the NACH Stockholders' Agreement would not render it an ''agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation.'' *See* Section (4)(iii) of Article IX of the proposed NA Casin Holdings Certificate.

[23] *See supra* note 17.

[24] Specifically, the put agreements do not constitute an ''agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation.'' *See* Section (4)(iii) of Article IX of the proposed NA Casin Holdings Certificate.

[25] *See* Section 3(c) of the Saliba Put Agreement; *see also* Section 3(c) of the Raptor Put Agreement.

[26] *See* Article FOURTH of the proposed CHX Certificate.

[27] *See* Article FOURTH of the proposed CHX Holdings Certificate.

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78c(a)(26).

discharge its SRO responsibilities pursuant to CHX's registration under Section 6 of the Act. Assuming that the Closing occurs, CHX Holdings represents that it will at all times ensure that the Exchange has access to financial resources sufficient for it to discharge its SRO responsibilities after the date of Closing.

Following the Closing, CHXBD will remain a Delaware limited liability corporation of which CHX Holdings will remain the sole member. Pursuant to Article 19, Rule 2 of CHX Rules, CHXBD provides the outbound routing of orders from the Exchange to other trading centers. CHXBD operates a facility (as defined in Section 3(a)(2) of the Exchange Act) [30] of the Exchange. The Financial Industry Regulatory Authority (''FINRA''), an SRO unaffiliated with the Exchange or any of its affiliates, carries out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Section 17d–1 of the Act [31] with the responsibility for examining CHXBD for compliance with the applicable financial responsibility rules. As provided in Article 19, Rule 2(a)(3), a Participant's use of CHXBD to route orders to another trading center is optional; any Participant that does not wish to use CHXBD may use other routers to route orders to other trading centers. Further, as provided in Article 19, Rule 2(a)(6) of CHX Rules, the books, records, premises, officers, agents, directors and employees of CHXBD as a facility of the Exchange are deemed to be those of the Exchange for purposes of, and oversight pursuant to, the Act, and the books and records of CHXBD as a facility of the Exchange are at all times subject to inspection and copying by the Exchange and by the Commission.

The Exchange states that all of the provisions of Article 19, Rule 2 of CHX Rules governing the operation of CHXBD will remain in full force and effect at all times prior to and after the Closing. The Exchange, on behalf of CHXBD, will provide notice to, and obtain any required consents from, FINRA, for the Transaction.

Proposed CHX Certificate and Bylaws Generally

The Exchange proposes to retain most of the current provisions of the CHX Certificate and Bylaws, except that the Exchange proposes to amend certain requirements regarding CHX's board and committee composition and procedures to be largely similar to the board and committee composition requirements and procedures of the National Stock Exchange, Inc. (''NSX'').[32]

Initially, the Exchange proposes the following non-substantive amendments to the CHX Certificate:

- Amend the title to CHX Certificate to reflect ''Amended and Restated Certificate of Incorporation of the Chicago Stock Exchange, Inc.''
- Add an attestation clause and signature block to the end of the proposed CHX Certificate.

The Exchange also proposes the following non-substantive amendments to the CHX Bylaws:

- Move Articles I through XI of the current CHX Bylaws to Article II through XII of the proposed CHX Bylaws, in light of the adoption of the definitions under Article I of the proposed CHX Bylaws, as discussed below, and amend all citations to reflect the new Article.
- Amend references to each section under an Article to reflect the Article to which it is associated (*e.g.,* current Article I, ''Sec. 1'' is proposed ''Section 1.1'').

CHX Board Composition Requirements and Procedures

As discussed in detail below, the proposed CHX board and committee composition and procedure requirements are similar to the board and committee composition and procedure requirements of NSX,[33] except that the proposed CHX requirements:

- include a new board composition requirement that at least 20% of the CHX Board be comprised of CHX Holdings Directors, which is not an NSX requirement; [34]
- require a minimum of ten CHX Board directors, as opposed to a minimum of seven NSX board directors;
- maintain the current position of Vice Chairman and associated responsibilities, which is not an NSX requirement; and
- maintain current procedures for selecting members of CHX Board committees, current composition requirements for CHX Board committees (*e.g.,* different composition requirements for the respective Executive Committees [35]) and does not require the establishment of an Appeals Committee or a Business Conduct Committee, all of which differ from the analagous NSX requirements.

Initially, the Exchange proposes to adopt Article I of the proposed CHX Bylaws to provide definitions for certain terms used throughout the proposed CHX Bylaws, which are largely similar to the terms and definitions under Article I of the Third Amended and Restated By-Laws of NSX (''NSX By-Laws'').[36]

Article II and Article IV of the current CHX Bylaws and Article FIFTH of the current CHX Certificate provide, among other things, CHX Board composition and procedure requirements, the key provisions of which include the following:

- The CHX Board shall consist of not fewer than ten (10) and not more than sixteen (16) directors (''CHX Directors'') divided into three classes, with the term of office of one class expiring each year.[37]
- The CHX Board shall consist of the following: [38]
  - ○ The Chief Executive Officer (''CEO'') of the CHX;
  - ○ Public Directors,[39] who shall equal one-half the number of directors comprising the entire CHX Board (rounded up to the next whole number); and
  - ○ Participant Directors.[40]
- The Chairman of the CHX Board shall be either the CEO of CHX or a Public Director and if the CEO of CHX is the Chairman of the CHX Board, the CEO may not hold any other office at CHX.[41]

[30] 15 U.S.C. 78c(a)(2).

[31] 15 U.S.C. 78q(d)(1).

[32] *See* Articles III and V of the NSX By-Laws. NSX is a registered national securities exchange. In 2015, the Commission approved a transaction involving NSX. *See* Exchange Act Release No. 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (Approval Order for SR–NSX–2014–017); *see also* Exchange Act Release No. 73944 (December 24, 2014), 80 FR 85 (January 2, 2015) (SR–NSX–2014–017).

[33] *See id.*

[34] Section 1.1(s) of the proposed CHX Bylaws defines ''CHX Holdings Director'' as ''a member of the Board who is a director of CHX Holdings, Inc.''

[35] *See* Section 5.5 of the proposed CHX Bylaws; *see also* Section 5.5 of Article V of the NSX By-Laws.

[36] *See supra* note 32.

[37] See Section 2(a) of Article II of the current CHX Bylaws.

[38] See Section 2(b) of Article II of the current CHX Bylaws.

[39] Article II, Section 2(b) of the current CHX Bylaws defines ''Public Director'' as a director who (i) is not a Participant, or an officer, managing member, partner or employee of an entity that is a Participant, (ii) is not an employee of the Corporation or any of its affiliates, (iii) is not broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with (x) CHX Holdings, Inc., the Corporation or any of their affiliates or (y) any broker or dealer.

[40] Article II, Section 2(b) of the current CHX Bylaws defines ''Participant Director'' as ''a director who is a Participant or an officer, managing member or partner of an entity that is a Participant'' and the term ''Participant'' means ''any individual, corporation, partnership or other entity that holds a permit issued by the Corporation to trade securities on the market operated by the Corporation.'' *See supra* note 11.

[41] *See* Section 4(a) of Article II of the current CHX Bylaws.

• The Nominating and Governance Committee shall nominate directors for each director position standing for election, provided that candidates for STP Director positions may also be nominated by Participants.[42]

• CHX Directors are elected to full three-year terms at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast.[43]

• Vacancies are generally filled only with a person nominated by the Chairman and Vice Chairman and elected by a majority of the directors then in office, though less than a quorum or by a sole remaining director, provided that the CHX Board composition requirements are met.[44] A director chosen to fill a vacancy shall hold office until end of the the next annual meeting of stockholders.[45]

• Members of the CHX Board (''CHX Directors'') may only be removed for cause.[46]

The Exchange now proposes various amendments to the CHX Board composition requirements, which include the following key amendments:[47]

• The CHX Board shall consist of not fewer than ten (10) and not more than twenty-five (25) CHX Directors and shall not be divided into classes. NSX requires at least seven directors.[48] The Exchange is proposing to maintain the current minimum requirement of 10 CHX Directors as that is the minimum number of directors that would permit the Exchange to meet the proposed CHX Board composition requirements, as described immediately below.

• The CHX Board shall be comprised of:[49]

○ The CEO of the CHX;

○ at least 50% Non-Industry Directors[50] (at least one of whom shall be an Independent Director[51]);

○ at least 20% Participant Directors;[52] and

○ at least 20% CHX Holdings Directors.[53]

• The Chairman of the CHX Board may be the CEO and/or President of CHX or a Non-Industry Director.[54]

• The CHX Director term shall be one year, except that the term of the CEO of CHX shall expire when such individual ceases to be the CEO of the CHX.[55] The Exchange believes that this change will facilitate compliance with the proposed board composition requirements, which is more specific than the current requirements.

• Eliminate the ''STP Participant Director'' positions and corresponding nominating and selection process and replace with a simplified Participant Director nominating process, whereby the Participant Director Nominating Committee[56] shall recommend individual(s) to the Board from which the stockholders will elect the required number of Participant Directors at the annual meeting of stockholders.

• Adopt a CHX Holdings Director nomination and selection process that is virtually identical to the proposed Participant Director nominating and selection process, except that candidates for the CHX Holdings Director positions shall be selected by the CHX Holdings Board.[57]

• CHX Directors may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that any Participant Director or CHX Holdings Director may only be removed for cause.[58] The Exchange believes that this change will provide stockholders with recourse in the event the best interest of the Exchange requires the removal of a director who could not be removed for cause.

• Adopt Chairman of the CHX Board,[59] CHX Board Vacancy[60] and

[42] *See* Section 3(b) and (e) of Article II of the current CHX Bylaws.

[43] *See* Section 2(c) of Article II of the current CHX Bylaws; *see also* Section 9 of Article III of the current CHX Bylaws.

[44] *See* Section 6 of Article II of the current CHX Bylaws.

[45] *See id.*

[46] *See* Section (f) of Article FIFTH of the current CHX Certificate.

[47] The Exchanges notes that the following provisions under the current CHX Certificate are being deleted as they are being superseded by new provisions under the proposed CHX Bylaws: Sections (b) and (c) of Article FIFTH of the current CHX Certificate is replaced by Section 3.2 of the proposed CHX Bylaws; Section (d) of Article FIFTH of the current CHX Certificate is replaced by Section 3.3 of the proposed CHX Bylaws; Section (f) of Article FIFTH of the current CHX Certificate is replaced by Section 3.8 of the proposed CHX Bylaws; and Section (g) of Article FIFTH of the current CHX Certificate is replaced by Section 3.7 of the proposed CHX Bylaws.

[48] *See* Section 3.2(a) of the proposed CHX Bylaws; *see also* Section 3.2 of Article III of the NSX By-Laws.

[49] *See* Section 3.2(b) of the proposed CHX Bylaws.

[50] Section 1.1(n) of the proposed CHX Bylaws defines ''Non-Industry Director'' as ''a member of the Board who is (1) an Independent Director; or (2) any other individual who would not be an Industry Director.'' In turn, Section 1.1(m) of the proposed CHX Bylaws defines ''Industry Director'' as ''a member of the Board who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be: Engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the member of the Board or 20 percent or more of the gross revenues received by the member of the Board's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the member of the Board or member or 20 percent or more of the gross revenues received by the member of the Board's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years. The proposed definition is virtually identical to the definition of ''Industry Director'' under the NSX By-Laws. *See* Section 1.1 of the NSX By-Laws.

[51] Section 1.1(l) of the proposed CHX Bylaws defines ''Independent Director'' as ''a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange or any Participant or any affiliate of any such Participant other than as a member of the Board.''

[52] Section 1.1(g) of the proposed CHX Bylaws defines ''Participant Director'' as ''a director who is a Participant or a director, officer, managing member or partner of an entity that is or is an affiliate of, a Participant.''

[53] The Exchange believes that requiring at least 20% of the CHX board be comprised of CHX Holdings Directors will promote governance efficiencies between CHX Holdings and CHX that will operate to enhance the governance and operation of the Exchange as an SRO. The Exchange notes that the bylaws of NYSE Market (DE), Inc., a parent of NYSE MKT, LLC, a national securities exchange, requires a majority of its board be comprised of board members of an indirect parent; provided that such members meet certain independence and domicile requirements. *See* Article III, Section 1(A) of the Fourth Amended and Restated Bylaws of the NYSE Market (DE), Inc. The Exchange further notes that the NSX does not have a similar requirement.

[54] *See* Section 3.4 of the proposed CHX Bylaws; *see also* Section 3.6 of the NSX By-Laws.

[55] *See* Section 3.3 of the proposed CHX Bylaws; *see also* Section 3.4 of the NSX By-Laws.

[56] *See* Section 5.11 of the proposed CHX Bylaws.

[57] *See* Sections 3.6 and 5.2 of the proposed CHX Bylaws; *see also* Sections 3.5 and 5.2 of the NSX By-Laws.

[58] Section 3.7 of the proposed CHX Bylaws provides that for ''the purposes of Section 3.7 only, 'cause' shall mean shall mean only (a) a breach of a director's duty of loyalty to the Corporation or its stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (d) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

[59] *See* Section 3.4 of the proposed CHX Bylaws; *see also* Section 3.6 of the NSX By-Laws.

[60] *See* Section 3.7 of the proposed CHX Bylaws; *see also* Section 3.7 of the NSX By-Laws.

CHX Board Quorum and Action [61] provisions that are similar to the analagous provisions under the NSX By-Laws, except that the proposed CHX Board Vacancy provisions contemplate procedures for filing vacancies for CHX Holdings Directors that are not found under the NSX By-Laws.

Incidentally, the Exchange proposes to delete Sections (b) through (d), (f) and (g) of Article FIFTH of the current CHX Certificate, as the provisions are obviated by the proposed amendments reflected in the proposed CHX Bylaws.[62] The Exchange proposes to maintain Section (e) of Article FIFTH of the current CHX Certificate, but to move the provision to Section (b) of Article FIFTH of the proposed CHX Certificate.[63]

The Exchange also proposes to amend Article IV of the current CHX Bylaws regarding CHX Committees. The current key requirements for CHX Committees are as follows:

- The CHX Bylaws currently require the following CHX Committees: Executive Committee; Nominating and Governance Committee; Audit Committee; Compensation Committee; Regulatory Oversight Committee; Finance Committee; Judiciary Committee; and other CHX Committees as may be provided in the bylaws or CHX Rules or as may be from time to time established by the CHX Board.[64]
- Members of the CHX Committees are selected (1) by the Chairman and/or Vice Chairman of the CHX Board with approval of the CHX Board; (2) by the Vice Chairman of the CHX Board with approval of the Public Directors of the CHX Board—for the Regulatory Oversight Committee; (3) by the CEO of CHX alone—for the Judiciary Committee; or (4) by the CHX Board alone—for the Nominating and Governance Committees, subject to composition requirements, as described under current Article 2 of the CHX Rules.[65] In contrast, all committees of the NSX Board are selected by the Chairman with approval of the NSX Board.[66]

The Exchange proposes to maintain the current requirements for the CHX Committees with the following amendments:

- Move Article 2, Rules 2–4, 8–9, and 11–12 of the current CHX Rules [67] and restate them under Article V of the proposed CHX Bylaws as Sections 5.5 through 5.10 and 5.12 of the proposed CHX Bylaws with amendments (1) to contemplate the proposed CHX board composition requirements of Article III of the proposed CHX Bylaws and (2) to require that the Regulatory Oversight Committee consist of at least five members, all of whom must be Non-Industry Directors, the later requirement being similar to a requirement of NSX that ''[t]he Regulatory Oversight Committee shall at all times be comprised entirely of Non-Industry Directors.'' [68] [69] Thus, Article 2 of the proposed CHX Rules will only include rules describing the current CHX Committees that are comprised solely of Participants.[70]
- Adopt Section 3.6 of the proposed CHX Bylaws, which provide CHX Director nomination and election provisions similar to analagous provisions under the NSX By-Laws.[71] Generally, paragraph (a) and (b) thereunder provides that the Nominating and Governance Committee each year shall nominate directors for each director position standing for election at the annual meeting of stockholders that year. In addition, with respect to the nomination and election of CHX Holdings and Participant Directors:
  - Paragraph (b) thereunder provides that the Nominating and Governance Committee will only nominate persons (1) for Participant Director positions who have been approved and submitted by the Participant Director Nominating Committee and (2) for CHX Holdings Director positions who have been approved and submitted by the CHX Holdings Board.
  - Paragraph (c) thereunder provides that the Participant Director Nominating Committee shall consult with the Nominating and Governance Committee, the Chairman of the CHX Board and the CEO of CHX, as well as solicit comments from Participants, for the purpose of identifying Participant Director nominees. The list of Participant Director nominees (''initial nominees'') shall be submitted to the Nominating and Governance Committee no later than 75 days prior to the date announced for the annual meeting of stockholders.
  - Paragraph (d) thereunder provides that the Nominating and Governance Committee shall provide the Secretary of CHX the initial nominees no later than 60 days prior to the date announced for the annual meeting of stockholders. The Participants may also identify other candidates (''additional candidates''), subject to specific conditions and requirements.
  - Paragraph (e) thereunder provides that if additional candidates are identified and validly presented to the Secretary of CHX, the Secretary of CHX shall notify all Participants of the list of initial nominees and additional candidates, as well as the date and time of the Participant Director election, no later than 20 days prior the date announced for the annual meeting of stockholders. Paragraph (e) further provides specific Participant voting requirements, procedures and limitations.
  - Paragraph (f) thereunder provides that if no additional candidates are received by the date that is 35 days prior to the date announced for the annual meeting of stockholders, the initial nominees shall be deemed to be the persons approved by the Participants as Participant Director nominees and the Secretary of CHX shall so notify the Nominating and Governance Committee.
- Adopt Section 5.11 of the proposed CHX Bylaws describing the Participant Director Nominating Committee, which is virtually identical Section 5.7 of the NSX By-Laws.[72]

The Exchange also proposes to amend current Section 2 of Article II (Special Meetings) of the current CHX Bylaws (*i.e.,* Section 4.2 of the proposed CHX Bylaws) (1) to clarify that a special meeting of the stockholders may be called ''at any time'' by the CEO or the

[61] *See* Section 3.13 of the proposed CHX Bylaws; *see also* Section 3.12 of the NSX By-Laws.

[62] *See supra* note 47.

[63] The CHX Director election requirements may also be found under Section 4.9 of the proposed CHX Bylaws.

[64] *See* Section 1 of Article IV of the current CHX Bylaws.

[65] *See* Section 2 of Article IV of the current CHX Bylaws.

[66] *See* Section 5.2 of the NSX By-Laws.

[67] The Exchange proposes to eliminate Article 2, Rule 6 of the current CHX Rules as it is currently reserved.

[68] Section 5.6 of the NSX By-Laws.

[69] While all members of the current Regulatory Oversight Committee are Public Directors, Article 2, Rule 4 (Regulatory Oversight Committee) of the current CHX Rules only requires that a minimum of five members be Public Directors. *See supra* note 39. The Exchange believes that explicitly requiring all members of the Regulatory Oversight Committee to be Non-Industry Directors will serve to better avoid conflicts of interest between members of the Regulatory Oversight Committee and Participants.

[70] The Exchange propose the following amendments to Article 2 of the current CHX Rules: Amend title from ''Committees'' to ''Participant Committees;'' delete current CHX Article 2, Rule 1 as the rule is redundant of, and obviated by, provisions in the proposed CHX Bylaws; proposed CHX Article 2, Rule 1 (current CHX Article 2, Rule 5) describes the Committee on Exchange Procedure, and the Exchange proposes non-substantive amendments the current CHX Article 2, Rule 5 to replace references to ''Exchange Procedure Committee'' with the more accurate and consistent ''Committee on Exchange Procedure;'' and proposed CHX Article 2, Rule 2 (current CHX Article 2, Rule 7) describes the Judiciary Committee; proposed CHX Article 2, Rule 3 (current CHX Article 2, Rule 10) describes the Participant Advisory Committee.

[71] *See* Section 3.5 of the NSX By-Laws.

[72] *See supra* note 32.

CHX Board and (2) to permit a special meeting of the stockholders to be called ''upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast'' (''CHX stockholder-called special meeting provision'').[73] [74] Given that there will be 13 Indirect Upstream Owners of the Exchange, the Exchange submits that the CHX stockholder-called special meeting provision would facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. The Exchange notes that while the proposed stockholder-called special meeting provision may result in a special meeting being called by as few as three Indirect Upstream Owners, any action by the stockholders during a special meeting would be subject to the general quorum and voting requirements of Section 4.9 of the proposed CHX Bylaws, which requires, among other things, that the majority of the total votes which all of the outstanding stock of the Corporation would be entitled to cast at the meeting to be present, in person or by proxy, to constitute a quorum.

Proposed CHX Holdings Certificate and Bylaws Generally

The Exchange proposes to retain most of the current provisions of the CHX Holdings Certificate and Bylaws, except that the Exchange proposes to amend certain requirements regarding (1) board composition and procedures; (2) Ownership and Voting Limitations to be similar to those of NSX Holdings; [75] and (3) special meetings to permit a special meeting of the stockholders to be called upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast.

Initially, the Exchange proposes the following non-substantive amendments to the CHX Holdings Certificate:

- Replace current Article FOURTH in its entirety with, among other provisions described in detail below, language that provides that the total number of shares of stock which CHX Holdings shall have authority to issue is 1,000 shares of common stock having a par value of $0.01 per share and that NA Casin Holdings shall be the sole owner of this stock.
- Amend title to the CHX Holdings Certificate to state ''Third Amended and Restated Certificate of Incorporation of the Chicago Stock Exchange, Inc.''
- Adopt caption paragraph above Article FIRST to reflect the amendment history of the CHX Holdings Certificate.
- Move Article SIXTH of the current CHX Holdings Certificate to Article FIFTH of the proposed CHX Holdings Certificate, due to the proposed deletion of Article FIFTH of the current CHX Holdings Certificate, as discussed below.
- Delete Article SEVENTH of the current CHX Holdings Certificate as it contains obsolete information regarding the incorporator.
- Move Articles EIGHTH through THIRTEENTH of the current CHX Holdings Certificate to Articles SIXTH through ELEVENTH of the proposed CHX Holdings Certificate, respectively, due to proposed deletions of Articles FIFTH and SEVENTH of the current CHX Holdings Certificate. Moreover, replace ''United States Securities and Exchange Commission'' with ''Commission,'' due to adoption of the shorthand reference of ''Commission'' for the ''United States Securities and Exchange Commission'' under paragraph (b)(ii) of Article FOURTH of the proposed CHX Holdings Certificate.
- Add attestation clause and signature block to the end of the proposed CHX Holdings Certificate.

The Exchange also proposes the following non-substantive amendments to the CHX Holdings Bylaws:

- Amend reference to each section under an Article to reflect the Article to which it is associated (*e.g.,* current ''Article I, Sec. 1'' would be proposed ''Section 1.1'') and associated cross-references.
- Amend reference to the ''Securities Exchange Act of 1934'' under Section 3.1 of the proposed CHX Holdings Bylaws to note shorthand reference to the ''Exchange Act'' and corresponding amendments to Section 3.3 and Article VIII of the proposed CHX Holdings Bylaws to replace references to either ''Securities Exchange Act of 1934'' or the ''Act'' with the ''Exchange Act.''
- Amend reference to the ''Chicago Stock Exchange, Inc.'' under Section 3.1 of the proposed CHX Holdings Bylaws to note shorthand reference to ''CHX'' and corresponding amendments under Sections 3.1, 3.2, 3.5, 3.6, 7.5, 9.3 and Article VIII of the proposed CHX Holdings Bylaws.
- Adopt shorthand reference of ''Commission'' for the ''United States Securities and Exchange Commission'' under Section 3.2 of the proposed CHX Holdings Bylaws and corresponding amendments under Section 3.5 and Article VIII of the proposed CHX Holdings Bylaws.

The Exchange further proposes to adopt Section (a) of Article FOURTH of the proposed CHX Holdings Certificate to authorize the CHX Holdings Board to create and issue options, warrants and other rights. The Exchange believes that the proposed provision would facilitate the ability of the CHX Holdings Board to raise additional capital for CHX Holdings, which would in turn permit CHX Holdings to further capitalize the Exchange so that the Exchange may continue to meet its regulatory obligations. The Exchange notes that the proposed provision is virtually identical to Section (A) of Article FOURTH of the NSX Holdings Certificate.

CHX Holdings Board Composition Requirements and Procedures

The Exchange proposes to substantively modify certain requirements related to CHX Holdings Board composition and procedures, which is similar to the board composition and procedures requirement of NSX Holdings, as described below. Article SIXTH of the current CHX Holdings Certificate and Articles II, IV and V of the current CHX Holdings Bylaws provide, among other things, CHX Holdings Board composition and procedure requirements, the relevant provisions of which include the following:

- CHX Holdings Board shall consist of not less than 10 nor more than 16 directors, divided into three classes, where one CHX Holdings Director must be the CEO of CHX Holdings.[76]
- The Nominating and Governance Committee, comprised of six or more CHX Holdings Directors, shall nominate directors for the class of directors standing for election each year. In the event a vacancy on the CHX Holdings Board occurs between annual meeting of the stockholders, the vacancy shall be filled only with a person nominated by the Chairman and Vice Chairman and elected by a majority of the CHX Holdings Directors then in office, though less than a quorum, except that those vacancies resulting from removal from office by a vote of the stockholders

[73] As described below, the Exchange is also proposing to adopt virtually identical amendments to Section 4.2 of the proposed CHX Holdings Bylaws.

[74] The Exchange also notes that the CHX stockholder-called special meeting provision is different from Section 2.2 of the proposed NA Casin Holdings Bylaws and Section 4.2 of the NSX By-Laws, both of which permit a special meeting of the stockholders to be called by a majority of the stockholders and Section 1.2 of the By-Laws of NSX Holdings, Inc. (''NSX Holdings By-Laws''), which do not permit stockholders to call a special meeting of the stockholders.

[75] *See* Section (B) of Article FOURTH and Article SEVENTH of the Second Amended and Restated Certificate of Incorporation of NSX Holding (''NSX Holdings Certificate''); *see also* Article II of the NSX Holdings By-Laws; *see also supra* note 32. NSX Holdings is the direct parent of the NSX.

[76] *See* Section 2 of Article II of the current CHX Holdings Bylaws.

for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.[77]

• CHX Holdings Directors are elected to full three-year terms at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast, with one class expiring each year.[78]

• CHX Holdings directors may only be removed for ''cause'' [79] by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.[80]

• Vacancies created on the CHX Holdings Board may only be filled by a person nominated by the Chairman and Vice Chairman of CHX Holdings and elected by a majority of the directors then in office, though less than a quorum, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.[81]

• All committees of CHX Holdings are appointed by the Chairman and/or Vice Chairman, with the approval of the CHX Holdings Board, except that members of the Nominating and Governance Committee are appointed by the board of directors.[82]

The Exchange now proposes various amendments to the CHX Holdings Board composition requirements and procedures to be similar to those of NSX Holdings, which include the following key amendments: [83]

• Eliminate required minimum and maximum number of CHX Holdings Directors and permit the number of CHX Holdings Directors to be fixed by resolution of the CHX Holdings Board.[84]

• Eliminate classes of CHX Holdings Directors and associated three-year terms and replace with a general provision that each CHX Holdings Director shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. CHX Holdings Directors shall continue to be elected at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast.[85]

• Maintain the current CHX Holdings Director nominating process via the Nominating and Governance Committee, but reduce the number of required members of the Nominating and Governance Committee to one or more directors, in light of the proposed elimination of the required minimum/maximum number of CHX Holdings Directors. This would harmonize the minimum CHX Holdings Board and committee member requirements.

• Any CHX Holdings Director or the entire CHX Holdings Board may be removed, with or without cause, by the holders of a majority of the voting power of the shares then entitled to vote at an election of directors; except that the CHX Holdings Board must consist of one director who is the CEO of CHX Holdings.[86] The Exchange believes that this change will provide stockholders with recourse in the event the best interest of the Exchange requires the removal of a director who could not be removed for cause.

Incidentally, the Exchange proposes to delete paragraphs (b) through (d) and (f) through (h) of Article SIXTH of the current CHX Holdings Certificate, as the provisions are either obviated by the proposed amendments reflected in the proposed CHX Holdings Bylaws or obsolete.[87] The Exchange proposes to maintain current Section (e) of Article SIXTH of the current CHX Holdings Certificate, but to move the provision to Section (b) of Article FIFTH of the proposed CHX Holdings Certificate.[88] The Exchange also proposes to delete reference to CHX Holdings Director classes under Section 2.6 of the proposed CHX Holdings Bylaws.

The Exchange also proposes to amend current Section 2 of Article IV (Special Meetings) of the current CHX Holdings Bylaws (*i.e.,* Section 4.2 of the proposed CHX Holdings Bylaws) (1) to clarify that a special meeting of the stockholders may be called ''at any time'' by the CEO or the CHX Holdings Board and (2) to permit a special meeting of the stockholders to be called ''upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast'' (''CHX Holdings stockholder-called special meeting provision''). Similar to the reasoning for the proposed amendment to Section 4.2 of the CHX Bylaws, given that there will be 13 Upstream Owners of CHX Holdings, the Exchange submits that the CHX Holdings stockholder-called special meeting provision would facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. The Exchange notes that while the proposed CHX Holdings stockholder-called special meeting provision may result in a special meeting of the stockholders being called by as few as three Indirect Upstream Owners, any action by the stockholders during a special meeting would be subject to the general quorum and voting requirements of Section 4.9 of the proposed CHX Holdings Bylaws, which requires, among other things, that the majority of the total votes which all of the outstanding stock of CHX Holdings would be entitled to cast at the meeting to be present, in person or by proxy, to constitute a quorum.

CHX Holdings Current Ownership and Voting Limitations

Section (b) of Article FIFTH of the current CHX Holdings Certificate contains Ownership and Voting Limitations, which provide in general that for so long as CHX Holdings controls the CHX: No Person,[89] either alone or together with its Related Persons,[90] may own, directly or

[77] *See* Sections 3 and 6 of Article II of the current CHX Holdings Bylaws.

[78] *See* Section 2(c) of Article II of the current CHX Holdings Bylaws; *see also* Section 9 of Article IV of the current CHX Holdings Bylaws.

[79] Article SIXTH, Section (f) of the current CHX Holdings Certificate defines ''cause'' only as ''(i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit.''

[80] *See* Section (f) of Article SIXTH of the current CHX Holdings Certificate.

[81] *See* Section 6 of Article II of the current CHX Holdings Bylaws.

[82] *See* Section 3 of Article II of the current CHX Holdings Bylaws; *see also* Section 2 of Article V of the current CHX Holdings Bylaws.

[83] The Exchanges notes that the following provisions under the current CHX Holdings Certificate are being deleted as they are being superseded by new provisions under the proposed CHX Holdings Bylaws or obsolete: Sections (b) and (c) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.2 of the proposed CHX Holdings Bylaws; Section (d) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.2(c) and (d) of the proposed CHX Holdings Bylaws; Section (f) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.16 of the proposed CHX Holdings Bylaws; Section (g) of Article SIXTH of the current CHX Holdings Certificate is being deleted as obsolete; and Section (h) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.6 of the proposed CHX Holdings Bylaws.

[84] *See* Section 2.2(a) of the proposed CHX Holdings Bylaws; *see also* Article SEVENTH of the NSX Holdings Certificate.

[85] *See* Section 2.2(c) of the proposed CHX Holdings Bylaws; *see also* Article SEVENTH of the NSX Holdings Certificate.

[86] *See* Section 2.16 of the proposed CHX Holdings Bylaws; *see also* Article SEVENTH of the NSX Holdings Certificate.

[87] *See supra* note 83.

[88] The CHX Holdings Director election requirements may also be found under Section 4.9 of the proposed CHX Holdings Bylaws.

[89] Paragraph (a)(i) of Article FIFTH of the current CHX Holdings Certificate defines ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.''

[90] Paragraph (a)(ii) of Article FIFTH of the current CHX Holdings Certificate defines ''Related Persons''

indirectly, of record or beneficially shares of stock of CHX Holdings representing in the aggregate more than forty percent (40%) of the then-outstanding votes entitled to be cast on any matter; (2) no Person, either alone or together with its Related Persons, who is a Participant may own, directly or indirectly, of record or beneficially shares of stock of CHX Holdings representing in the aggregate more than twenty percent (20%) of the then-outstanding votes entitled to be cast on any matter; and (3) no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock (whether such shares be common stock or preferred stock) of CHX Holdings or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of CHX Holdings. Section (a) of Article FIFTH of the current CHX Holdings Certificate contains obsolete stock transfer restrictions that expired in 2004, which the Exchange proposes to delete in its entirety.

The current CHX Holdings Certificate contains provisions to address violations of the current Ownership and Voting Limitations. Specifically, Section (d) of Article FIFTH the current CHX Holdings Certificate (Effect of Purported Transfers and Voting in Violation of this Article) requires CHX Holdings to only record the transfer or voting of shares that do not violate the Ownership and Voting Limitations. That is, to the extent a purported transfer or voting of shares exceeds the Ownership and Voting Limitations (''excess shares''), such excess shares are not recorded nor effective. Furthermore, Section (e) of Article FIFTH the current CHX Holdings Certificate (Right to Redeem Shares Purportedly Transferred or Voted in Violation of this Article) provides that if any stockholder purports to transfer or vote shares in excess of the Ownership and Voting Limitations, CHX Holdings shall have the right to redeem such excess shares for a price per share equal to the par value of those shares.

With respect to the ability of the Commission to enforce the Act as it applies to the CHX after the Closing, the CHX will operate in the same manner following the close of the Transaction in which it operates today. Thus, the Commission will continue to have plenary regulatory authority over the CHX, as is the case currently with the CHX being a wholly-owned subsidiary of CHX Holdings. As described throughout this proposed rule filing, the CHX is proposing a series of amendments to its governing documents, as well as governing documents of NA Casin Holdings that will create an ownership structure and provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the CHX and their respective directors, officers, employees, and agents to the extent that they are involved in the activities of the CHX.

Waiver of Current Ownership and Voting Limitations

As described above, CHX Holdings will become a wholly-owned direct subsidiary of NA Casin Holdings (''Proposed Share Ownership''). In order to permit the Proposed Share Ownership in excess of the current Ownership and Voting Limitations, paragraph (b)(iii)(B) and paragraph (b)(iv) of Article FIFTH of the current CHX Holdings Certificate requires that the CHX Holdings Board adopt a bylaw that waives the current Ownership and Voting Limitations and make certain findings with respect to the waiver of the current Ownership and Voting Limitations.[91]

Thus, pursuant to paragraph (b)(iii)(B) of Article FIFTH of the current CHX Holdings Certificate, on February 3, 2016 and November 22, 2016, the CHX Holdings Board voted to approve Article XII, Section 12.1 of the proposed CHX Holdings Bylaws, which provides as follows:

(a) For the sole purpose of permitting the merger contemplated by an Agreement and Plan of Merger, dated February 4, 2016, among the Corporation, Exchange Acquisition Corporation (''Merger Sub'') and North America Casin Holdings, Inc. (''Parent''), under which the Corporation will become a wholly-owned subsidiary of Parent, the Board of Directors hereby waives pursuant to Article FIFTH, paragraph (b)(iii)(B) of the certificate of incorporation of the Corporation dated July 27, 2006, as amended (''2006 Certificate''): (i) The restrictions on ownership of capital stock of the Corporation described in Article FIFTH, paragraph (b)(ii)(A) of the 2006 Certificate (''Ownership Limits'') to permit Parent to possess ownership in the Corporation in excess of the Ownership Limits (''Proposed Share Ownership''); and (ii) the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FIFTH, paragraph (b)(ii)(C) of the 2006 Certificate (''Voting Limits'') to permit Parent to possess voting rights in excess of the Voting Limits (''Proposed Voting Rights'').

(b) In so waiving the applicable Ownership Limits and Voting Limits, the Board of Directors has determined that: (i) The acquisition of the Proposed Share Ownership by Parent will not impair the ability of the Chicago Stock Exchange, Inc. (''Exchange'') to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (ii) the acquisition or exercise of the Proposed Voting Rights by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and that it will not impair the ability of the Commission to enforce the

as ''(A) with respect to any Person, all ''affiliates'' and ''associates'' of such Person (as such terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, as amended); (B) with respect to any Person that holds a permit issued by the Chicago Stock Exchange, Inc. to trade securities on the Chicago Stock Exchange (a ''Participant''), any broker or dealer with which a Participant is associated; and (C) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation.''

[91] Current Paragraph (b)(iii)(B) of Article FIFTH of the current CHX Holdings Certificate provides as follows: ''the limitations in clauses (ii)(A) and (ii)(C) may be waived by the Board of Directors of the Corporation pursuant to an amendment to the bylaws adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of the Chicago Stock Exchange, Inc., to carry out its functions and responsibilities as an 'exchange' under the Act, and the rules under the Act; is otherwise in the best interests of the Corporation and its stockholders and the Chicago Stock Exchange, Inc.; will not impair the ability of the United States Securities and Exchange Commission to enforce the Act, and such amendment shall not be effective until approved by said Commission. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act, and the rules under the Act, and the governance of the Chicago Stock Exchange, Inc.'' Current Paragraph (b)(iv) of Article FIFTH of the current CHX Holdings Certificate provides as follows: ''Notwithstanding clauses (iii)(A) and (iii)(B) above, in any case where a Person, either alone or together with its Related Persons, would own or vote more than the above percentage limitations upon consummation of any proposed sale, assignment or transfer of the Corporation's capital stock, such sale, assignment or transfer shall not become effective until the Board of Directors of the Corporation shall have determined, by resolution, that such Person and its Related Persons are not subject to any applicable 'statutory disqualification' (within the meaning of Section 3(a)(39) of the Securities Exchange Act of 1934, as amended).''

Exchange Act and the rules and regulations promulgated thereunder; and (iii) neither Parent, nor any of its Related Persons, is subject to ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Exchange Act.[92]

Moreover, on November 22, 2016, the CHX Holdings Board approved the Resolutions, herein attached as Exhibit 5H, which includes, among other things, findings that (1) the acquisition of the Proposed Share Ownership by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (2) the acquisition or exercise of the Proposed Voting Rights by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and that it will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (3) neither Parent, nor any of its Related Persons, is subject to ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Exchange Act; and (4) execution and delivery of the Merger Agreement by Parent constitutes notice of Parent's intention to acquire the Proposed Share Ownership and the Proposed Voting Rights, in writing not less than forty-five days before the proposed ownership of such shares or the proposed exercise of such voting rights.[93]

The Exchange submits that SEC approval of the proposed rule change and, in particular, Section 12.1 of the proposed CHX Holdings Bylaws, will effectuate a waiver of the current Ownership and Voting Limitations and will permit the Proposed Share Ownership and the Proposed Voting Rights.

Proposed Ownership and Voting Limitations

The Exchange further proposes to replace the Exchange's current Ownership and Voting Limitations under Article FIFTH of the current CHX Holdings Certificate with similar Ownership and Voting Limitations (comprised of the ''Voting Limitation'' and the ''Concentration Limitation'') utilized by NSX Holdings, except that the Exchange is not requesting a temporary waiver of the Concentration Limitation as provided under Section B of Article FOURTH of the NSX Holdings Certificate. Given that the Indirect Upstream Owners will have a direct ownership interest in NA Casin Holdings, NA Casin Holdings would also adopt Ownership and Voting Limitations under the proposed NA Casin Holdings Certificate identical to the those in the proposed CHX Holdings Certificate,[94] with additional language that provides that for so long as the Corporation shall directly or indirectly control CHX, the Corporation shall take reasonable steps necessary to cause CHX Holdings, a Delaware corporation and a wholly-owned subsidiary of the Corporation, to be in compliance with the Voting Limitation and the Concentration Limitation, as such terms are defined in Article FOURTH of the proposed CHX Holdings Certificate.[95]

Paragraph (c)(i) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Except as otherwise provided in this Section (c) of Article FOURTH, no Person,[96] either alone or with its Related Persons,[97] shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (the ''Concentration Limitation'').

Paragraph (c)(i)(A) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

The Concentration Limitation shall apply unless and until: (x) a Person (either alone or with its Related Persons) intending to acquire such ownership shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than 45 days (or such shorter period as the Board of Directors of the Corporation shall expressly consent to) prior to the acquisition of any shares that would cause such Person (either alone or with its Related Persons) to exceed the Concentration Limitation, of its intention to acquire such ownership; (y) the Board of Directors of the Corporation shall have resolved to expressly permit such ownership; and (z) such resolution shall have been filed with the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder.

Paragraph (c)(i)(B) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Subject to its fiduciary obligations pursuant to the Delaware General Corporation Law, the Board of Directors of the Corporation shall not adopt any resolution pursuant to paragraph (i)(A) of this Section (c) of Article FOURTH unless the Board of Directors of the Corporation shall have determined that: (x) such acquisition of beneficial ownership by such Person, either alone or with its Related Persons, will not impair any of the Corporation's or CHX's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation and its stockholders; (y) such acquisition of beneficial ownership by such Person, either alone or with its Related Persons, will not impair the Commission's ability to enforce the Exchange Act; and (z) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act. In making such determinations, the Board of Directors of the Corporation may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors of the Corporation may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

Moreover, paragraph (c)(i)(C) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Unless the conditions specified in paragraph (i)(A) of this Section (c) of Article FOURTH are met, if any Person, either alone or with its Related Persons, at any time owns beneficially shares of stock of the Corporation in excess of the Concentration Limitation, the Corporation shall call from such Person and its Related Persons that number of shares of stock of the Corporation entitled to vote on any matter that exceeds the Concentration Limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.[98]

The proposed CHX Holdings Certificate also provides for limitations on ownership of shares by Participants of the Exchange. Paragraph (c)(ii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

For so long as CHX remains a registered national securities exchange under Section 6

[92] 15 U.S.C. 78c(a)(39).

[93] The Merger Agreement was executed on February 4, 2016 and the Resolutions were approved on November 22, 2016.

[94] *See* Sections (4)–(15) of Article IX of the proposed NA Casin Holdings Certificate.

[95] *See* Section (4) of Article IX of the proposed NA Casin Holdings Certificate.

[96] Section (b) of Article FOURTH of the proposed CHX Holdings Certificate provides, in pertinent part, as follows: '''Person' as a natural person, partnership (general or limited), corporation, limited liability company, trust or unincorporated organization, or a governmental entity or political subdivision thereof.''

[97] *Supra* note 17.

[98] Any stock called pursuant to Article FOURTH, paragraph (c)(i)(C) of the proposed CHX Holdings Certificate shall be effected by a resolution of the CHX Holdings Board that must be filed with the Commission pursuant to Section 19(b) of the Exchange Act.

of the Exchange Act, no Participant, either alone or with its Related Persons, shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter. If any Participant, either alone or with its Related Persons, at any time owns beneficially shares of stock in excess of such 20% limitation, the Corporation shall call from such Participant and its Related Persons that number of shares of stock of the Corporation entitled to vote on any matter that exceeds such 20% limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.

Paragraph (c)(iii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

The Corporation shall not register the purported transfer of any shares of stock of the Corporation in violation of the restrictions imposed by this Section (c) of Article FOURTH.

Paragraph (c)(iv) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

For purposes of this Section (c) of this Article FOURTH, no Person shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of the Corporation solely because such Person or any of such Person's Related Persons has or shares the power to vote or direct the voting of such shares of stock pursuant to a revocable proxy given in response to a public proxy or consent solicitation conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act, except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).

Section (d) of Article FOURTH (Ownership Limitation for Disqualified Controlling Stockholders) of the proposed CHX Holdings Certificate provides as follows:

Notwithstanding any other provision of this Third Amended and Restated Certificate of Incorporation, no Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act shall be permitted at any time to own beneficially, either alone or with its Related Persons, shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (such Person, a ''Disqualified Controlling Stockholder''). If a Person becomes a Disqualified Controlling Stockholder, the Corporation shall call from such Person and its Related Persons that number of shares of stock entitled to vote on any matter that exceeds such 20% limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.

Section (e) of Article FOURTH of the proposed CHX Holdings Certificate (Procedure for Calling Shares) provides as follows:

In the event the Corporation shall call shares of stock (the ''Called Stock'') of the Corporation pursuant to Sections (c) or (d) of this Article FOURTH, notice of such call shall be given by first class mail, postage prepaid, mailed not less than 5 business nor more than 60 calendar days prior to the call date, to the holder of the Called Stock, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (w) the call date; (x) the number of Called Stock to be called; (y) the aggregate call price; and (z) the place or places where Called Stock are to be surrendered for payment of the call price. Failure to give notice aforesaid, or any defect therein, shall not affect the validity of the call of Called Stock. From and after the call date (unless default shall be made by the Corporation in providing funds for the payment of the call price), shares of Called Stock, which have been called as aforesaid shall be cancelled, shall no longer be deemed to be outstanding, and all rights of the holder of such Called Stock as a stockholder of the Corporation (except the right to receive from the Corporation the call price against delivery to the Corporation of evidence of ownership of such shares) shall cease. Upon surrender in accordance with said notice of evidence of ownership of Called Stock so called (properly assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be called by the Corporation at par value.

Section (f) of Article FOURTH of the proposed CHX Holdings Certificate (Right to Information; Determinations by the Board of Directors) provides as follows:

The Board of Directors of the Corporation shall have the right to require any Person and its Related Persons reasonably believed (v) to be subject to the Voting Limitation or the Nonvoting Agreement Prohibition, (w) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation, (x) to own beneficially (within the meaning of Rules 13d–3 and 13d–5 under the Exchange Act) an aggregate of 5% or more of the then outstanding shares of stock of the Corporation entitled to vote on any matter, which ownership such Person, either alone or with its Related Persons, has not reported to the Corporation, (y) to be subject to the ownership limitation set forth in paragraph (ii) of Section (c) of this Article FOURTH or (z) to be a Disqualified Controlling Stockholder, to provide the Corporation complete information as to all shares of stock of the Corporation beneficially owned by such Person and its Related Persons and any other factual matter relating to the applicability or effect of this Article FOURTH as may reasonably be requested of such Person and its Related Persons. Any constructions, applications or determinations made by the Board of Directors of the Corporation pursuant to this Article FOURTH in good faith and on the basis of such information and assistance as was then reasonably available for such purpose shall be conclusive and binding upon the Corporation and its directors, officers and stockholders.

With respect to voting limitations, paragraph (b)(i) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Notwithstanding any other provision of this Third Amended and Restated Certificate of Incorporation, (x) no Person, either alone or with its Related Persons, as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of the Corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the ''Voting Limitation''), and if votes have been cast, in person or by proxy or through any voting agreement or other arrangement, by any Person, either alone or with its Related Persons, in excess of the Voting Limitation, the Corporation shall disregard such votes cast in excess of the Voting Limitation and (y) no Person, either alone or with its Related Persons, may enter into any agreement, plan or other an agreement relating to shares of stock of the Corporation entitled to vote on any matter with any other Person, either alone or with its Related Persons, under circumstances which would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation which would, as a result thereof, represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the ''Nonvoting Agreement Prohibition'').[99]

[99] Article FOURTH, paragraph (b)(i) of the proposed CHX Holdings Certificate prohibits ''Nonvoting Agreements'' by or among Persons and their Related Persons that would result in shares of stock of CHX Holdings that would be subject to such agreement plan or other arrangement not being voted on any matter, or the withholding of any proxy relating those shares, where the effect of such an agreement would be to enable any Person, either alone or with its Related Persons, to vote, possess the right to vote or cause the voting of shares of CHX Holdings which would, as a result thereof, represent in the aggregate more than 20% of the then outstanding votes entitled to be cast (the ''Nonvoting Agreement Prohibition''). Any share owner seeking a waiver of the Nonvoting Agreement Prohibition so as to be able to enter into such an agreement would also be required to obtain express permission of the CHX Holdings Board through a duly authorized written resolution that is filed with and approved by the Commission under Section 19(b) of the Exchange Act.

Paragraph (b)(ii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

The Voting Limitation or the Nonvoting Agreement Prohibition, as applicable, shall apply unless and until: (x) a Person (and its Related Persons) owning any shares of stock of the Corporation entitled to vote on such matter shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than 45 days (or such shorter period as the Board of Directors of the Corporation shall expressly consent to) prior to any vote, of its intention to cast more than 20% of the votes entitled to be cast on such matter or to enter into an agreement, plan or other arrangement that would violate the Nonvoting Agreement Prohibition, as applicable; (y) the Board of Directors of the Corporation shall have resolved to expressly permit such exercise or the entering into of such agreement, plan or other arrangement, as applicable; and (z) such resolution shall have been filed with the Securities and Exchange Commission (the ''Commission'') under Section 19(b) of the Exchange Act and shall have become effective thereunder.

Paragraph (b)(iii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Subject to its fiduciary obligations pursuant to the Delaware General Corporation Law, the Board of Directors of the Corporation shall not adopt any resolution pursuant to paragraph (b)(ii) of this Article FOURTH unless the Board of Directors of the Corporation shall have determined that: (v) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or with its Related Persons, will not impair any of the Corporation's or the CHX's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation and its stockholders; (w) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or with its Related Persons, will not impair the Commission's ability to enforce the Exchange Act; (x) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act; (y) in the case of a resolution to approve the exercise of voting rights in excess of the Voting Limitation, for so long as CHX remains a registered national securities exchange as defined under Section 6 of the Exchange Act, neither such Person nor any of its Related Persons is a Participant (any such Person that is a Related Person of a Participant shall hereinafter also be deemed to be a Participant for purposes of this Third Amended and Restated Certificate of Incorporation, as the context may require); and (z) in the case of a resolution to approve any waiver of the Nonvoting Agreement Prohibition, no such waiver may be approved with respect to any agreement, plan or other arrangement to which a Participant is a party that relates to shares of stock of the Corporation entitled to vote on any matter. In making such determinations, the Board of Directors of the Corporation may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors of the Corporation may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

Paragraph (b)(iv) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

This Section (b) of Article FOURTH shall not apply to (x) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (y) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act.

Jurisdiction Over Individuals

The Exchange proposes to harmonize provisions under the proposed CHX Holdings Bylaws and the NA Casin Holdings Bylaws regarding jurisdiction over individuals.

Specifically, Section 3.5 of the proposed CHX Holdings Bylaws [100] provides as follows:

• The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, Commission, and CHX,[101] for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of CHX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, Commission or the CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of CHX.

Similarly, Section 10.1.1 of the NA Casin Holdings Bylaws [102] provides as follows:

• The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, United States Securities and Exchange Commission (''Commission''), and the Chicago Stock Exchange, Inc. (''CHX''), for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of CHX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, Commission or the CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of CHX.

Access to Books and Records

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws and the NA Casin Holdings Certificate regarding access to certain books and records so as to facilitate access to such books and records of the Indirect Upstream Owners by the Commission and CHX.

[100] Section 3.6 of the proposed CHX Holdings Bylaws provides that the Corporation shall take such action as is necessary to ensure that the Corporation's officers, directors and employees consent to the applicability of Sections 3.1, 3.2, 3.3, 3.4 and 3.5 with respect to activities related to the CHX.

[101] Section 3.5 of the proposed CHX Holdings Bylaws is virtually identical to Article III, Section 5 of the current CHX Holdings Bylaws, except for amendments to replace ''Chicago Stock Exchange, Inc.'' with the abbreviated ''CHX.''

[102] Similar to Section 3.6 of the proposed CHX Holdings Bylaws, Section 10.1.2 of the NA Casin Bylaws would provide that the Corporation shall take reasonable steps necessary to cause its officers, directors, and employees prior to accepting a position as an officer, director, or employee, as applicable, of the Corporation to consent to the applicability to them of Sections 1, 3, 16 and 17 of Article IX of the Certificate of Incorporation and Section 10.1.1 hereof to the extent that such officers, directors, and employees are involved in the activities of CHX. *See supra* note 100.

Specifically, the proposed CHX Holdings Bylaws includes the following provisions:

• Section 3.2 [103] would provide that all confidential information pertaining to the self-regulatory function of CHX (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of CHX that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) Not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any non-regulatory purposes. Nothing in these bylaws shall be interpreted as to limit or impede: (a) The rights of the Commission or CHX to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (b) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or CHX.

• Section 3.3 [104] would provide that for so long as the Corporation shall control, directly or indirectly, CHX, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of CHX. The Corporation's books and records relating to the activities of CHX shall be subject at all times to inspection and copying by the Commission and CHX. The Corporation's books and records related to the activities of CHX shall be maintained within the United States.

• Section 3.7 provides that for so long as a stockholder shall maintain a direct or indirect equity interest in the Chicago Stock Exchange, Inc.: (a) The books, records, officers, directors (or equivalent) and employees of the stockholder shall be deemed to be the books, records, officers, directors and employees of Chicago Stock Exchange, Inc. for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of Chicago Stock Exchange, Inc.; (b) the stockholder's books and records related to the activities of Chicago Stock Exchange, Inc. shall at all times be made available for inspection and copying by the Commission and Chicago Stock Exchange, Inc.; and (c) the stockholder's books and records related to the activities of Chicago Stock Exchange, Inc. shall be maintained within the United States.

Similarly, the NA Casin Holdings Certificate includes the following provisions:

• Similar to Section 3.2 of the proposed CHX Holdings Bylaws, Section (16) of Article IX would provide that all confidential information pertaining to the self-regulatory function of CHX (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of CHX that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) Not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any non-regulatory purposes. Nothing in this Amended and Restated Certificate of Incorporation shall be interpreted as to limit or impede: (A) The rights of the Commission or CHX to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (B) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or CHX.

• Similar to Section 3.3 of the proposed CHX Holdings Bylaws, Section (17) of Article IX would provide that for so long as the Corporation shall control, directly or indirectly, CHX, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of CHX. The Corporation's books and records relating to the activities of CHX shall be subject at all times to inspection and copying by the Commission and CHX. The Corporation's books and records related to the activities of CHX shall be maintained within the United States.

• Similar to Section 3.7 of the proposed CHX Holdings Bylaws, Section (18) of Article IX would provide that for so long as a stockholder shall maintain a direct or indirect equity interest in CHX: (a) The books, records, officers, directors (or equivalent) and employees of the stockholder shall be deemed to be the books, records, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of CHX; (b) the stockholder's books and records related to the activities of CHX shall at all times be made available for inspection and copying by the Commission and CHX; and (c) the stockholder's books and records related to the activities of CHX shall be maintained within the United States.

Additional Matters

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws and the NA Casin Holdings Certificate regarding the preservation of the independence of the self-regulatory function of the CHX, directors' consideration of the effect of CHX Holdings' actions on the CHX's ability to carry out its responsibilities under the Exchange Act and cooperation with the Commission and the CHX.

Specifically, the proposed CHX Holdings Bylaws includes the following provisions:

• Section 3.1 provides that for so long as the Corporation shall control Chicago Stock Exchange, Inc. (''CHX''), the Corporation and its Board of Directors, officers, employees and agents shall give due regard to the preservation of the independence of the self-regulatory function of the CHX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the CHX relating to its regulatory functions (including enforcement and disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of the CHX to carry out its responsibilities under the Securities

[103] *See supra* note 100.

[104] *See id.*

Exchange Act of 1934, as amended (the ''Exchange Act''). The Corporation's books and records related to the activities of CHX shall be maintained within the United States.

• Section 3.4 provides that the Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall comply with the federal securities laws and rules and regulations thereunder and shall: (a) Cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX's regulatory authority; and (b) take reasonable steps necessary to cause its agents to cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX's regulatory authority with respect to such agents' activities related to CHX.

Similarly, the NA Casin Holdings Certificate includes the following provisions:

• Similar to Section 3.1 of the proposed CHX Holdings Bylaws, Section (3) of Article IX would provide that for so long as the Corporation shall control CHX, the Corporation and its Board of Directors, officers, employees and agents shall give due regard to the preservation of the independence of the self-regulatory function of the CHX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the CHX relating to its regulatory functions (including enforcement and disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of the CHX to carry out its responsibilities under the Securities Exchange Act of 1934, as amended. The Corporation's books and records related to the activities of CHX shall be maintained within the United States.

• Similar to Section 3.4 of the proposed CHX Holdings Bylaws, Section (2) of Article IX would provide that the Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall comply with the federal securities laws and rules and regulations thereunder and shall: (a) Cooperate (i) with the United States Securities and Exchange Commission (the ''Commission''), and (ii) with the Chicago Stock Exchange, Inc. a Delaware corporation and an indirect wholly-owned subsidiary of the Corporation (''CHX''), pursuant to, and to the extent of, CHX's regulatory authority; and (b) take reasonable steps necessary to cause its agents to cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX's regulatory authority with respect to such agents' activities related to CHX.

Moreover, so as to ensure that a new NA Casin Holdings board is elected by the Indirect Upstream Owners as soon as practicable after the Closing and to facilitate the ability of NA Casin Holdings to maintain board members that are experienced with the operation of the Exchange, NA Casin Holdings would adopt the following provision in the NA Casin Holdings Certificate:

• Section (4) of Article V of the NA Casin Holdings Certificate would provide that the directors shall hold office until their successors are elected and qualified, and prior to the election of directors described in paragraph (5) below, any director may be removed with or without cause at any time by a vote of the recordholders of a majority of the Shares then entitled to vote, or by written consent of the recordholders of a majority of the Shares entitled to vote at a meeting of the stockholders.

• Section (5) of Article V of the NA Casin Holdings Certificate would provide that within 30 days after the consummation of the merger contemplated by the Agreement and Plan of Merger dated as of February 4, 2016 among CHX Holdings, Inc., the Corporation and Exchange Acquisition Corp. (the ''Merger Agreement'') the Corporation shall convene a special meeting of its stockholders for the purpose of electing a new Board of Directors. From and after such special meeting, the Board shall be and is divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III. In case of any increase or decrease, from time to time, in the number of directors, the number of directors in each class shall be apportioned as nearly equal as possible. No decrease in the number of directors shall shorten the term of any incumbent director.

• Section (6) of Article V of the NA Casin Holdings Certificate would provide that each director shall serve for a term ending on the date of the third annual meeting following the meeting at which such director was elected; provided, that each director initially appointed to Class I shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2017; each director initially appointed to Class II shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2018; and each director initially appointed to Class III shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2019; provided further, that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal.

The class board structure of Article V of the NA Casin Holdings Certificate would ensure overlap of board member terms, which would provide continuity and stability as to board composition and, thereby, facilitate the ability of the NA Casin Holdings board to meet its obligations under Article IX of the NA Casin Holdings Certificate.

Effecting Amendments to CHX Holdings and NA Casin Governing Documents

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws, the NA Casin Holdings Certificate and the NA Casin Holdings Bylaws regarding the effectuation of amendments to those documents.

Specifically, Article VIII of the proposed CHX Holdings Bylaws provides as follows:

• These bylaws may be amended or repealed, or new bylaws may be adopted, by the Board of Directors. These bylaws may also be amended or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Corporation. For so long as this Corporation shall control, directly or indirectly, CHX, before any amendment to or repeal of any provision of the bylaws of this Corporation shall be effective, those changes shall be submitted to the Board of Directors of CHX and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Exchange Act and the rules promulgated under that Exchange Act by the Commission or otherwise, then the proposed changes to the bylaws of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

Also, Article ELEVENTH of the proposed CHX Holdings Certificate provides as follows:

• The Corporation reserves the right to amend this certificate of incorporation, and to change or repeal any provision of the certificate of incorporation, in the manner prescribed at the time by statute, and all rights conferred upon stockholders by such certificate of incorporation are granted subject to this reservation. For so long as this Corporation shall control, directly or indirectly, Chicago Stock Exchange, Inc., before any amendment to or repeal of any provision of this certificate of incorporation shall be effective, those changes shall be submitted to the Board of Directors of

Chicago Stock Exchange, Inc. and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Act and the rules promulgated under that Act by the Commission or otherwise, then the proposed changes to the certificate of incorporation of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

Similarly, NA Casin Holdings would adopt the following provisions in its governing documents to require the consent of the CHX's board of directors in amending or repealing any provisions of NA Casin Holdings' governing documents:

- Section 11.1 of the NA Casin Holdings Bylaws would provide, in pertinent part, that for so long as this Corporation shall control, directly or indirectly, CHX, before any amendment to or repeal of any provision of these Bylaws shall be effective, the same shall be submitted to the board of directors of CHX and if said board shall determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Securities and Exchange Act of 1934 and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.
- Article X of the NA Casin Holdings Certificate would provide that for so long as this Corporation shall control, directly or indirectly, CHX before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, the same shall be submitted to the board of directors of CHX and if said board shall determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[105] and Section 6(b)(1) in particular.[106] Specifically, the Exchange believes that the proposed non-substantive amendments to the governing documents of CHX and CHX Holdings and the CHX Rules clarify the history and organization of those documents and eliminates redundant provisions, which include the following key changes described in greater detail above:

- Omitting provisions from the proposed CHX Holdings Certificate regarding board composition requirements and election/vacancy procedures, as they are fully-described under Article II of the proposed CHX Holdings Bylaws.
- Omitting provisions from the proposed CHX Certificate regarding board composition requirements and election/vacancy procedures, as they are fully-described under Article III of the proposed CHX Bylaws.
- Moving provisions under Article 2, Rule 1 of the current CHX Rules regarding board committees and their respective composition requirements to Article V of the proposed CHX Bylaws.

Accordingly, the Exchange believes that the proposed rule change would further 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 Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of Section 6(b)(1) of the Act.

Moreover, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5) [107] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Exchange submits that the CHX Rules, the relevant governing documents of CHX and its upstream affiliates, CHX Holdings and NA Casin Holdings, the NACH Stockholders' Agreement, the Saliba Put Agreement and the Raptor Put Agreement, as proposed to be adopted or amended, to permit the Transaction, are consistent with Section 6(b) of the Act,[108] in general and 6(b)(5), in particular.

The proposed CHX Holdings Certificate and Bylaws establish an organizational structure for CHX Holdings, as the holding company for CHX, which will assure that the Commission and CHX will continue to be able to fully discharge their respective obligations to effectively regulate the equity securities markets and CHX. Specifically, among other key provisions, CHX Holdings and its directors, officers, employees and agents, are subject to the exclusive jurisdiction of the U.S. federal courts, the SEC and CHX; CHX Holdings is obligated to comply with the federal securities laws and the rules and regulations thereunder, as are its directors, officers and employees; prospective owners would be required to adhere to the proposed Ownership and Voting Limitations; and the books, records, premises, directors, employees and agents of CHX Holdings are deemed to be those of CHX for purposes of and subject to oversight pursuant to the Act. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed CHX Holding Certificate and Bylaws also establish board composition and procedure requirements, which will facilitate the ability of the CHX Holdings to ensure that the CHX Holdings Board is optimally constituted with members that would give due regard to the preservation of the independence of the SRO function of the Exchange. To this end, the CHX Holdings Certificate and Bylaws have been updated to be largely consistent with the board composition and procedure requirements of NSX Holdings. Specifically, among other provisions, the proposed CHX Holdings Board composition and procedure requirements provide flexibility regarding the number of CHX Holdings Directors and the removal of CHX Holdings Directors. The Exchange believes that the proposed changes will also promote consistency among the various governance documents of the holding companies of the national securities exchanges and facilitate the ability of the Commission to provide oversight regarding the upstream governance of national securities exchanges. The Exchange also notes that CHX Holdings stockholder-called special meeting provision will facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed NA Casin Holdings Certificate and Bylaws establish an

[105] 15 U.S.C. 78f(b).

[106] 15 U.S.C. 78f(b)(1).

[107] 15 U.S.C. 78f(b)(5).

[108] 15 U.S.C. 78f(b).

organizational structure for NA Casin Holdings, as the direct holding company for CHX Holdings, which will assure that the Commission and CHX will continue to be able to fully discharge their respective obligations to effectively regulate the equity securities markets and CHX. Specifically, similar to the requirements under the CHX Holdings Certificate and Bylaws, among other provisions, NA Casin Holdings and its directors, officers, employees and agents, would be subject to the exclusive jurisdiction of the U.S. federal courts, the SEC and CHX; NA Casin Holdings is obligated to comply with the federal securities laws and the rules and regulations thereunder, as are its directors, officers and employees; prospective owners would be required to adhere to the Ownership and Voting Limitations; and the books, records, premises, directors, employees and agents of NA Casin Holdings are deemed to be those of CHX for purposes of and subject to oversight pursuant to the Act. Moreover, the harmonization between the NA Casin Holdings Certificate and Bylaws and the CHX Holdings Certificate and Bylaws are intended to align the CHX Holdings governance structure with that of NA Casin Holdings and thus enhance governance efficiencies. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed CHX Certificate, Bylaws and Rules establish an organization structure for CHX that will assure that CHX will continue to be able to fully-discharge its obligations as an SRO pursuant to the Exchange Act. Specifically, among other key provisions, the CHX board composition and procedure requirements have been updated to be largely consistent with the board composition and procedure requirements of NSX; the CHX Regulatory Oversight Committee composition requirements have been updated to be consistent with the NSX Regulatory Oversight Committee composition requirements; and the rules governing the composition of the various CHX board committees have been restated under the proposed CHX Bylaws in a manner similar to the NSX By-Laws. The Exchange believes that these amendments will promote consistency among the various governance documents of the national securities exchanges and facilitate the ability of the Commission to provide oversight of the equity securities markets. The Exchange also notes that the current provisions regarding the SRO function of CHX will remain substantively unchanged and will remain in full force and effect prior to, during and after the Closing. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

To the extent that the CHX Certificate and Bylaws differ from that of NSX, the Exchange believes that those provisions are also consistent with the objectives of Section 6(b)(5). Specifically, the Exchange believes that the proposed requirement that at least 20% of the CHX board be comprised of CHX Holdings Directors will promote governance efficiencies between CHX Holdings and CHX that will operate to enhance the governance and operation of the Exchange as an SRO. Also, the Exchange believes that maintaining the role of Vice Chairman of the CHX Board and the current CHX Board committee composition requirements (except for the Regulatory Oversight Committee composition requirements, as described above) will provide continuity in CHX governance so as to facilitate the transition to the post-Closing governance structure. Finally, the Exchange believes that the CHX stockholder-called special meeting provision will facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. As such, all of these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

In addition, the proposed NACH Stockholders' Agreement, Saliba Put Agreement and Raptor Put Agreement include provisions that provide reasonable financial protections to the Indirect Upstream Owners so as to facilitate consummation of the Transaction without violating the proposed Ownership and Voting Limitations. Specifically, while the proposed NACH Stockholders' Agreement includes various transfer of shares provisions, the agreement does not contain any provisions, such as lock-up, drag-along or tag-along rights, that could result in the Indirect Upstream Owners becoming Related Persons.[109] [110] Accordingly, the Exchange believes that these agreements would not by themselves result in a violation of the proposed Ownership and Voting Limitations and would, instead, facilitate the ability of the Indirect Upstream Owners to provide additional capital to the Exchange so that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

Moreover, the Exchange submits that the proposed call options under the proposed CHX Holdings Certificate [111] and NA Casin Holdings Certificate [112] will serve as an enforcement and deterrence mechanism to ensure compliance with the proposed Ownership and Voting Limitations by the Upstream Owners and any future owners. Thus, the Exchange submits that the call options are consistent with Section 6(b)(5) in that the call options further the protection of investors and the public interest by ensuring diversity in the ownership of the Exchange, which is key to protecting the Exchange's independence and its ability to meet its obligations pursuant to the Exchange Act.

Further, the proposed rule change is designed to effectuate changes to the CHX Holdings' ownership necessary to close the Transaction and provide for an efficient transition into a new organizational structure as soon as practicable after approval by the Commission of the proposed rule change. To this extent, the Exchange submits that the rule changes are consistent with Section 6(b)(5) in that they are designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

The Exchange believes that the Transaction and the proposed rule change promote the protection of investors and the public interest. The Exchange submits that its proposal and the proposed ownership structure are consistent with the public interest in promoting efficient markets, reducing administrative burdens on exchanges, and providing flexibility where appropriate to the effective discharge of SRO responsibilities. The amendments are intended to provide market participants, investors, and the public with a clear and transparent description of the proposed changes to the CHX Holdings' ownership and governance structure as reflected in governing corporate documents. The Exchange

[109] *See supra* note 17.

[110] *See supra* note 22.

[111] *See* Section (e) of Article FOURTH of the proposed CHX Holdings Certificate.

[112] *See* Section (14) of Article IX of the proposed NA Casin Holdings Certificate.

also believes that the Closing will operate to enhance competition among the equity securities markets and provide new trading and capital formation opportunities for market participants and the investing public. As such, the Transaction and the proposed rule change will assure that the Exchange meets its statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The rule change is being proposed in connection with the Transaction that will, upon completion, change the ownership structure of CHX Holdings. The Exchange believes that the Transaction will result in substantial capital investment into the Exchange, which will better enable the Exchange to compete within the highly competitive U.S. securities market and better enable the Exchange to further the objectives of the Act. As such, the Exchange believes that there is no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2016–20 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–CHX–2016–20. 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 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–CHX–2016–20 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[113]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29646 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[113] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79477; File No. SR–NYSE–2016–83]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 67 To Modify the Web site Data Publication Requirements Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

December 6, 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 30, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Rule 67 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan''). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, NYSE MKT LLC, NYSE Arca, Inc., the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (''BZX''), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, and the Nasdaq Stock Market LLC (collectively ''Participants'') filed with the Commission, pursuant to Section 11A of the Act [4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[8] The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[9] On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.[10] Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[12] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Rule 67(b)(2) provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 67, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 67(b)(3)(C), provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 67, publicly available on the Exchange's Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .70 to Rule 67 provides, among other things, that the requirement that the Exchange or their DEA make certain data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

The Exchange is proposing amendments to Rule 67(b)(2) (regarding Appendix B.I and B.II data) and Rule 67(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on the Exchange's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .70 to Rule 67 would provide that, notwithstanding the provisions of paragraphs (b)(2), (b)(3)(C) and (b)(5), the Exchange shall make data for the Pre-Pilot period publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan by February 28, 2017.[13]

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.[14]

Finally, the Exchange is proposing an amendment to Rule 67(b)(5) (regarding data described in Item III of Appendix B) to add a provision identical to Rule 67(b)(2) (as amended above pursuant to the proposed changes described above to such Rule), which shall require the Exchange to make the data described in Item III of Appendix B publicly available on the Exchange Web site within 120 calendar days following month end at no charge and shall not identify the member organization that generated the data. The Exchange is proposing such an amendment in order to add a provision in its rules to comply with such requirement and provision in the Plan.[15]

As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[9] *See* Approval Order at 27533 and 27545.

[10] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

[11] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; *see also* Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[12] *See* Securities Exchange Act Release No. 77468 (March 29, 2016), 81 FR 19269 (April 4, 2016) (Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSE–2016–27); *see also* Securities Exchange Act Release No. 78813 (September 12, 2016), 81 FR 63825 (September 16, 2016) (Immediate Effectiveness of Proposed Rule Change to Amend Rule 67 to Modify Certain Data Collection Requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program) (SR–NYSE–2016–63); *see also* Letter from John C. Roeser, Associate Director, Division of Trading and Markets, Commission, to Sherry Sandler, Associate General Counsel, NYSE, dated April 4, 2016.

[13] With respect to data for the Pilot Period, the requirement that the Exchange or their DEA make data publicly available on the Exchange's or DEA's Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or DEA's Web site by February 28, 2017, which is 120 days following the end of October 2016.

[14] *See supra* note 11.

[15] *See* Section VII of the Plan.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

The Exchange believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The Exchange notes that the proposal does not alter the information required to be submitted to the SEC.

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 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) [18] of the Act and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of November 30, 2016.[22]

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.[23] 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–NYSE–2016–83 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–NYSE–2016–83. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–83, and should be submitted on or before January 3, 2017.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29649 Filed 12–9–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79473; File No. SR–IEX–2016–17]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Web site Data Publication Requirements Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

December 6, 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 21, 2016, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend IEX Rule 11.340 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').

IEX has filed the proposed rule change for immediate effectiveness. IEX has requested that the SEC waive the 30-day operative period so that the proposed rule change may become operative upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.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 the 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 these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA and several other self-regulatory organizations (the ''Participants'') filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program.[8] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10] The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[11] On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.[12] Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. An amendment to the Plan adding IEX as a Participant was filed with the Commission on August 4, 20 [sic].[13] On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.[14]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

IEX adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[15] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendix B to the Plan, IEX Rule 11.340(b)(2)(C) provides that IEX shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraphs (b)(2)(A) and (B) of Rule 11.340, publicly available on the IEX Web site on a monthly basis at no charge and shall not identify the Member that generated the data. IEX Rule 11.340(b)(3)(C), provides, among other things, that IEX shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) and (B) of Rule11.340, publicly available on the IEX Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Supplementary Material .09 to IEX Rule 11.340 provides, among other things, that the requirement that IEX make certain data publicly available on the IEX Web site pursuant to Appendix B and Appendix C to the Plan shall

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[11] *See* Approval Order at 27533 and 27545.

[12] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

[13] Securities Exchange Act Release No. 78702 (August 26, 2016). Pursuant to the terms of the plan, the amendment was effective on filing pursuant to Rule 608(b)(3) of the Act because it involves solely technical or ministerial matters.

[14] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; *see also* Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[15] *See, e.g.,* Securities Exchange Act Release No. 78820 (September 13, 2016), 81 FR 64234 (September 19, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–IEX–2016–13); *see also* Securities Exchange Act Release No. 78481 (August 4, 2016) 81 FR 52933 (August 10, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–IEX–2016–07); *see also* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Claudia Crowley, Chief Regulatory Officer, IEX, dated August 30, 2016.

commence at the beginning of the Pilot Period.

IEX is proposing amendments to Rule 11.340(b)(2)(C) (regarding Appendix B.I and B.II data) and Rule 11.340(b)(3)(C) (regarding Appendix B.IV data), to provide that data required to be made available on IEX's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Supplementary Material .09 to Rule 11.340 would provide that, notwithstanding the provisions of paragraphs (b)(2)(C) and (b)(3)(C), IEX shall make data for the Pre-Pilot period publicly available on the IEX Web site pursuant to Appendix B to the Plan by February 28, 2017.[16]

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

As noted in Item 1 of this filing, IEX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[17] which requires, among other things, that IEX 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, and Section 6(b)(8) of the Act,[18] which requires that IEX rules not impose any burden on competition that is not necessary or appropriate.

IEX believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the Commission. IEX believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting IEX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX 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. IEX notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting IEX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. IEX notes that the proposed change will not affect the data reporting requirements of Members under IEX's rules. The proposal also does not alter the information required to be submitted to the Commission.

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.[19]

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)[20] of the Act and Rule 19b–4(f)(6)[21] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and public availability of such information. The proposal does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.[24]

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.[25] If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to

[16] With respect to data for the Pilot Period, the requirement that IEX make data publicly available on the IEX Web site pursuant to Appendix B to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the IEX Web site by February 28, 2017, which is 120 days following the end of October 2016. We note that FINRA has submitted a request for exemption, on behalf of all Plan Participants, requesting that the Commission grant an exemption from such provisions of the Plan. *See,* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated November 14, 2016.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(8).

[19] Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. *See* Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at *https://www.fif.com/comment-letters.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] *Id.*

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(3)(C).

[26] 15 U.S.C. 78s(b)(2)(B).

determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2016–17 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–IEX–2016–17. This file number should be included in 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at *www.iextrading.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–17 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29645 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 14, 2016 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to approve the 2017 budget of the Public Company Accounting Oversight Board and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact Brent J. Fields in the Office of the Secretary at (202) 551–5400.

Dated: December 7, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–29794 Filed 12–8–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79479; File No. SR–NYSEMKT–2016–104]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That the Exchange Would Not Be Required To Report to the Securities Information Processor an Official Closing Price, as Defined Under Rule 123C(1)(e)(i)—Equities, as an ''M'' Sale Condition

December 6, 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 23, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 this rule change to provide that the Exchange would not be required to report to the securities information processor an Official Closing Price, as defined under Rule 123C(1)(e)(i)—Equities, as an ''M'' sale condition. 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 is proposing to provide that the Exchange would not be required to report to the securities information processor (''SIP'') an Official Closing Price, as defined under Rule 123C(1)(e)(i)—Equities, as an ''M'' sale condition.[4] This proposed rule change would not change how the Official Closing Price would be determined and disseminated if the Exchange is unable

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For a description of all sale conditions that are reportable to the SIP, including the ''M'' and ''6'' sale conditions, see the Consolidated Tape System Participant Communications Interface Specification, dated September 15, 2016, at 87 (''SIP Specifications''), available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.*

to conduct a closing transaction in one or more securities due to a systems or technical issue, as described in Rules 123C(1)(e)(ii)–(iv)—Equities.

As set forth in the SIP Specifications, a price reported to the SIP by an exchange under the ''M'' sale condition, which is called the ''Market Center Official Close,'' is not used for purposes of determining a consolidated last sale price or the high or low price of a security and does not include any volume information. Each exchange determines what price could be reported to the SIP as its ''Market Center Official Close.'' To date, the Exchange has not reported to the SIP a price with an ''M'' sale condition.

By contrast, a trade reported to the SIP as a Market Center Closing Trade with a ''6'' sale condition includes volume information, is included in the consolidated last sale, and is included in the high or low price of a security. The Exchange reports to the SIP closing auction trades of a round lot or more with a ''6'' sale condition.[5]

Recently, the Exchange amended Rule 123C(1)(e)—Equities to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.[6] In that Filing, the Exchange noted that once it implemented changes to how the Exchange determines the Official Closing Price, the Exchange ''will disseminate to the SIP the Official Closing Price as an ''M'' value.'' [7]

With this proposed rule change, the Exchange is modifying this statement to permit, but not require, the Exchange to report a price with an ''M'' sale condition to the SIP when the Official Closing Price is determined under Rule 123C(1)(e)(i)—Equities. Specifically, the Exchange does not believe that it should publish an Official Closing Price to the SIP as an ''M'' value if there has not been a last-sale eligible trade in a security on a trading day. For example, based on feedback from industry participants, the Exchange understands that certain market participants, such as index providers and mutual funds, follow a different method of determining a security's closing price when there have not been any last-sale eligible trades on a trading day. Under these circumstances, the Exchange understands that an Official Closing Price reported to the SIP as an ''M'' sale condition that differs from how an industry market participant may determine such value for its own purposes could lead to confusion if a market participant's systems read the ''M'' value published by the SIP that differs from their calculation.

Accordingly, this proposed rule change is intended to provide that the Exchange's would not be required to publish an Official Closing Price, as defined in Rule 123C(1)(e)(i)—Equities, as an ''M'' sale condition to the SIP. And, as noted above, this proposed rule change would not alter how the Official Closing Price would be disseminated under Rules 123C(1)(e)(ii)–(iv)—Equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency that the Exchange's is not required to report a price to the SIP as an ''M'' sale condition. The Exchange believes that the proposed rule change is consistent with the Act because the ''M'' sale condition does not contribute to the consolidated last sale price for a security, the high or low price of a security, or reported volume for a security, and therefore is an informational value. The Exchange further believes that this proposed rule change is consistent with the protection of investors and the public interest because it would reduce confusion by eliminating publication to the SIP of a price that may conflict with how an index provider or mutual fund determines that value for a security if there are no last-sale eligible trades on a trading day. Finally, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would apply only when the Exchange is fully operational. If the Exchange is unable to conduct a closing transaction due to a systems or technical issue, current Rule 123C(1)(ii)–(iv)—Equities would govern, with no change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to specify that the Exchange would not be required to report an Official Closing Price to the SIP as an ''M'' sale condition if there has not been a last-sale eligible trade on a trading day.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

[5] For example, under Rule 123C(1)(e)(i)—Equities, if there were no closing transaction in a security or if a closing transaction is less than one round lot, the Exchange's Official Closing Price will be the most recent last-sale eligible trade on the Exchange in such security on that trading day. By contrast, on NYSE Arca, Inc., under the same circumstances, the Official Closing Price will be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. *See* NYSE Arca Equities, Inc. Rule 1.1(gg)(1)(A).

[6] *See* Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSEMKT–2016–31; SR–NYSE–2016–18) (Approval Order) and 77306 (March 7, 2016), 81 FR 12986 (March 11, 2016) (Notice of Filing).

[7] *See id.* at 12986. *See also* Securities Exchange Act Release No. 76601 (December 9, 2015), 80 FR 77680 (December 15, 2015) (SR–NYSEMKT–2015–98) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to define the term ''Official Closing Price'').

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the operative delay would be consistent with the protection of investors and the public interest because it would make transparent that the Exchange would not report an ''M'' sale condition to the SIP for a security if there has not been a last-sale eligible trade on a trading day. The Exchange further believes that the proposed rule change is consistent with the protection of investors and the public interest because it would not change how an Official Closing Price would be disseminated under Exchange Rule 123C(1)(e)(ii)–(iv)—Equities. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest because it clarifies the Exchange's reporting practices while maintaining its procedures for disseminating an Offiicial Closing Price. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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–NYSEMKT–2016–104 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–NYSEMKT–2016–104. 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 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–NYSEMKT–2016–104 and should be submitted on or before January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29651 Filed 12–9–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of 30 day reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 11, 2017. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Abstract: Government wide requirements in the annual appropriations act, as well as OMB Circular A 123 Appendix B. require agencies to conduct an alternative credit worthiness assessment when the credit score inquiry results in no score. This information of collection will be used as a means of making that alternative.

SUPPLEMENTARY INFORMATION:

Title: ''Alternative Creditworthiness Assessment''.

Description of Respondents: Personnel that assist in the process of loan applications.

Form Number: 2294.

Annual Responses: 12.

Annual Burden: 2 hrs.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–29717 Filed 12–9–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice to change meeting date for the December Advisory board meeting.

SUMMARY: The SBA is issuing this notice to announce the change in date of the December 2016 meeting for the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meeting for December will be held on the following date: Tuesday, December 13, 2016 at 1:00 p.m. EST.

ADDRESSES: This meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however; advance notice of attendance is required. Anyone wishes to be a listening participant must contact Monika Nixon by fax (202) 481–5624 or email *monika.nixon@sba.gov.*

If you would like to request accommodations or require additional information, please contact Monika Nixon at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss the following issues pertaining to the SBDC Advisory Board:

—SBA Update

—Annual Meetings

—Board Assignments

—Member Roundtable

Miguel L'Heureux,

White House Liaison.

[FR Doc. 2016–29654 Filed 12–9–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0036]

Request for Information on Strategies for Improving Work Outcomes for Individuals With Musculoskeletal Disabilities

AGENCY: Social Security Administration.

ACTION: Notice; reopening of the comment period.

SUMMARY: On Monday, September 19, 2016, we published in the **Federal Register** a notice requesting information regarding Request for Information (RFI) on Strategies for Improving Work Outcomes for Individuals with Musculoskeletal Disabilities and solicited public comments. We provided a 60-day comment period ending on November 18, 2016. We are reopening the comment period for 30 days.

DATES: The comment period for the notice published on September 19, 2016 (81 FR 64254), is reopened. To ensure that your written comments are considered, we must receive them no later than January 11, 2017.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2016–0036 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2016–0036. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Susan Wilschke, Acting Associate Commissioner for the Office of Research, Demonstration, and Employment Support, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–8906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: This document reopens to January 11, 2017, the comment period for the notice RFI that we published on September 19, 2016. We are reopening the comment period in light of the comments that we have received on the RFI notice. If you have already provided comments on the proposed rules, we will consider your comments and you do not need to resubmit them.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2016–29633 Filed 12–9–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–122]

Petition for Exemption; Summary of Petition Received; Flight Options, 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 January 3, 2017.

ADDRESSES: Send comments identified by docket number FAA–2016–6581 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: Dale Williams (202) 267–4179, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Dated: December 2, 2016.

Dale A. Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–6581.

Petitioner: Flight Options, LLC.

Section(s) of 14 CFR Affected: 135.25(b)(c).

Description of Relief Sought: Flight Options seeks exemption from § 135.25(b), which requires a part 135 certificate holder to have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in its operations specifications. In addition, Flight Options seeks exemption from § 135.25(c), which specifies that, for the purposes of § 135.25(b), a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months. In addition, the FAA notes that an exemption from § 135.419 may be relevant to the disposition of this petition. Section 135.419 states that the FAA Administrator may require or allow an approved aircraft inspection program for any make and model aircraft of which the certificate holder has exclusive use of at least one aircraft (as defined in § 135.25(b)). Flight Options currently operates 75 turbo jet aircraft all of which are leased aircraft. Flight Options retains responsibility for all maintenance of the aircraft on its part 135 certificates. Additionally, Flight Options maintains a part 145 repair station (No. BTVR626C). Flight Options' business model is for all aircraft also to be operated under 14 CFR part 91K and under part 91 as appropriate. Flight Options currently is in compliance with 14 CFR 135.25(b) and (c) by leasing a B–300 aircraft and maintains it on their part 135 Operations Specifications and utilizes it solely as a part 135 aircraft.

[FR Doc. 2016–29640 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Orlando Melbourne International Airport (MLB), Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps (NEM's) submitted by the Melbourne Airport Authority (Authority, Melbourne, FL) for the Orlando Melbourne International Airport (MLB), Melbourne, FL under the provisions of 40 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed Noise Compatibility Program (NCP) that was submitted for the Orlando Melbourne International Airport under Part 150 in conjunction with the Noise Exposure Maps, and that this program will be approved or disapproved on or before May 30, 2017.

DATES: *Effective Date:* The effective date of the FAA's determination on the Noise Exposure Maps and of the start of its review of the associated Noise Compatibility Program is December 1, 2016. The public comment period ends on January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Nagy at the Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Orlando, FL, 32882, Telephone 407–813–6331.

SUPPLEMENTARY INFORMATION: This Notice announces that the FAA finds that the Noise Exposure Maps submitted for Orlando Melbourne International Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective December 1, 2016. Furthermore, FAA is reviewing a proposed Noise Compatibility Program for MLB which will be approved or disapproved on or before May 30, 2017. This notice also announces the availability of this Noise Compatibility Program for public review and comment.

Under 49 U.S.C., Section 47503, Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Melbourne Airport Authority submitted to the FAA on September 9, 2016 Noise Exposure Maps, descriptions and other documentation that were produced during the Orlando Melbourne International Airport Part

150 Study conducted between March 1, 2013 and September 9, 2016. It was requested that the FAA review this material as the Noise Exposure Maps, as described in Section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 47504 of the Act.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by the Melbourne Airport Authority. The documentation that constitutes the ''Noise Exposure Maps'' as defined in CFR Part 150 Section 150.7 includes: Chapter 2.0 Airport Facilities and Local Airspace, Chapter 5.0 Noise Modeling, Chapter 6.0 Airport Operational Data, Chapter 7.0 Noise Exposure, Chapter 8.0 Noise Exposure Maps Certification, Figure 6–1 Modeled Flight Tracks—East Flow, Figure 6–2 Modeled Flight Tracks—West Flow, Figure 6–3 Modeled Flight Tracks—Touch and Go and Helicopter, Figure 7–1 2016 Noise Exposure Map, Figure 7–2 Future Land Use, Figure 7–3 2021 Noise Exposure Map, Table 6–1 2016 Annual Operations, Table 6–2 2016 Annual-Average Day Fleet Mix (Itinerant Operations), Table 6–3 2016 Annual-Average Day Fleet Mix (Local Operations), Table 6–4 2021 Annual Operations, Table 6–5 2021 Annual-Average Day Fleet Mix (Itinerant Operations), Table 6–6 2021 Annual-Average Day Fleet Mix (Local Operations), Table 6–7 2016 and 2021 Stage Length Percentages, Table 6–8 2016 and 2021 Runway Use Percentages, Table 6–9 2016 and 2021 Departure Flight Track Use Percentages, Table 6–10 2016 and 2021 Arrival Flight Track Use Percentages, Table 6–11 2016 and 2021 Local and Helicopter Flight Track Use Percentages, Table 7–1 Land Use Acreage within Existing (2016) DNL Contours, Table 7–3 2021 DNL Contour Land Use Impacts. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on December 1, 2016.

The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of CFR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Orlando Melbourne International Airport, also effective on December 1, 2016. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 30, 2017.

The FAA's detailed evaluation will be conducted under the provisions of Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable.

Copies of the full Noise Exposure Map documentation and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32882

Orlando Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, FL 32901

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, on December 1, 2016.

Bart Vernace,

Manager, Orlando Airports District Office, Orlando, FL.

[FR Doc. 2016–29639 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Washington State

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of Section 1308 of the Moving Ahead for Progress in the 21st Century Act. The action relates to design refinements to West Approach Bridge South, the Montlake Lid, and other elements of the Montlake Interchange on State Route (SR) 520 in the City of Seattle, King County, State of Washington.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before May 11, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Anthony Sarhan, Major Project Oversight Manager, Federal Highway Administration, 711 S. Capitol Way, Suite 501, Olympia, WA 98501–1284, 360–753–9487, or *anthony.sarhan@dot.gov;* or Margaret Kucharski, Mega Projects Compliance and Documentation Manager, Washington State Department of Transportation, 999 3rd Ave. Suite 2200, Seattle, WA 98104, 206–770–3500, or *Margaret.Kucharski@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2011, FHWA published a

''Notice of Final Federal Agency Actions on Proposed Highway in Washington'' in the **Federal Register** at 76 FR 55459 for the SR 520, I–5 to Medina: Bridge Replacement and HOV Project. Notice is hereby given that, subsequent to the earlier FHWA notice, FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA re-evaluation for the SR 520 SR 520, I–5 to Medina: Bridge Replacement and HOV Project: West Approach Bridge South and Montlake Lid Design (hereafter ''re-evaluation''). The action(s) by FHWA and the laws under which such actions were taken, are described in the re-evaluation and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The project proposed to improve safety and mobility for people and goods across Lake Washington by replacing the SR 520 Portage Bay and Evergreen Point bridges and improve existing roadway between Interstate 5 (I–5) in Seattle and Evergreen Point Road in Medina spanning 5.2 miles. The Final Environmental Impact Statement (EIS) for the project was published in January 2011 and the Record of Decision (ROD) was issued in August 2011.

Since issuance of the FHWA ROD, the design has been refined for the West Approach Bridge South, Montlake Lid, and other project elements in the Montlake Interchange Area including changes to the path connections, changes to stormwater facilities, and changes to the design of the intersection at 24th Avenue East and East Lake Washington Boulevard. The re-evaluation considering these refinements was prepared in October 2016. It identifies and documents potential effects associated with these refinements. This notice only applies to the re-evaluation.

Information about the re-evaluation and associated records are available from FHWA and WSDOT at the addresses provided above and can be found at: *https://www.wsdot.wa.gov/Projects/SR520Bridge/Library/I5Medina.htm.* This notice applies to all Federal agency decisions related to the re-evaluation as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Anadromous Fish Conservation Act [16 U.S.C. 757(a-757(g)); Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (25 U.S.C. 3001–3013).
6. *Wetlands and Water Resources:* Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Clean Water Act, (Section 319 [33 U.S.C. 329]); Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)].
7. *Navigation:* Rivers and Harbors Act of 1899 [33 U.S.C. 403]; General Bridge Act of 1946 [33 U.S.C. 9 and 11].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141, 126 Stat. 405).

Frederick A. Judd IV,

FHWA Acting Assistant Division Administrator, Olympia, WA.

[FR Doc. 2016–29675 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0036]

Notice of Buy America Waiver for Replacement Parts on Diesel Multiple Unit Rail Vehicles

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: The Federal Transit Administration (FTA) received a request from the North County Transit District (NCTD) in California for a Buy America non-availability waiver for the procurement of replacement parts for Diesel Multiple Unit (DMU) rail vehicles. The 12 DMU rail vehicles were manufactured by Siemens as a part of their Desiro series and were placed in revenue service in 2008. Mid-life maintenance and replacement overhauls of vehicle parts are now required in order to ensure safe and continuous transit service. The FTA hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to the purchase of the replacement parts by NCTD over several phases from 2018 through 2026.

DATES: The waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, Assistant Chief Counsel, at (202) 366–2217 or *cecelia.comito@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for the NCTD's purchase of replacement parts on their Siemens-manufactured Desiro series DMU rail vehicles, including, but not limited to, Power Pack Assembly, Power Truck Assembly, Jakobs Truck Assembly, Transmission, Primary Suspension, Secondary Suspension, Power Wheelset Assembly, Power Truck Brake Rotors, Jakobs Truck Brake Rotors, Power Truck Wheels, Jakobs Truck Wheels, A/C Compressors, Carbody Brake Components, Automatic Train Couplers, and HVAC Roof Mounted Units (the ''Replacement Parts'') pursuant to 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the

United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' 49 CFR 661.7(c)(1).

NCTD provides transit service to the entire North San Diego County, serving more than 12 million riders annually. In 2003, NCTD requested and received from FTA a non-availability Buy America waiver for the procurement of 12 DMU vehicles for use on NCTD's Sprinter line, with 15 light rail stations between the cities of Escondido and Oceanside. NCTD purchased the 12 DMU vehicles in 2004 and placed the vehicles into revenue service in 2008 on NCTD's Sprinter line. The useful life of the vehicles is 25 years.

According to NCTD, the Replacements Parts for the DMU vehicles are nearing the end of their useful service lives and showing signs of wear and fatigue. Without periodic capital equipment replacement and/or rebuild, the likelihood of mechanical downtime increases significantly, equating to prolonged service outages for riders. In March 2013, NCTD removed the Sprinter service from revenue service for more than two months due to premature wear of one of the three braking systems and unavailability of domestic replacement parts. NCTD intends to replace the components over several phases during the coming years, from 2018 through 2026. The last phase is anticipated to be procured over a subsequent seven-year period. Any non-availability waiver granted would be effective for all phases of these projects and will expire upon completion of these projects.

As a part of its search for domestic Replacement Parts, NCTD issued a Request for Information (RFI) on November 12, 2013 to maintenance and engineering communities to determine if any firms existed that could either supply Buy America compliant parts and components, or reverse engineer the parts and components utilizing plans and specifications provided. More than 300 vendors received the RFI; 19 downloaded the RFI. One vendor responded that ''with proper specifications, drawings, and samples, we may be able to design and supply Buy America Compliant, OE equivalent, air bellows, primary suspension, and passenger bellows.'' However, the original equipment manufacturer (''OEM'') would not provide the requested proprietary information. NCTD undertook three additional procurements for the Replacement Parts. Three responses were received; none could certify to Buy America compliance.

NCTD's 12 vehicles are the only Siemens Sprinter vehicles in the United States. Additionally, since these vehicles were specifically designed to meet California Public Utilities Commission rail safety requirements, Sprinter is the only vehicle of its kind internationally. NCTD's multiple procurement efforts have demonstrated that there are no suppliers willing to invest in infrastructure to manufacture parts that are suitable only for NCTD's 12 vehicles.

Under 49 U.S.C. 5323(j)(6), FTA cannot deny an application for a waiver based on non-availability unless FTA can certify that (i) the steel, iron, or manufactured good (the ''item'') is produced in the United States in a sufficient and reasonably available amount; and (ii) the item produced in the United States is of a satisfactory quality. Additionally, FTA must provide a list of known manufacturers in the United States from which the item can be obtained. FTA is not aware of any manufacturers who produce the Replacement Parts in the United States.

The 12 DMUs purchased by NCTD were granted a waiver from Buy America, and Replacement Parts are necessary for mid-life maintenance of the rail vehicles. Due to its unsuccessful efforts to identify domestic manufacturers, NCTD seeks a non-availability waiver of the Buy America requirements for the various Replacement Parts. FTA published a notice in the **Federal Register** announcing the Buy America waiver request (Docket No. FTA–2016–0036) and sought comments from all interested parties, including potential vendors and suppliers. The comment period closed on November 14, 2016, and no comments were received.

Therefore, based on the information provided in support of NCTD's request for a Buy America waiver and the lack of any comments, FTA hereby waives its Buy America requirements for the procurement of the various Replacement Parts on the grounds that the manufactured product is not available in the U.S. This waiver is limited to the purchase of replacement parts for the 12 DMUs which will be acquired for the replacement of the components over several phases from 2018 through 2026. The waiver is effective for all phases of these projects.

Ellen Partridge,

Chief Counsel.

[FR Doc. 2016–29707 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0038]

Notice of Buy America Waiver for Radio Consoles

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to Greater Dayton Regional Transit Authority's (GDRTA) request for a Buy America non-availability waiver for the procurement of radio consoles, which would be a part of GDRTA's new communication system (''radio consoles''), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to a single procurement by GDRTA for the radio consoles.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, FTA Assistant Chief Counsel, at (202) 366–2217 or *cecelia.comito@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for GDRTA for the procurement of radio consoles under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the

steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' 49 CFR 661.7(c)(1).

In January 2014, GDRTA conducted a technology scope development project to determine how technology enhancements could improve its operational efficiency; this included a voice and data communication alternatives analysis. GDRTA comprehensively examined various technologies available for its voice and data communication needs. GDRTA compared and evaluated the differences between radio and cellular-based communication, including a cost analysis, reliability assessment, and long-range maintenance and operational differences. On August 5, 2014, the GDRTA Board approved the adopted of a mixed communication system for the agency, which would employ both voice and cellular data systems. GDRTA would join Montgomery County's 800 MHz analog trunked system, instead of continuing to own a 450 MHz radio system.

Montgomery County's analog system uses proprietary Motorola SmartNetTrunking, and all equipment must be original equipment manufacturer (OEM) Motorola devices. All equipment also must be programmed to use the County's 800 MHz analog system and have the ability to work on the MARCS 800 MHz digital system without any additional hardware. In November 2014, GDRTA purchased Motorola mobile and portable radios for its supervisors and its diesel, trolly, paratransit, maintenance, and support vehicles. The procurement and installation of the radio consoles is the final step to move GDRTA's communication system to Montgomery County's system.

Motorola manufactures equipment both domestically and overseas. While the voice processing module portion of the radio consoles currently are manufactured in Illinois, the other components are manufactured in Mexico. Thus, GDRTA submitted a waiver request based on non-availability under 49 CFR 661.7(c)(1).

On Tuesday November 1, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the Buy America waiver request (81 FR 211) seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on November 15, 2016, and no comments were received.

Therefore, based on the information supplied in support of GDRTA's request for a Buy America waiver for the radio consoles, FTA hereby waives its Buy America requirements for the radio consoles on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the radio consoles by GDRTA.

Ellen Partridge,

Chief Counsel.

[FR Doc. 2016–29685 Filed 12–9–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0035]

Notice of Buy America Public Interest Waiver for Hurricane Sandy Emergency Relief Work Performed for the World Trade Center

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice Buy America waiver.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Port Authority of New York and New Jersey (PANYNJ) for a Buy America public interest waiver for the procurement of equipment to replace what was damaged at the World Trade Center Transportation Hub (WTC Hub) project during Hurricane Sandy. A public interest waiver is needed because Hurricane Sandy damaged an existing construction site that receives federal funds but is not subject to FTA's Buy America requirements and the only option PANYNJ had to implement Sandy recovery work was to replace the damaged equipment with the same equipment. 49 U.S.C. 5323(j)(2)(A) and 49 CFR 661.7(b). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA provided notice of the public interest waiver request and sought comment on whether to grant the request. FTA received one comment in support of the waiver, and no comments objecting to the waiver. Therefore, FTA is issuing a general public interest waiver for two PANYNJ Hurricane Sandy grants, NY–44–X005 and NY–44–X014. This public interest waiver is limited to the Hurricane Sandy recovery projects at the WTC Hub only and does not apply to separately funded resiliency projects.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, FTA Assistant Chief Counsel, (202)366–2217 or *Cecelia.comito@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA is granting a public interest waiver to the Port Authority of New York and New Jersey (PANYNJ) for the procurement of replacement equipment damaged by Hurricane Sandy at the World Trade Center Transportation Hub (WTC Hub) project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). If, however, FTA finds that the application of this requirement would be inconsistent with the public interest, it may waive this requirement. 49 U.S.C. 5323 (j)(2)(A). In determining whether the conditions exist to grant a public interest waiver, FTA will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b).

On May 13, 2015, PANYNJ requested a Buy America waiver for the replacement or repair of equipment damaged by Hurricane Sandy at the WTC Hub because the WTC Hub project is being constructed pursuant to a grant awarded in 2003, it is not feasible to replace the damaged equipment with equipment that is different than that used in the original project and it is in the public's interest to repair the damage at the WTC Hub as quickly as possible. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b). Additionally, the underlying project is not subject to FTA's Buy America requirements.

The September 11, 2001 terrorist attacks on the World Trade Center resulted in extensive damage to the WTC Hub. In August 2002, the Federal Emergency Management Agency (FEMA) entered into a memorandum of agreement with the U.S. Department of Transportation under which FEMA agreed to provide $2.75 billion to cover expenses incurred in repairing or rebuilding public transportation facilities and systems damaged by the September 11, 2001 terrorist attacks. Under the agreement, FTA would serve as the lead agency to oversee the grant and the construction of the project. In December 2003, FTA entered into a grant agreement with PANYNJ to

rebuild the WTC Hub. Because the WTC Hub project was funded with FEMA grant funds, FTA's Buy America requirements did not apply to the project.

In October 2012, the WTC Hub project was an active construction site, with an estimated project completion date of December 2015. Hurricane Sandy caused extensive damage to the construction site, resulting in more than $214 million in damage to the construction site. FTA awarded PANYNJ two grants—NY–44–X005 for $54.24 million and NY–44–X014 for $159.72 million—in Hurricane Sandy recovery funds to be used for recovery and emergency repair work for the WTC Hub project. Because the repair work was for an ongoing construction project, PANYNJ was required to use existing contracts that were originally procured in accordance with the requirements for the FEMA-funded WTC Hub project. To apply FTA's Buy America requirements to replace or repair equipment installed on an ongoing construction project would result in significant delay to completion of the project, impact contracts awarded under the FEMA funds, and potentially impact previously provided warranties. Moreover, a public interest waiver would maintain overall consistency of administration, oversight and implementation of both the ongoing WTC Hub project and the WTC Hurricane Sandy recovery work.

On November 4, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing PANYNJ's Buy America waiver request (81 FR 76999) seeking public comment. The comment period closed on November 14, 2016, and FTA received one comment. The comment was provided by a private citizen who supports granting the waiver. The commenter noted that the WTC Hub is a critical connection for Lower Manhattan employers and New Jersey employees. The commenter also noted while projects that abide to the Buy America requirements promote domestic industry and the livelihoods or hard-working Americans, that occurrences like Hurricane Sandy demonstrate the need for flexibility to waive Buy America under certain circumstances.

Accordingly, because the original project was funded by FEMA and therefore, not subject to FTA's Buy America regulations, and the lack of any comments opposing the waiver, FTA is granting a general public interest waiver of FTA's Buy America requirements for the two grants, NY–44–X005 for $54.24 million and NY–44–X014 for $159.72 million—awarded to PANYNJ. This public interest waiver is limited to the Hurricane Sandy recovery projects at the WTC Hub only, and does not apply to separately funded resiliency projects.

Ellen Partridge,

Chief Counsel.

[FR Doc. 2016–29686 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0037]

Notice of Buy America Waiver for Ultrastraight Rail

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Central Puget Sound Transit Authority (Sound Transit) for a Buy America non-availability waiver for the procurement of ultrastraight rail. Sound Transit seeks to procure approximately 15,100 feet ultrastraight rail for a portion of its Northgate Link light rail extension to avoid exceedance of contractually-mandated vibration thresholds. The FTA hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to a single procurement by Sound Transit.

DATES: The waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, Assistant Chief Counsel, at (202) 366–2217 or *cecelia.comito@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for Sound Transit for the procurement of approximately 15,100 feet of ultrastraight rail pursuant to 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' 49 CFR 661.7(c)(1).

Sound Transit's Northgate Link extension is a $1.9 billion rail project that consists of 4.3 miles and 3 new stations, and runs through residential and employment areas, including the University of Washington. Approximately 15,100 feet of that extension will run under the University of Washington's Health Sciences and Physics-Astronomy buildings, which house precision-measurement laboratories and experiments conducted by Nobel Prize winning faculty. The project's potential impact on the University's buildings was considered as part of the environmental review process required by the National Environmental Policy Act (NEPA). In 2006, FTA issued a final Record of Decision (ROD) for the project, and required implementation of mitigation measures, including a measure that would minimize vibration under the University buildings. Sound Transit then executed a 2007 agreement with the University of Washington in which Sound Transit agreed to not exceed specified vibration thresholds, which could be met through use of ultrastraight rail, with parameters for that ultrastraight rail based on American Railway Engineers Maintenance-of-Way Association (''AREMA'') standards.

Sound Transit contacted domestic rail manufacturers regarding their ability to produce ultrastraight rail within the agreed upon AREMA specifications for the rail. Two leading manufacturers, Steel Dynamics, Inc. (SDI) and EVRAZ North America (EVRAZ), stated unequivocally that they are unable to fabricate rail that meets the specification. Sound Transit subsequently explored using domestically-sourced, milled rail. However, testing of the as-installed milled rail found that the rail failed to meet the applicable vibration thresholds. Due to its unsuccessful

efforts to procure domestically-sourced ultrastraight rail within the vibration thresholds, Sound Transit seeks a non-availability waiver of the Buy America requirements for domestically-sourced steel. FTA published a notice in the **Federal Register** announcing the Buy America waiver request (Docket No. FTA–2016–0037) and sought comments from all interested parties, including potential vendors and suppliers. The comment period closed on November 8, 2016, and no comments were received.

Therefore, based on the information supplied in support of Sound Transit's request for a Buy America waiver and the lack of any comments, FTA hereby waives its Buy America requirements for the procurement of ultrastraight rail on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement by Sound Transit for the procurement of approximately 15,100 feet of ultrastraight rail.

Ellen Partridge,

Chief Counsel.

[FR Doc. 2016–29684 Filed 12–9–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Agency Information Collection Activity Under OMB Review: (Customer Satisfaction Surveys)

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) National Cemetery Administration (NCA) 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 revised collection allow 30 days for public comment in response to the notice. This notice solicits comments on the collection of perceptions of the quality of service afforded by the National Cemetery Administration as judged by next of kin of those interred, or funeral directors who facilitate these interments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0571'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0571.''

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), 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, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA'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: Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Revision of an approved collection.

Abstract: Improving Customer Service through Effective Performance Management, NCA will conduct surveys to determine the level of satisfaction with existing services among their customers. The surveys will solicit voluntary opinions and are not intended to collect information required to obtain or maintain eligibility for a VA program or benefit. Baseline data obtained through these information collections are used to validate customer service standards. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 66136 on September 26, 2016,

Affected Public: Individuals or households interring Veterans or eligible dependents, and funeral directors facilitating such interments.

Estimated Annual Burden Hours, Burden per Respondents, and Number of Respondents:

I. National Cemetery Administration Mail Surveys

a. *Next of Kin National Customer Satisfaction Survey* (Mail to 15,000 respondents/30 minutes per survey) = 7,500 hours.

b. *Funeral Directors National Customer Satisfaction Survey* (Mail to 4,000 respondents/30 minutes per survey) = 2,000 hours.

c. *Veterans-At-Large National Customer Satisfaction Survey* (Mail to 5,000 respondents/30 minutes per survey) = 2,500 hours.

IV. Program/Specialized Service Survey

National Cemetery Administration Headstone and Marker/PMC Survey (Mail to 6,000 surveys/15 minutes per each) = 1,000.

Frequency of Response: Annually.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–29665 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection Activity Under OMB Review: (VA Homeless Providers Grant and Per Diem Program)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0554'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0554.''

SUPPLEMENTARY INFORMATION:

Title: VA Homeless Providers Grant and Per Diem Program.

OMB Control Number: 2900–0554.

Type of Review: Reinstatement with change of a currently expired collection.

Summary of Collection of Information: The proposed rule at § 61.80, contains compliance reporting provisions for capital grants, per diem, and special needs grants.

Description of the Need for Information and Proposed Use of Information: Determine eligibility for capital grants & per diem and reporting requirements to determine grant compliance.

Description of Likely Respondents: Grant Applicants—Non-Profit Agencies, State and Local Governments, and Indian Tribal Governments.

Estimated Number of Respondents per Year: 650.

Estimated Frequency of Responses per Year: 1 per year.

Estimated Average Burden per Response: 18.98 hours.

Estimated Total Annual Reporting and Recordkeeping Burden: 12,340 hours.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–29664 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection: Activity Under OMB Review (Request for Disinterment)

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No.2900–0365.''

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0365.''

SUPPLEMENTARY INFORMATION:

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Revision.

Abstract: VA Form 40–4970 is to allow a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. The information will be used to ensure immediate family members are in agreement with the request in accordance with the U.S.C. 38. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Vol. 81, FR 69575 on October 6, 2016.

Affected Public: Individuals or households.

Estimated Annual Burden: 185.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,106.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–29663 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0619]

Agency Information Collection Activity Under OMB Review (Inquiry Routing & Information System (IRIS)).

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Information and Technology (OIT), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 11, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0619.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0619.''

SUPPLEMENTARY INFORMATION:

Title: Inquiry Routing & Information System (IRIS).

OMB Control Number: 2900–0619.

Type of Review: Revision of a currently approved collection.

Abstract: The IRIS Ask A Question form on the VA Web site's Contact Us link is used by Web site visitors to submit inquiries to locations and

business lines across VA to respond to any questions, complaints, suggestions or other issues. 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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published October 4, 2016, Vol. 81, No. 192, page 68502.

Affected Public: Individuals or households.

Estimated Annual Burden: 66,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Daily.

Estimated Number of Respondents: 33,000 per month.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–29666 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0793]

Agency Information Collection Activity Under OMB Review: (VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0793'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0793.''

SUPPLEMENTARY INFORMATION:

Titles

1. Academic Verification, VA Form 10–0491.
2. Addendum to Application, VA Form 10–0491a.
3. Annual VA Employment Deferment Verification, VA Form 10–0491c.
4. Education Program Completion Notice Service Obligation Placement, VA Form 10–0491d.
5. Evaluation Recommendation Form, VA Form 10–0491e.
6. HPSP Agreement, VA Form 10–0491f.
7. HPSP/OMPSP Application, VA Form 10–0491g.
8. Notice of Approaching Graduation, VA Form 10–0491h.
9. Notice of Change and/or Annual Academic Status Report, VA Form 10–0491i.
10. Request for Deferment for Advanced Education, VA Form 10–0491j.
11. VA Scholarship Offer Response, VA Form 10–0491k.
12. VIOMPSP Agreement, VA Form 10–0491l.

OMB Control Number: 2900–0793.

Type of Review: Revision of a currently approved collection.

Abstract

The information required determines the eligibility or suitability of an applicant desiring to receive an award under the provisions of 38 U.S.C. 7601 through 7619, and 38 U.S.C. 7501 through 7505. The information is needed to apply for the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program. The VA Health Professional Scholarship Program awards scholarships to students receiving education or training in a direct or indirect healthcare services discipline to assist in providing an adequate supply of such personnel for VA and for the United States. The Visual Impairment and Orientation and Mobility Professional Scholarship Program awards scholarships to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility in order to increase the supply of qualified blind rehabilitation specialists for VA and the Nation. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Vol. 81, No. 195, FR 69904 on Friday, October 7, 2016.

Affected Public: Individuals or households.

ESTIMATE OF THE HOUR BURDEN FOR THE COLLECTION OF INFORMATION

APPLICANTS

VA Forms	Number of respondents	× Number of responses	Equals	× Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
10–0491g—Application	1,500	1	1,500	60	90,000	.....	1,500
10–0491—Academic Verification	1,500	1	1,500	60	90,000	.....	1,500
10–0491e—Evaluations & Recommendations (2)	1,500	2	3,000	50	150,000	.....	2,500
10–0491a—Addendum to Application	450 (30%)	1	450	10	4,500	.....	75
Total	.....	.....	.....	.....	.....	.....	5,575

APPLICANTS SELECTED TO RECEIVE A SCHOLARSHIP

VA Forms	Number of respondents	× Number of responses	Equals	× Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
10–0491L—Agreement for the VIOMPSP	30	1	30	15	450		8
10–0491k—VA Scholarship Offer Response	30	1	30	10	300		5
10–0491i—Notice of Change and/or Annual Academic Status Report	30	1	30	20	600		10
10–0491h—Notice of Approaching Graduation	30	1	30	10	300		5
10–0491d—Education Program Completion Notice/Service Obligation Placement	30	1	30	20	600		10
10–0491j—Request for Deferment for Advanced Education	6	1	6	10	60		1
10–0491c—Annual VA Employment/Deferment Verification	30	1	24	10	240		4
Total							43
Grand Total for VIOMPSP							5,618

HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM (HPSP) APPLICANTS

VA Forms	Number of respondents	× Number of responses	Equals	× Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
10–0491g—Application	5,000	1	5,000	60	300,000		5,000
10–0491—Academic Verification	5,000	1	5,000	60	300,000		5,000
10–0491e—Evaluations & Recommendations (2)	5,000	2	10,000	50	500,000		8,333
10–0491a—Addendum to Application	1500 (30%)	1	1500	10	15,000		250
Total							18,583

APPLICANTS SELECTED TO RECEIVE A SCHOLARSHIP

VA Forms	Numnrt of respondents	× Number of responses	Equals	× Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
10–0491f—Agreement for the HPSP	100	1	100	15	1,500		25
10–0491k—VA Scholarship Offer Response	100	1	100	10	1,000		17
10–0491i—Notice of Change and/or Annual Academic Status Report	100	1	100	20	2,000		33
10–0491h—Notice of Approaching Graduation	100	1	100	10	1,000		17
10–0491d—Education Program Completion Notice/Service Obligation Placement	100	1	100	20	2,000		33
10–0491j—Request for Deferment for Advanced Education	20	1	20	10	200		3
10–0491c—Annual VA Employment/Deferment Verification	80	1	80	10	800		13
Total							141
Grand Total for HPSP							18,724
Grand Total for Both VIOMPSP and HPSP							24,342

Frequency of Response: Annually.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–29667 Filed 12–9–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Monday,

No. 238 December 12, 2016

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 1600

Resource Management Planning; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

[Docket ID: BLM–2016–0002; LLWO210000.17X.L16100000.PN0000]

RIN 1004–AE39

Resource Management Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The final rule affirms the important role of other Federal agencies, State and local governments, Indian tribes, and the public during the planning process and enhances opportunities for public involvement and transparency during the preparation of resource management plans. The final rule will enable the BLM to more readily address resource issues at a variety of scales, such as wildfire, wildlife habitat, appropriate development, or the demand for renewable and non-renewable energy sources, and to respond more effectively to change. The final rule emphasizes the role of using high quality information, including the best available scientific information, in the planning process; and the importance of evaluating the resource, environmental, ecological, social, and economic conditions at the onset of planning. Finally, the final rule makes revisions to clarify existing text and to improve the readability of the planning regulations.

DATES: This final rule is effective on January 11, 2017.

FOR FURTHER INFORMATION CONTACT: Leah Baker, Division Chief for Decision Support, Planning and NEPA, at 202–912–7282, for information relating to the BLM's national planning program or the substance of this proposed rule. For information on procedural matters or the rulemaking process, you may contact Charles Yudson, Management Analyst for the Office of Regulatory Affairs, at 202–912–7437. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339, to contact these individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Executive Summary

Land use planning forms the basis of, and is essential to, everything that the Bureau of Land Management does in caring for America's public lands. Congress has directed that these lands be managed for multiple use and sustained yield, and has required the BLM to do that through land use planning with public involvement. It has been over thirty years since the BLM last issued regulations to implement this important mission.

Concerns have been raised for some time by State and local governments, resource users, and others, that the planning process has become too slow and too unresponsive to the public. This final rule is the result of a multi-year effort to address those concerns and to implement best practices developed over time. It ensures that the process going forward will maximize transparency and public involvement, honor the partnership with other governmental entities, be more efficient, based on best available information, and adaptable to changing conditions.

Background

The BLM manages ten percent of the land in the United States and 30 percent of the nation's minerals. Under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1712, the BLM is required to develop land use plans in partnership with State, local, and tribal governments, as well as the public, to manage these diverse public lands and resources in accordance with the BLM's multiple-use and sustained yield mission. BLM land use plans, called ''resource management plans,'' establish goals and objectives to guide future land and resource management actions implemented by the BLM.

Pressures are increasing on BLM-administered lands and land managers to better balance often competing and increasingly conflicting uses of the public lands. The BLM and its stakeholders, including State and local governments, are experiencing an increased number of practical challenges, including unexpected delays, higher expenses, and expanded legal challenges in managing these lands. Resource issues, such as invasive species, wildfire, energy production and transmission, and wildlife conservation, cross traditional administrative and jurisdictional boundaries, making current planning less efficient and more costly to implement.

State, local, and tribal government officials and representatives of diverse stakeholder groups have expressed concern about the current process, stating that they often feel disconnected from the BLM's resource management planning process. The process has been described as one characterized by long waiting periods punctuated by short periods in which stakeholders have to digest and respond to large volumes of information. This can be exacerbated by the need to supplement draft plans that have been in progress for years when new issues are identified or additional information is required late in the planning process. Delays in BLM planning efforts increasingly consume BLM staff capacity and resources that could otherwise be spent addressing critical resource management priorities. They also cause frustration among stakeholders and partners who depend on the BLM's ability to develop and implement resource management plans and management decisions in a timely manner.

The BLM began work towards this rule in May 2014 through a range of outreach efforts seeking public input into how the land use planning process could be improved. At that time, the BLM developed a Web site for the initiative (*www.blm.gov/plan2*) and issued a national press release with information on how to provide input to the agency. The BLM held two facilitated public listening sessions that were available through a live broadcast of the event over the Internet (livestream) in the fall of 2014. The BLM also conducted external outreach to partners and internal inquiry to staff. The *Planning 2.0 Public Input Summary Report,* issued in 2015, summarizes written comments received through these processes from over 6,000 groups and individuals. The agency also conducted extensive outreach to State, local, and tribal governments, along with various Federal Advisory Committee Act-chartered Resource Advisory Councils (RACs). In developing the proposed rule, the BLM considered the information received during this initial outreach initiative and worked to find an appropriate balance between different needs and perspectives.

The proposed rule was published on February 25, 2016 (81 FR 9674) and was available for public comment for over 100 days, including a 90 day formal comment period, after requests for extensions were granted. During that time the BLM hosted a variety of public outreach events and briefings for a wide range of interested parties and conducted government-to-government consultation with all federally recognized Indian tribes with which the Bureau normally consults regarding land use planning.

The BLM received 3,354 public comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (*http://www.regulations.gov*) by entering Docket ID: BLM–2016–0002 in the ''Search'' bar.

Overview of the Final Rule

The final rule reflects this outreach effort, including careful consideration of the many comments and recommendations received since the publication of the proposed rule. The final rule does not radically change the existing process, but rather improves that process based on public input and knowledge gained from best practices developed over many years.

First, the final rule responds to concerns that, at times, the process can be cumbersome, slow to complete, and not adequately transparent or responsive to State, local, tribal or general public input. These concerns are addressed by increasing public access at earlier stages in the process, including public input on the scope of the resource management plan. The unique partnerships between States, local governments and Indian tribes are honored and enhanced. The new requirement for upfront information-gathering and public involvement should strengthen the planning process by better reflecting resource conditions, issues, and concerns within the planning area. Gathering this information up front should help reduce the need for supplementation later in the planning process, which is often the cause for long delays under the current rule, leading to added cost and concern that the resulting decisions are no longer relevant.

The final rule makes resource management plans better able to deal with modern pressures on the public lands and to adapt to changes to conditions on the land. This will be done in part by gathering high quality information, including the best available scientific information, from all relevant sources to inform land management, and by retaining flexibility to plan at the appropriate scale to deal with changing resource issues.

The final rule revises two subparts of the existing regulations, 43 CFR subparts 1601 (Planning) and 1610 (Resource Management Planning). Changes in subpart 1601 clarify certain aspects of the general purpose, objective, responsibilities, definitions, and principles sections. Subpart 1610 describes the general framework for resource management planning. In this subpart, the final rule creates new opportunities for public involvement earlier in the planning process, including during a ''planning assessment'' to determine baseline conditions before initiating the preparation of a resource management plan. The final rule fully aligns with FLPMA and the National Environmental Policy Act (NEPA) and clarifies the provisions for the special relationship and involvement of cooperating agencies, coordination with other Federal agencies, State and local governments and Indian tribes, and consistency with other plans; establishes a requirement to initiate tribal consultation during the preparation and amendment of resource management plans; establishes a requirement for the use of ''high quality information''; clarifies existing flexibility to determine the scope of the planning areas to reflect the realities of resource management on the ground; updates plan approval, protest, and implementation procedures; affirms the statutory requirements for designation and protection of areas of critical environmental concern (ACECs); and makes other clarifying edits. These revisions are described in detail in the section-by-section discussion of this preamble, and are briefly summarized below. In both subparts, the final rule also makes non-substantive changes to improve readability and understanding of the planning regulations.

Public Involvement

The final rule provides several new opportunities for public involvement early in the planning process. During the planning assessment interested participants will be able to submit data and other information, such as existing resource-related plans or strategies, and the BLM will work with governmental partners, stakeholders, and the public to better understand public views in relation to the resource management plan and the preliminary planning area. At a slightly later stage, the BLM will make preliminary resource management alternatives and their rationale, as well as the procedures, assumptions, and indicators for the effects analysis, available for public review. This will enable the public to raise any concerns before the BLM begins analyzing the effects of alternatives and preparing a draft resource management plan. We believe these new steps will improve the effectiveness and timeliness of land use plans, improve the ability of the BLM to work with other Federal agencies, State, local, and tribal governments and others concerned about issues in a given planning area to develop a resource management plan that is responsive to the issues, and reduce the need for supplemental analyses and data gathering, as concerns and potential conflicts will be more likely to surface earlier in the planning process.

The final rule also restructures the public involvement provisions to clarify where in the land use planning process the BLM will provide for public notice, public review, or public comment, and establishes new requirements for notification and availability of documents. The final rule lengthens the public comment period on draft resource management plans from 90 to 100 days while reducing the comment period for draft EIS-level amendments from 90 to 60 days, to reflect the fact that draft resource management plans tend to be larger in scope than amendments. The final rule also changes the requirements for selecting a preferred alternative to align more closely with the requirements of the Department of the Interior (DOI) NEPA implementation regulations.

Special Relationship With Indian Tribes and Other Governmental Entities

The final rule reflects the importance of government-to-government consultation with Indian tribes during resource management planning by establishing a new regulatory requirement for the BLM to initiate consultation during the preparation and amendment of resource management plans. The final rule also clarifies and affirms existing provisions regarding the special partnership with cooperating agencies; the coordination of planning efforts with other Federal agencies, and State, tribal and local governments; and the efforts to maximize consistency with other governmental plans.

Specifically, the final rule retains current provisions regarding participation by eligible governmental entities in the special status of ''cooperating agency'' in the planning process. Cooperating agencies are provided the opportunity to work closely with the BLM throughout the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives, and review preliminary documents not otherwise publicly available. This unique partnership is available by statute only to governmental entities, and helps the BLM develop a land use plan that is responsive to the needs and concerns of local communities.

In addition, the final rule reiterates and confirms current practice that the BLM will coordinate with all governmental entities, consistent with FLPMA (43 U.S.C. 1712(c)(9)), to assure that the BLM considers their plans,

policies, and management programs that are germane in the development of resource management plans. It also confirms the existing important practice, as required by FLPMA, of working to minimize and resolve inconsistencies between Federal and non-Federal government plans.

Planning Assessment

The final rule establishes a new upfront planning assessment which will be prepared prior to initiating resource management plans, as well as generally for plan amendments for which an environmental impact statement (EIS) will be prepared (EIS-level amendments). This step will provide an opportunity for the BLM, State, tribal, and local governments, stakeholders, and the public to work together to better understand the existing conditions in the planning area, and is likely to surface issues and concerns that will help inform the types of data and information necessary to the planning process.

During this step, the BLM will invite eligible State, tribal, and local government entities to participate as cooperating agencies and will coordinate with them regarding inventory of the public lands and alignment with their resource-related plans, policies, and management programs. Gathering relevant data and information is an important part of the assessment and will improve understanding of key resource issues and conditions and other issues in the planning area. The results of the planning assessment will be summarized in a report made available to other Federal agencies, State, local and tribal governments, stakeholders, and the public, as will as much of the geospatial information as possible.

Planning Framework

The final rule will focus resource management plans on the achievement of desired outcomes and specific resource conditions. Under the final rule, the BLM will use high quality information of various types and sources, including the best available scientific information, to identify desired characteristics within the planning area (*i.e.,* the goals) and specific and measurable resource conditions which guide progress toward the achievement of goals (*i.e.,* the objectives). By identifying these clear targets for management, the BLM will more readily be able to apply adaptive management principles and respond to change over time.

In addition to the goals and objectives, the final rule identifies other plan components which provide planning level management direction. These include designations, which highlight priority resource values and resource uses; resource use determinations, which identify allowances, exclusions, and restrictions to use; monitoring and evaluation standards, which provide a feedback mechanism during plan implementation; and, where appropriate, lands identified as available for disposal from BLM administration. These plan components may only be changed through a plan amendment, except to correct a typographical or mapping error, or to reflect minor changes in mapping or data.

Plan Boundaries and Responsibilities

The final rule reflects a flexible process for the BLM to collaborate with other Federal agencies, State, tribal, and local governments, stakeholders, and the public to identify the geographic area to be considered in the resource management plan, so as to best address all relevant resource issues. Under the final rule, the BLM will work with all interested parties to identify a preliminary planning area, taking into consideration any management concerns, including those identified through monitoring and evaluation; relevant landscapes based on these management concerns; resource-related plans of other Federal agencies, State and local governments, and Indian tribes; and any other relevant information. Other Federal agencies, State, tribal, and local governments, stakeholders, and the public will be provided an opportunity to review and provide input on the preliminary planning area, before it is formalized in a notice of intent (NOI).

When a preliminary planning area does not cross State boundaries, which is likely to be the more common situation, the State Director will typically be the deciding official in finalizing the plan. If a planning area does cross State boundaries, the BLM Director will select the appropriate deciding official, usually from among the State Directors involved, and determine the final planning area. In all situations, the deciding official will select the appropriate responsible official for preparing the resource management plan or plan amendment.

Protests

The final rule revises the protest procedures to provide more detailed information on what constitutes a valid protest issue. In addition, the rule provides an opportunity for the public to submit protests electronically through methods specified for each resource management plan or plan amendment, and clarifies that proposed resource management plans (including plan revisions) and plan amendments are subject to protest.

As a general matter, the final rule clarifies that the focus of a protest is to identify and remedy inconsistency with Federal laws and regulations or the purposes, policies, and programs implementing such laws and regulations. It provides that a party that previously participated in the preparation of a plan or plan amendment may file a protest to identify why a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations before the final decision to approve the plan.

Transition From the Existing Planning Process

The final rule addresses the transition from the existing planning regulations to those that result from this final rule. For any ongoing resource management planning efforts that were formally initiated prior to the effective date of this final rule, the planners may choose to complete the planning process using either the existing regulations or these final regulations. This ensures that the ongoing resources already invested in the planning process by other Federal agencies, State, tribal and local governments, stakeholders, the public, and the BLM will be maintained and respected. The final rule is effective on January 11, 2017.

I. Background

The BLM manages more than 245 million acres of land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's mission is to manage and conserve the public lands for the use and enjoyment of present and future generations under the mandate of multiple-use and sustained yield. In Fiscal Year 2015, $88 billion in economic output was generated from activities associated with BLM-managed lands.[1]

[1] U.S. Department of the Interior Economic Report FY 2015. *https://www.doi.gov/ppa/economic_analysis.*

Statutory and Regulatory Authority

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, is the BLM ''organic act'' that establishes the agency's mission to manage the public lands on the basis of multiple-use and sustained yield, unless otherwise specified by law. Through FLPMA, the BLM is directed to manage the public lands in a manner which recognizes the nation's need for natural resources from the public lands, provides for outdoor recreation and other human uses, provides habitat for fish and wildlife, preserves and protects certain public lands in their natural condition, and protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values. The BLM develops goals and objectives to guide management through the land use planning process under section 202 of FLPMA.

Section 202(a) of FLPMA requires the Secretary of the Interior, with public involvement, to ''develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.'' Section 202(c) of FLPMA provides that the Secretary, in developing and revising land use plans, shall: Use and observe the principles of multiple use and sustained yield; use an interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; give priority to the designation and protection of ACECs; use the inventory of public lands, resources and other values, to the extent it is available; consider both present and potential uses of public lands; consider the relative scarcity of values; weigh long-term benefits against short term benefits; provide for compliance with applicable pollution control laws; and coordinate with other Federal departments and agencies, Indian tribes, and States and local governments.

Section 202(f) of FLPMA provides that the Secretary shall provide for public involvement and establish procedures by regulation ''to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.'' Under FLPMA, the Secretary administers the public lands through the BLM.

The BLM issued regulations establishing a land use planning system for BLM-managed public lands, as prescribed in FLPMA, in 1979 (44 FR 46386). These regulations established the term ''resource management plan'' (RMP) for the land use plans mandated by FLPMA, to replace the then-existing ''management framework plans.'' The BLM revised these regulations in 1983 to clarify the planning process and ''eliminate burdensome, outdated, and unneeded provisions'' (48 FR 20364). These regulations were amended again in 2005 (70 FR 14561) to make clear the role of cooperating agencies in the land use planning process and to emphasize the importance of working with Federal and State agencies and local and tribal governments through cooperating agency relationships in developing, amending, and revising the BLM's resource management plans.

The BLM's Existing Land Use Planning Process

The BLM planning process is a collaborative process, which involves Federal agencies, Indian tribes, State and local governments, and the public at various steps, while retaining decision-making authority within the BLM. Throughout the planning process, the BLM coordinates with other Federal agencies, Indian tribes, and State and local governments to ensure that BLM considers non-BLM government plans that are germane in the development of resource management plans and assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. In addition, government entities that have either relevant jurisdiction by law or special expertise are invited to participate as cooperating agencies. Cooperating agencies work with the BLM during the planning process to identify issues that should be addressed, to collect and analyze data, develop and evaluate alternatives, and review preliminary documents.

Traditionally, resource management plans are generally established based on a BLM field office or district office boundary and prepared by an interdisciplinary team under the direction of a BLM field or district manager. Generally, the BLM State Directors provide oversight and guidance to the field or district managers and the BLM State Directors approve the resource management plan. The BLM Director provides high-level guidance and renders a decision on any public protests of the proposed plan, and, when necessary, inconsistencies with State and local plans that are raised by a Governor through a consistency review process. The Secretary of the Interior, the Assistant Secretary for Land and Minerals Management, the BLM Director, or other BLM officials may provide oversight and approval for resource management plans of national importance.

As outlined in 43 CFR subparts 1601 and 1610, the steps of the planning process are fully integrated with the requirements of NEPA.[2] The planning process begins with public notice and formal invitation for the public to assist the BLM in the identification of planning issues, concurrent and integrated with the NEPA scoping process. Planning issues are defined in the current BLM Land Use Planning Handbook (H–1601–1) as ''disputes or controversies about existing and potential land and resource allocations, levels of resource use, production, and related management practices.''

Next, the BLM develops criteria to guide the development of the resource management plan. The planning criteria are intended to ensure that the resource management plan is tailored to the planning issues and that the BLM avoids unnecessary data collection and analyses. The BLM summarizes the planning issues and planning criteria in a scoping report, which is made available to the public. The BLM continues to refine the planning issues and the planning criteria throughout the development of the draft resource management plan.

To aid in the planning process, the BLM arranges for the collection or assembly of data and information, which are then analyzed to determine the ability of the resources to respond to the planning issues as well as any management opportunities. The resulting ''analysis of the management situation'' provides the basis for the BLM's development of a range of reasonable alternatives and analysis of the environmental impacts of these alternatives, as required by NEPA. The BLM presents the range of alternatives in a single integrated draft resource management plan and draft EIS and identifies its preferred alternative. The BLM then makes the draft resource management plan and draft EIS available to the public for a minimum 90-day comment period. At the close of this period, the BLM evaluates the comments received and prepares a proposed resource management plan and final EIS, including responses to any substantive public comments

[2] Council on Environmental Quality (CEQ) NEPA implementing regulations require Federal agencies, ''to the fullest extent possible,'' to ''[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively'' 40 CFR 1500.2(c).

received on the draft resource management plan and draft EIS.

The BLM provides the proposed resource management plan and final EIS to the Governor(s) of any State(s) the plan falls within for a 60-day consistency review period and identifies any known inconsistences between State and local plans and the proposed resource management plan. During this period, the Governor may identify any additional inconsistencies and recommendations to remedy inconsistencies. This step, in addition to the ongoing coordination with State and local governments, supports implementation of the FLPMA requirement that the BLM keep apprised of State, local, and tribal land use plans and assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal government plans (see 43 U.S.C. 1712(c)(9)). Concurrent with the Governor's consistency review, the BLM provides a 30-day period during which members of the public who have an interest that may be adversely affected by the approval of the proposed resource management plan and who participated in the planning process may protest approval of the proposed resource management plan. The BLM Director renders a decision on any protest, which serves as the final decision of the DOI and is not subject to an administrative appeal.

Following approval of the resource management plan, the BLM conducts monitoring and evaluation at intervals established in the plan to assess the need for maintenance, revision, or amendment of the plan. Maintenance is provided as needed to reflect minor changes in data. An amendment or plan revision is initiated in response to monitoring and evaluation findings, new data, new or revised policy, a change in circumstances, or a proposed action that would not be in conformance with the approved resource management plan. The BLM undertakes a resource management plan revision when monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances affect the entire plan or major portions of the plan.

The final rule includes this general process for developing, revising, amending, and maintaining a resource management plan, as described, while making specific changes to improve the process in a number of ways.

Why the BLM Is Revising the Land Use Planning Process

The final rule responds to needs identified by the BLM, State, local and tribal governments, the public, and related Presidential and Secretarial direction. In 2011, the BLM released a strategic plan titled ''Winning the Challenges of the Future: A Roadmap for Success in 2016'' (the Roadmap). This document highlighted the increasing challenges the BLM faces in managing for multiple-use and sustained yield on the public lands. Population growth and urbanization in the West, a diversifying portfolio of use activities, demand for renewable and non-renewable energy sources, and the proliferation of landscape-scale environmental change agents such as climate change, wildfire, and invasive species create challenges that require the BLM to develop new strategies and approaches to effectively manage the public lands. Simultaneously, the rapid acceleration in technologies such as the Internet, telecommunications, and analytical tools, including geospatial tools, have brought new opportunities to improve the land use planning process. Given the foundational nature of land use planning, a process that establishes direction for future management activities on the public lands, the Roadmap recognized the need for the BLM's resource management plans to address these challenges and respond to emerging opportunities. The Roadmap also recognized the importance of an efficient planning process, one that can effectively integrate new information and new technologies as they become available in order to keep resource management attuned to changing conditions on the ground and newly available information.

Specifically, the Roadmap set the following goal for the BLM to accomplish by the year 2016: ''Adopt a proactive and nimble approach to planning that allows us to work collaboratively with partners at different scales to produce highly useful decisions that adapt to the rapidly changing environment and conditions'' (page 10). Following the publication of the Roadmap, the BLM chartered a team of BLM managers and planning staff to assess the current status of the BLM's resource management plans and develop recommendations to improve the process for developing resource management plans. The final rule, in part, implements the recommendations for achieving the goals set forth in the Roadmap.

Related Executive and Secretarial Direction

In addition, the final rule responds to and advances direction set forth in several Executive or Secretarial Orders and related policies and strategies. This direction demonstrates an increasing emphasis within the DOI, and the Federal Government, on the use of landscape-scale, science-based, collaborative approaches to natural resource management. Recent Presidential and Secretarial direction provided to DOI bureaus and agencies emphasize the importance of this approach for resource management planning.

Effective collaboration is a central theme in recent Presidential and Secretarial directives, beginning with the President's 2009 Open Government Directive (M–10–06). This directive describes the three principles of transparency, participation, and collaboration as the cornerstone of an open government by promoting accountability to the public, sharing of information, and partnerships and cooperation within the Federal Government, across all levels of government, and between the government and private institutions. In 2012, the Office of Management and Budget (OMB) and the CEQ issued the ''Memorandum on Environmental Collaboration and Conflict Resolution.'' This memorandum directs Federal departments and agencies to ensure they effectively explore opportunities for up-front collaboration in their planning and decision-making processes to address different perspectives and potential conflicts and thereby promote improved outcomes, including fewer appeals and less litigation.

Multiple directives related to climate change also emphasize the importance of collaboration, science, adaptive management, and the need for landscape-scale approaches to resource management. ''Secretarial Order 3289—Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources,'' issued on September 14, 2009, and amended on February 22, 2010, directs DOI bureaus and agencies to work together, with other Federal, State, tribal and local governments, and with private landowners, to develop landscape-level strategies for understanding and responding to climate change impacts. The Departmental Manual chapter on climate change policy (523 DM 1), issued on December 20, 2012, similarly directs DOI bureaus and agencies to ''promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems.'' ''The Department of the Interior Climate Change Adaptation Plan for 2014'' (Climate Change Adaptation Plan), provides guidance for implementing 523 DM 1 and ''Executive

Order No. 13653—Preparing the United States for the Impacts of Climate Change'' (78 FR 66819). The Climate Change Adaptation Plan directs the DOI bureaus and agencies to strengthen existing landscape level planning efforts; use well-defined and established approaches for managing through uncertainty, such as adaptive management; and maintain key ecosystem services, among other important directives. This plan also identifies several guiding principles, including the use of the best available social, physical, and natural science to increase understanding of climate change impacts and active coordination and collaboration with stakeholders.

Likewise, recent directives associated with renewable energy development and mitigation practices emphasize the importance of a collaborative, landscape-scale approach. ''Secretarial Order 3285—Renewable Energy Development by the Department of the Interior,'' issued on March 11, 2009, and amended on February 22, 2010, identified renewable energy production, development, and delivery as one of the Department's highest priorities and called on bureaus and agencies to carry out this priority by collaborating with one another and with governmental and tribal partners, local communities, and private landowners. In particular, this Order highlighted the need to identify and prioritize specific locations that are well-suited to large-scale renewable energy production as well as the electric transmission infrastructure and transmission corridors needed to deliver the energy produced.

A landscape-scale approach to planning is integral to effectively managing the public lands consistent with the BLM's multiple use and sustained yield mission. ''Secretarial Order 3330—Improving Mitigation Policies and Practices of the Department of the Interior,'' issued on October 31, 2013, called for the development of a DOI-wide mitigation strategy, which will use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. The April 2014 report, ''A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior,'' provides direction to implement such an approach. The Departmental Manual was revised in October 2015, to include direction to all bureaus and agencies for implementation of this approach to resource management (600 DM 6).

The Presidential Memorandum ''Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment,'' issued in November 2015, affirmed the importance of applying a landscape-scale approach by directing agencies that ''[l]arge-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable'' (80 FR 68743).

Finally, ''Secretarial Order 3336—Rangeland Fire Prevention, Management and Restoration,'' issued on January 5, 2015, directs DOI bureaus and agencies to use landscape-scale approaches to address fire prevention, management, and restoration in the Great Basin; and to establish protocols for monitoring the effectiveness of fuels management, post-fire activities, and long-term restoration treatments and a strategy for adaptive management to modify management practices or improve land treatments when necessary.

Collectively, these directives emphasize the importance of landscape-scale, science-based management, including active coordination and collaboration with partners and stakeholders. The BLM believes that changes to the resource management planning process included in this rule will assist in effectively implementing these directives.

The Planning 2.0 Initiative

Together, the Roadmap and the recent policy and strategic direction described in this preamble informed the BLM's decision to revise its resource management planning process. The BLM's Planning 2.0 initiative responds to this opportunity. Through Planning 2.0, the BLM seeks to improve the resource management planning process, including the development, amendment, and maintenance of resource management plans. The BLM has developed three targeted goals to guide the Planning 2.0 initiative:

Goal 1: Improve the BLM's ability to respond to change in a timely manner. This goal addresses the need for land use plans that support effective management when faced with environmental uncertainty, incomplete information, or changing resource, environmental, ecological, social, or economic conditions. It is imperative that resource management plans provide clear management direction to guide future management activities on the public lands, while facilitating the use of adaptive, science-based approaches to respond to change when necessary and appropriate. Encompassed in this goal is the need for an efficient planning process so that changes to a resource management plan, when needed, are timely and responsive to the relevant issues.[3]

Goal 2: Provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans. This goal highlights the importance of meaningful public involvement in the planning process to reduce conflict and disputes over public lands management and develop durable resource management plans. Through the Planning 2.0 initiative, the BLM seeks to establish earlier and more frequent opportunities for public involvement in the planning process and to provide for effective coordination with other Federal agencies, State and local governments, and Indian tribes. At the same time, Planning 2.0 affirms the BLM's commitments to collaborating with cooperating agencies and working with RACs throughout the planning process (see existing § 1610.3–1(g)).

Goal 3: Improve the BLM's ability to apply landscape-scale approaches to resource management. This goal addresses the need for landscape-scale approaches to resource management in order to effectively manage public lands on the basis of multiple use and sustained yield and to address resource issues which occur at a range of geographic scales. A landscape-scale approach is a structured and analytical process that guides resource management decisions at multiple geographic scales in order to consider multiple overlapping landscapes and to achieve multiple social, environmental, and economic goals. The BLM manages a diverse range of natural resources, which occur at an equally diverse range of geographic scales, and collaborates with a diversity of partners, stakeholders and communities, who work at different scales. For these reasons, the BLM planning process must be able to consider issues and opportunities at multiple scales and across traditional management boundaries.

To achieve these three goals, the BLM is amending specific provisions of the land use planning regulations (43 CFR

[3] An efficient land use planning process under FLPMA advances direction in CEQ NEPA regulations and guidance for seeking efficiencies in the NEPA process. *See, e.g.,* 40 CFR 1500.2(b) and (c) and 1500.5; Memorandum for Heads of Federal Departments and Agencies from Nancy H. Sutley, Chair, Council on Environmental Quality, ''Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act'' (Mar. 6, 2012), *https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving_nepa_efficiencies_06mar2012.pdf.*

part 1600). These regulatory revisions are the subject of this final rule. Separately, the BLM also is revising the Land Use Planning Handbook to provide detailed guidance to implement these regulations. We have taken a coordinated approach to ensure that these two efforts mutually support achieving Planning 2.0 goals and provide consistent requirements and guidance for developing and amending resource management plans.

Related BLM Initiatives

In recent years, the BLM has taken several steps toward the goals identified in the ''Related Executive and Secretarial Direction'' section of this preamble, including tools to aid science-based decision-making; landscape-scale approaches to resource management; the use of adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. These steps include crafting new policies and strategies and introducing innovative data and information technology tools. The Planning 2.0 initiative supports the implementation of these other important BLM efforts and is mutually supported by these other efforts. Here we describe several other BLM efforts and how they relate to the goals of Planning 2.0, even though they are beyond the scope of this rulemaking.

In partnership with the Landscape Conservation Cooperatives (LCCs) and other Federal agencies, the BLM has worked to develop Rapid Ecoregional Assessments (REAs) in the western United States.[4] Each REA synthesizes the best available information about resource conditions and trends within an ecoregion and highlights areas of high ecological value, as well as areas that have high energy development potential and relatively low ecological value, which could be well-suited for siting future energy development. In addition, REAs establish landscape-scale baseline ecological data to help gauge the effect and effectiveness of future management activities. The REAs are an important step in support of adaptive, landscape-scale management approaches,[5] and they provide necessary data and information to support the Planning 2.0 goal to apply landscape-scale approaches to resource management.

In 2013, the BLM issued the ''Draft—Regional Mitigation Manual Section (MS)—1794'' as interim guidance, which promotes consideration of mitigation within a broader regional context and development of mitigation strategies. Mitigation strategies identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area. Under this draft guidance, the BLM has worked collaboratively with partners to develop regional mitigation strategies in several key areas while also developing guidance consistent with Secretarial Order 3330. This guidance, which provides for a landscape-scale approach to mitigation, is consistent with the Planning 2.0 goal to apply landscape-scale approaches to resource management. The Planning 2.0 initiative will support effective implementation of the regional mitigation policy by ensuring that resource management plans, like mitigation, are grounded in sound science, applied at a broader regional context, and that the mitigation hierarchy process is applied in the development and implementation of a resource management plan.

The BLM is implementing its ''Assessment, Inventory, and Monitoring (AIM) Strategy'' (2011), which was developed to standardize data collection and retrieval so information is comparable over time and can be readily accessed and shared. The AIM Strategy provides a process for the BLM to collect quantitative information on the status, condition, trend, amount, location, and spatial pattern of renewable resources on the nation's public lands. The BLM strategy, ''Advancing Science in the BLM: An Implementation Strategy'' (2015), outlines goals and an action plan for integrating science into multiple-use land management decisions in a consistent manner. Both strategies improve the BLM's ability to employ science-based decision-making and apply adaptive management techniques using standardized monitoring data that can be analyzed and applied at multiple geographic scales. These steps are important to achieving the Planning 2.0 goals.

In addition, the BLM is implementing its ''Geospatial Services Strategic Plan'' (GSSP) (2008), which is providing the high-quality mapping products needed to develop and support adaptive, landscape-scale approaches to resource management. The GSSP establishes a governance model for the management of BLM's geospatial information and institutes a structure to coordinate the use of geospatial technology within the BLM. The GSSP also addresses data management, data acquisitions, data standards, and the establishment of corporate data themes. Geospatial transformation is important for achieving all three Planning 2.0 goals. In addition to supporting science-based, landscape-scale, adaptive approaches to resource management, advances in geospatial technology support the use of new and innovative methods for public involvement. For example, the development and deployment of BLM's ePlanning platform, an online national register for land use planning and NEPA documents, provides a dynamic and interactive link between text, such as land use plans, and the supporting geospatial data. The ePlanning platform enables the BLM to make documents and maps available to the public via the Internet for review and comment and provides a searchable register for NEPA and land use planning projects.[6] The BLM is transitioning to the ePlanning platform for all land use planning and NEPA documents and expects that ePlanning will be deployed for all resource management plans throughout the BLM by 2017.

Finally, the BLM is strengthening its commitment to partnerships and cooperating agencies. The BLM's ''National Strategy and Implementation Plan to Support and Enhance Partnerships, 2014–2018'' (2014), highlights the importance of partnerships to achieving the BLM's mission, and creates a national framework for improved coordination in support of partnerships across the BLM. The updated BLM publication, *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (2012), reaffirmed the BLM's commitment to working with Federal, State, local, and tribal government partners. The Planning 2.0 goal of providing meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans will build on these foundational efforts.

[4] The LCCs are a network of 22 public-private partnerships launched under Secretarial Order 3289 to improve the integration of science and management to address climate change and other landscape-scale issues. See *http://lccnetwork.org/about.* Information about the REAs is available at: *http://www.blm.gov/wo/st/en/prog/more/Landscape_Approach/reas.html.*

[5] See BLM Information Bulletin No. 2012–058, ''The Bureau of Land Management's Landscape Approach for Managing the Public Lands'' (Apr. 3, 2012), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_information/2012/IB_2012-058.html.*

[6] See *https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do.*

Initial Public Involvement in Planning 2.0

The BLM conducted initial public outreach and engagement activities as a part of the Planning 2.0 initiative. This outreach is consistent with section 2(c) of ''Executive Order 13563—Improving Regulation and Regulatory Review'' (76 FR 3822, January 21, 2011), which encourages agencies to seek the views of those who are likely to be affected by a rulemaking before issuing a proposed rule. The initial outreach for the overall Planning 2.0 initiative included outreach to inform the development of the proposed rule as well as a forthcoming revision of the Land Use Planning Handbook. The BLM launched the Planning 2.0 initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a Web site for the initiative (*www.blm.gov/plan2*) and issued a national press release with information on how to provide input to the agency. The BLM held public listening sessions in Denver, Colorado (October 1, 2014) and in Sacramento, California (October 7, 2014). Both meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet (livestream). The goals of these meetings were to share information about the Planning 2.0 initiative with interested members of the public, to provide a forum for dialogue about the initiative, and to receive input from the public on how best to achieve the goals of the initiative. Summary notes from these meetings and recorded livestream video are available on the BLM Web site.

The BLM conducted external outreach to BLM partners and internal outreach to BLM staff in State, district, and field offices. External outreach included multiple briefings provided to the Federal Advisory Committee Act chartered RACs; a briefing for State Governor representatives coordinated through the Western Governors Association; a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies; multiple briefings for other Federal agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

Public Response to Planning 2.0 During Early Engagement

Between May 2014 and February 2015, over 6,000 groups and individuals submitted written comments for BLM's consideration. This information was summarized into a written report and made available on the Planning 2.0 Web site on February 3, 2015. The input received through written submissions and the public listening sessions covered a broad range of topics and opinions, which are summarized in this preamble and described in more detail in the ''Planning 2.0 Public Input Summary Report'' (2015). The summary report is available on the BLM Web site. The BLM worked to consider this information and to find an appropriate balance between different needs and perspectives in the development of the proposed and final rule.

A large number of comments focused on how to integrate adaptive management into resource management plans. While nearly all comments supported the initial goal of ''a more dynamic and efficient planning process,'' many commenters were concerned that resource management plans could become so ''dynamic'' that they become meaningless. Many comments suggested that the BLM establish achievable and measurable objectives to guide future decisions, as well as indicators and thresholds for resource conditions in resource management plans. While some commenters believed that the BLM should have the ability to increase or reduce resource protections established in the resource management plan if site-specific conditions warrant, many commenters were concerned that such an adaptive management approach might allow activities that otherwise conflict with the other resource management plan goals and objectives.

Some commenters suggested that efficiencies could be gained by developing standardized decision language, prohibiting overlapping designations, and working with partners to avoid duplication of efforts. Commenters requested that the BLM improve data collection and management by including non-BLM data sources in resource management plans; providing better public access to BLM data; establishing standards for monitoring in resource management plans; designating timeframes to modify management based on monitoring results; and identifying enforceable actions if monitoring does not occur.

Public comments affirmed the value of public participation as essential to the success of any land use plan. Several commenters expressed the need for broad, comprehensive stakeholder participation and requested that the BLM conduct strategic and targeted outreach at the onset of all planning efforts to reach stakeholders. Commenters also encouraged the BLM to collaborate with other Federal agencies, which often manage adjacent lands, and to conduct outreach to Indian tribes.

Numerous commenters suggested two new opportunities for public involvement in the planning process. Outreach before initiating the NEPA scoping process could be used to identify preliminary stakeholders and management issues, solicit input about resource data needed for resource management plan development, and encourage stakeholders to contribute inventory information. Additionally, a public review of preliminary management alternatives could occur between the identification of planning issues and the publication of the draft resource management plan and draft EIS to help BLM refine the range of alternatives to address public concerns.

The BLM also received comments on different ways to effectively engage the public. Several commenters requested that the BLM leverage web-, tele-, and video-conference technology to reach a larger audience while also providing meaningful involvement opportunities for members of the public without technological access. Commenters also described a broad range of best practices for public participation and encouraged the BLM to implement these practices in the planning process.

Several commenters proposed instituting a landscape level planning process in which the BLM would evaluate public lands, establish priority areas for conservation and priority areas for development, set desired conditions at the ecoregional level, and then allocate allowable uses and make special designations at the field office level. Conversely, some commenters questioned the utility of landscape level planning. It is important to many stakeholders that resource management plans provide specific, local context, and clearly articulate for local users how the BLM will manage public lands close to them. Some commenters were concerned that it would be shortsighted for the BLM to limit development only to those priority areas identified in an ecoregional plan, as future technological advances could make new unforeseeable areas appropriate for development.

Many comments urged the BLM to integrate the DOI mitigation policy, ''Improving Mitigation Policies and Practices of the Department of the Interior'' (Secretarial Order 3330), into the land use planning process. Public comments also stated that effective landscape planning should be fully integrated with the NEPA process and provide clear direction for considering

State and private lands. At the same time, commenters cautioned that the BLM should ensure that landscape level planning does not result in time-consuming analysis that overlaps the NEPA analysis that already occurs during a resource management plan revision.

In addition to input on how to meet Planning 2.0 goals, many public comments contained recommendations on how the BLM should address specific resources, uses, and special designations in resource management plans. These comments are summarized in the ''Planning 2.0 Public Input Summary Report'' (2015), available on the BLM Web site.

Public Involvement on the Proposed Rule

The BLM published the proposed rule in the **Federal Register** on February 25, 2016 (81 FR 9674) for a 60-day comment period ending on April 25, 2016. In response to public requests for an extension, the BLM extended the comment period for an additional 30 days on April 22, 2016 (81 FR 23666). The extended comment period closed on May 25, 2016.

During the comment period, the BLM hosted a variety of public outreach activities. The BLM held a public webinar (March 21, 2016) as well as a public meeting in Denver, CO (March 25, 2016) to provide an overview of the proposed rule and answer questions from the public. The public meeting was available to remote participants through livestream. In response to public interest in additional outreach activities, the BLM held a second public webinar (April 13, 2016) focused on frequently asked questions related to the proposed rule. All webinars and meetings were led by a third-party facilitator. Summary notes and recordings of all three events are available on the BLM Web site. In addition, the BLM provided an email address (*blm_wo_plan2@blm.gov*) at the close of each event for members of the public to send follow-up questions.

The BLM also conducted external outreach to several stakeholder organizations or committees regarding the proposed rule. External outreach included briefings provided to the BLM's Federal Advisory Committee Act chartered RACs; a briefing for the Association of Fish and Wildlife Agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

The BLM received 3,354 comment letters, which are available for viewing on the *regulations.gov* Web site by entering Docket ID: BLM–2016–0002 in the ''Search'' bar.

Tribal Consultation on the Proposed Rule

The BLM initiated government-to-government consultation with federally recognized Indian tribes with which the Bureau normally consults regarding land use planning. Each BLM State Office sent a letter notifying Indian tribes located within the jurisdictional boundary of the BLM State Office and with which the BLM State Office normally consults on proposed rules and requesting government-to-government consultation. Additionally, each BLM State Office sent a follow-up notification and request for consultation, however, the format for follow-up requests varied across BLM State Offices. Formats included telephone calls, letters, or in-person conversations at previously scheduled meetings.

To facilitate understanding of the proposed rule, the BLM held a webinar for interested Indian tribes on May 4, 2016. The webinar provided an overview of the proposed changes, discussion on topics of interest to tribal participants, and an opportunity for questions. In addition, in person meetings were held with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting with the BLM. This final rule is informed by input received from tribes during government-to-government consultation. Responses to tribal comments are addressed in the ''section-by-section discussion'' and ''response to public comments'' sections of this final rule.

How the Final Rule Achieves the Goals of Planning 2.0

As part of the Planning 2.0 initiative, the final rule amends specific provisions of the land use planning regulations (43 CFR part 1600). In the following paragraphs we explain how the changes to the land use planning regulations will serve the overall goals of the Planning 2.0 initiative.

The final rule identifies and defines the components of a resource management plan. These ''plan components'' provide the planning-level management direction that guides all future management decisions without specifically prescribing future decisions. Such an approach is important for implementing adaptive resource management as it establishes firm goals and objectives and provides for the use of public lands, while also providing flexibility to incorporate site-specific information, where appropriate, and respond to changing circumstances and new information.

The final rule requires that, when preparing or amending resource management plans, the BLM must use high quality information, including the best available scientific information. The final rule also emphasizes the importance of assessing resource, environmental, ecological, social, and economic conditions at relevant spatial scales and before initiating the preparation of a resource management plan, in order to apply science-based decision-making and inform management decisions at multiple scales.

The final rule will add new opportunities for meaningful public involvement in the land use planning process and emphasize the importance of early public involvement in order to engage different perspectives and ensure planning is responsive to public needs and values. Final changes will promote increased communication with and transparency to the public by providing for the use of electronic communications and information technology, in addition to traditional methods of communication. The BLM believes that enhanced public involvement will promote a more efficient planning process and improved outcomes by ensuring that diverse viewpoints are considered early and often. In particular, the BLM anticipates that considering diverse viewpoints early in the planning process, when they can help inform the development of the resource management plan and supporting NEPA analysis, will help the BLM avoid or minimize the need to re-start the planning process or supplement the NEPA analysis based on issues raised later in the process after considerable work has been completed. At the same time, the final rule expands the minimum requirement for the length of public comment periods for draft resource management plans to reflect the value placed on this step by members of the public, as indicated through public comment, and shortens the minimum requirement for the length of public comment periods for draft EIS-level amendments to reflect the fact that targeted amendments may be narrow in scope and scale and allow for a more efficient process in these situations.

In revisions to both subpart 1601 and 1610, the BLM updates some existing text to reflect current style guidelines and to use plain language, consistent with the ''Presidential Memorandum on Plain Language in Government Writing'' (63 FR 31885, June 10, 1998), which directs Federal Agencies to consider rewriting existing regulations in plain

language if the opportunity is available. These changes will facilitate improved readability and understanding of the planning regulations, which will support effective collaboration during the planning process.

Summary of Changes

The BLM received 3,354 comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (*http://www.regulations.gov*) (search Docket ID: BLM–2016–0002). The BLM has reviewed all public comments, and has made changes, as appropriate, to the final rule based on those comments and internal review. Those changes are described in detail in the ''section-by-section discussion'' of this final rule. In addition, the ''response to public comments'' in this final rule provides a summary of issues raised most frequently in public comments and the BLM's response. A table comparing the proposed rule to the final rule and a more comprehensive account of public comments and detailed responses to these comments are available to the public on the BLM Web site (*www.blm.gov/plan2*) and are included as a supporting document in the docket for this rulemaking on *regulations.gov.*

II. Section-by-Section Discussion of Changes to the Existing Planning Rule and Revisions From the Proposed Planning Rule

The following discussion describes the final rule provisions, substantial changes from the existing rule and revisions from the proposed rule, and the rationale for these changes. The final rule revises part 1600, including subparts 1601 (Planning) and 1610 (Resource Management Planning). Revisions in subpart 1601 update and introduce new definitions and revise the purpose, objective, responsibilities, environmental impact statement policy, and principles sections.

Subpart 1610 is reorganized to improve readability. Revisions describe guidance and general requirements, and resource management plan components; update the public involvement provisions; update the provisions regarding coordination with other Federal agencies, State and local governments and Indian tribes; establish a requirement in these regulations for government-to-government consultation with Indian tribes; establish an assessment of baseline conditions in the planning area before the BLM initiates the preparation of a resource management plan and most EIS-level amendments; revise the steps in the planning process to increase transparency and add new opportunities for public involvement; clarify resource management plan approval and protest procedures; modify the monitoring and evaluation, amendment, and maintenance provisions; update the provisions for designating ACECs; and make clarifying edits.

Subpart 1601—Planning

The final rule adopts several style changes throughout both subparts, consistent with the proposed rule, such as replacing the Bureau of Land Management with the acronym ''BLM'' and the Federal Land Policy and Management Act with the acronym ''FLPMA,'' for improved readability. The rule replaces the word ''title'' with ''part'' throughout both subparts for consistency with current style guidelines. We replace ''plan'' with ''resource management plan,'' where appropriate, and ''amendment'' with ''plan amendment'' throughout both subparts to improve consistency and precision in use of terminology.

One proposed style change is not adopted in the final rule. The proposed rule would have replaced the word ''shall'' with ''will'' throughout both subparts for improved readability; in response to public comment this proposed change is not adopted in the final rule. Rather, the final rule retains the word ''shall,'' throughout the rule unless specifically noted in the discussion for a particular section. In some instances the word ''will'' occurs in existing regulations or was included in proposed new provisions, and in these instances the final rule replaces ''will'' with ''shall,'' throughout unless specifically noted in the discussion for a particular section, for consistent use of terminology throughout both subparts. There is no change in meaning from these revisions.

Finally, the final rule removes most references to resource management plan ''revisions'' throughout both subparts, consistent with the proposed rule. Revisions are included in the definition of a resource management plan (see final § 1601.0–5) and must comply with all of the requirements of these regulations for preparing and approving a resource management plan (see final § 1610.6–7). Differentiating between the preparation of a new resource management plan and the revision of a resource management plan is unnecessary and confusing. For example, if the BLM revises portions of more than one existing resource management plan, it is unclear whether the resulting resource management plan would be considered a new resource management plan or a revised resource management plan. Under the existing, proposed and final regulations, there is no substantive difference between a resource management plan and the revision of a resource management plan, therefore both will be considered a ''resource management plan.''

Section 1601.0–1 Purpose

The final rule adopts the proposed changes to this section to introduce the acronym ''BLM,'' which is used throughout the part, and to remove the words ''and revision'' for the reasons previously described. There is no change from current practice or policy resulting from these revisions.

In addition, the final rule adds new language specifying that the process established by the regulations be ''consistent with the principles of multiple use and sustained yield, unless otherwise specified by law.'' This addition responds to a public comment requesting the BLM to include ''multiple use and sustained yield'' in this section, as well as general public comments asserting that the proposed rule would not adequately promote the principles of multiple use and sustained yield. The final rule reflects the requirements of FLPMA (see 43 U.S.C. 1701 (a)(7)), which states that ''management be on the basis of multiple use and sustained yield unless otherwise specified by law'' and that ''in the development and revision of land use plans, the Secretary shall . . . use and observe the principles of multiple use and sustained yield set forth in this and other applicable law.'' (See 43 U.S.C. 1712(c)(1).)

The BLM added the phrase ''unless otherwise specified by law'' in the final rule to be consistent with the language in FLPMA which makes it clear that in some situations certain BLM lands must be managed in compliance with other legal authorities which in some instances supersede the management direction in FLPMA to manage on the basis of multiple use and sustained yield (see 43 U.S.C. 1732(a)). For instance, national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must be managed for the care and management of the monument objects in accordance with the terms in the proclamation establishing the specific national monument. This new language in the final rule is not a change in practice or policy, as the BLM currently manages on the basis of multiple use and sustained yield unless otherwise specified by law.

Section 1601.0–2 Objective

The final rule revises the stated objectives of resource management planning to reflect the requirements of FLPMA and remove vague or inaccurate language. In the first sentence of this section, the final rule adopts the proposal to remove the phrase ''maximize resource values for the public through a rational, consistently applied set of regulations and procedures.''

The term ''maximize resource values'' is vague and therefore inappropriate in regulations. Further, FLPMA directs the BLM to manage the public lands on the basis of multiple use and sustained yield, rather than to ''maximize resource values.'' FLPMA defines multiple use, in part, as ''the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people'' as well as ''harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.'' (See 43 U.S.C. 1702(c).) This language provides a more precise explanation of how the BLM should consider resource values during the planning process and reaffirms statutory direction to manage on the basis of multiple use and sustained yield, unless otherwise specified by law. The second half of the removed language describes a ''rational, consistently applied set of regulations and procedures,'' which describes the purpose of developing planning regulations, but not an objective of resource management planning.

In the first sentence of this section, the proposed rule would have replaced the phrase ''promote the concept of multiple use management'' with the phrase ''promote the principles of multiple use and sustained yield on public lands, unless otherwise provided by law.'' The final rule revises this phrase to read ''manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law.'' This change is consistent with FLPMA, which, as discussed above, directs the BLM to ''use and observe the principles of multiple use and sustained yield'' in the development and revision of land use plans (see 43 U.S.C. 1712(c)(1)) and requires that ''management be on the basis of multiple use and sustained yield unless otherwise specified by law.'' (See 43 U.S.C. 1701(a)(7) and 43 U.S.C. 1732(a).) The final rule responds to public comments that the proposed language to ''promote'' the principles of multiple use and sustained yield may be perceived as a weaker requirement than ''managing on the basis'' of multiple use and sustained yield, as stated in FLPMA. This was not the intent of the proposed language, thus this change was made in the final rule.

The final rule replaces existing and proposed language which states that an objective of resource management planning is to ''ensure participation by the public'' with ''provide for meaningful public involvement by the public.'' This change responds to public comment that the BLM proposed to replace ''public participation'' with ''public involvement'' in other sections for consistency with FLPMA and should use the same terminology in this section. The change also responds to a public comment that FLPMA does not require the BLM to ensure or guarantee public participation; rather, FLPMA requires the BLM to provide ''opportunity for participation by affected citizens.'' (See 43 U.S.C. 1702(d).) The final rule provides opportunities for meaningful public involvement, but does not require that the public participate in these opportunities.

This section of the proposed rule would also have specified that such participation occurs ''in the development of resource management plans.'' The final rule revises this language to read ''in the preparation and amendment'' of resource management plans to clarify that it applies in both situations. There will be no change in existing practice or policy from these final changes.

Finally, the word ''appropriate'' is removed from before ''Federal agencies'' in the first sentence of this section. This word is unnecessary, as any interested Federal agency may participate in public involvement opportunities during the BLM's planning process; the BLM does not make a determination on which agencies may or may not be appropriate.

The BLM proposed to add additional language to this section, stating that the BLM would ''ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide for outdoor recreation and human use, and which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.'' This revision incorporates language from FLPMA (see 43 U.S.C. 1701(a)(8) and (a)(12)) to identify in the planning regulations the general management objectives that apply to the public lands and therefore apply to all resource management plans. While this is a change in the regulations, it would simply affirm statutory direction and not change existing practice or policy.

The final rule adopts the proposed additional language with revisions in response to public comment. The final rule is revised to read ''which recognizes the Nation's need for renewable and non-renewable resources, including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands.'' The final rule includes the phrase ''renewable and non-renewable resources'' to clarify that a wide-range of renewable and non-renewable resources are considered during resource management planning, including, but not limited to, those specifically identified in FLPMA.

Several public comments requested additional resources be identified in this section, such as ''electric energy and production.'' Although the objectives section cannot reasonably list all resources, the BLM affirms through this added language that a wide-range of renewable and non-renewable resources need to be considered in order to manage the public lands on the basis of multiple use and sustained yield, including renewable and non-renewable energy sources, among others.

The final rule adopts the proposed change to remove the final sentence in this section, ''resource management plans are designed to guide and control future management actions and development of subsequent, more detailed and limited scope plans for resources and uses.'' This sentence does not accurately describe the objectives of resource management planning; rather it describes the function of a resource management plan. Under the final rule, consistent with the proposed rule, elements of the removed sentence are revised and incorporated into the definition for ''plan components'' (for more information on ''plan components,'' see the preamble discussion of § 1601.0–5).

Section 1601.0–3 Authority

The final rule adopts this section, which is identical to that in the existing and proposed regulations.

Section 1601.0–4 Responsibilities

The final rule revises paragraph (a) of this section to use active voice, stating ''[t]he Secretary and the Director provide national level policy and procedure guidance for planning,'' consistent with the proposed rule. There is no change in the meaning of this sentence or in the associated responsibilities from existing regulations.

In the second sentence of § 1601.0–4(a), the BLM proposed to establish a new responsibility for the BLM Director to determine the deciding official (a new term defined in § 1601.0–5) and the planning area for resource management plans and for plan amendments that cross State boundaries. This proposed change would have represented a change from existing regulations, where the deciding official is the State Director and the default planning area is a field office area, unless otherwise authorized by the State Director (see existing § 1610.1(b)). In response to public comment, the final rule revises this paragraph to state that the BLM Director will determine the deciding official and the planning area when a resource management plan crosses State boundaries and when a plan amendment crosses State boundaries. When resource management plans or plan amendments do not cross State boundaries, the deciding official will be the BLM State Director with jurisdiction over the planning area, unless otherwise determined by the BLM Director.

Several public comments expressed the belief that the proposed rule was vague by not indicating which BLM official would normally be selected as the deciding official and such vagueness would place a burden on the public and other governmental entities because they would not know with whom to communicate or coordinate regarding the resource management plan. Further, public comments expressed concern that the deciding official might not have familiarity with the planning area. In response to these comments, revisions from the proposed to final rule specify that the default deciding official will be the BLM State Director when a resource management plan or plan amendment does not cross State boundaries, unless otherwise determined by the Director. In the situation that a resource management plan or plan amendment crosses State boundaries, the BLM Director will select a deciding official for the planning effort, as is currently the case.

The final rule also adds ''unless otherwise determined by the Director'' to the second sentence of § 1601.0–4(a), to reiterate that the BLM Director may exercise the authority to determine the deciding official. The Secretary of the Interior, as the administrator of the public lands, has the discretion to delegate the authority to approve resource management plans and plan amendments as he or she finds appropriate, thus this change is not a change in practice or policy from the existing rule. FLPMA provides the Secretary of the Interior the authority and responsibility to develop resource management plans; the planning regulations may not remove or restrict this statutory authority. (See 43 U.S.C. 1701(a)(5).) Under existing regulations there are several examples where the Secretary has approved a resource management plan or plan amendment of national importance, or where a plan or plan amendment has been approved by a BLM official other than a BLM State Director. For example, in 2012 under existing regulations, the Resource Management Plan Amendments and Record of Decision for Solar Energy Development in Six Southwestern States was approved by former Secretary of the Interior Ken Salazar. In 2016, the Northwestern and Coastal Oregon Resource Management Plan and Record of Decision and the Southwestern Oregon Resource Management Plan and Record of Decision were both approved by the BLM's Deputy Director. In these situations, the relevant BLM State Directors were actively involved in the preparation of the resource management plan or plan amendment, but were not the deciding official that approved the resource management plan or plan amendment. The final rule affirms this existing authority.

Section 1601.0–4 also addresses the determination of the planning area. Section 1601.0–4(a) of the final rule specifies that when a resource management plan or plan amendment crosses State boundaries the BLM Director will determine the planning area. Section 1601.0–4(b) specifies that when the resource management plan or plan amendment does not cross State boundaries, the deciding official will determine the planning area.

The BLM received several comments that raised concerns about the BLM Director determining future planning areas. Several comments stated that the BLM Director would be too far removed to be adequately aware of resources, issues, and management concerns important to local stakeholders and that the BLM Director would not have time to make planning area determinations, which would result in delays. Comments also raised concerns that the BLM Director would determine planning areas without public involvement. In response to public comments, the final rule establishes an intermediate approach between the existing and proposed regulations by providing that the BLM Director will determine the planning area when it crosses State boundaries, and the deciding official (by default a BLM State Director) will determine the planning area when the planning area does not cross State boundaries. Also, in response to these comments, the final rule includes new language in the provisions for the planning assessment (see final § 1610.4). This new language describes how the BLM will identify the need to cross State boundaries, and therefore identify the appropriate BLM official to determine the planning area. Section 1610.4(a) describes the process for selecting a preliminary planning area boundary, including an opportunity for public review (see the preamble to § 1610.4(a) for more information on this process). In situations where, through the process described in § 1610.4(a), the need is identified for resource management plans to cross State boundaries in order to address relevant management concerns, the BLM Director determines the final planning area and selects the appropriate deciding official.

Although under current regulations the BLM is able to establish a different planning area than the default field office boundary, the final rule affirms that the BLM no longer intends to rely on the field office area as the default resource management plan boundary. The BLM acknowledges that in some situations the relevant management concerns may require planning area boundaries that cross traditional BLM administrative boundaries.

The final rule adopts the proposed changes to § 1601.0–4(b) by stating ''deciding officials provide quality control'' instead of existing language which states that ''State Directors will provide quality control.'' Under the final rule, the deciding official will have the responsibilities that the State Director has under the existing rule. Deciding officials will be responsible for ''quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related [EISs] or [EAs].'' Changes clarify that deciding officials are responsible for quality control and supervisory review of plan amendments and resource management plans, which is consistent with current practice and policy.

Paragraph (b) of this section includes a new responsibility for the deciding official to determine the responsible

official for each resource management plan or plan amendment. The proposed rule did not specify how a responsible official would be selected and this revision clarifies this process. For the reasons previously described, paragraph (b) of this section also specifies that deciding officials determine the planning area for resource management plans and plan amendments that do not cross State boundaries. Although this represents a change in the regulations, the deciding official will generally be a BLM State Director when a resource management plan or plan amendment does not cross State boundaries (see paragraph (a) of this section); therefore, this change is generally consistent with current practice and policy.

The final rule adopts the proposed change to remove the requirement that deciding officials ''provide additional guidance, as necessary, for use by Field Managers.'' Deciding officials may provide guidance, as described in proposed § 1610.1–1, but this is only one of their many responsibilities during the planning process that are all encompassed by ''supervisory review.'' It is unnecessary and inappropriate to identify the provision of guidance as a unique responsibility in these regulations. The BLM intends no change in practice or policy by removing ''guidance'' from the responsibilities section.

The final rule also adopts the proposed change to remove the requirement that deciding officials ''file draft and final [EISs].'' This language is unnecessary and redundant with the requirement that deciding officials provide supervisory review for ''related [EISs]'' which will include supervisory review of filing the documents. Current BLM practice is for the State Director to delegate the responsibility of filing EISs or EAs, thus this change is consistent with current practice.

In paragraph (c) of this section, the final rule adopts the proposed changes to replace references to ''Field Managers'' with ''responsible officials'' (a proposed new term defined in § 1601.0–5) and provide that responsible officials will prepare resource management plans and plan amendments, and related EISs and EAs. As discussed in the preamble to the definitions in § 1601.0–5, the term ''responsible official'' is adapted from the term used in the DOI NEPA regulations (see 43 CFR 46.30). There is no change in the responsibilities associated with this role in the planning process, but the new term makes it clear to the public that the BLM has the flexibility under its regulations to prepare or amend resource management plans at levels other than a field office.

Changes to this section are intended to facilitate planning across traditional BLM administrative boundaries. For instance, if the planning area for a resource management plan or plan amendment is larger than the BLM field office administrative boundary in order to address a management concern that crosses administrative boundaries, the BLM Field Manager may not be the most appropriate BLM employee to prepare the resource management plan or plan amendment. These revisions are consistent with current practice permitted by the existing regulations. For example, the BLM District Manager is the responsible official for the preparation of the Carson City, Nevada resource management plan, which is currently under development and includes more than one BLM field office.

The final rule adopts the proposed change to include the preparation of related ''EAs'' (in addition to EISs) as a responsibility of responsible officials. This change fixes an existing inconsistency in the regulations. Responsible officials prepare plan amendments and either an EIS or an EA could be prepared to inform the plan amendment. The BLM intends no change in practice or policy from this addition.

The final rule removes the last sentence of paragraph (c) of this section, consistent with the proposed rule, which required that ''State Directors must approve these documents.'' Under the final rule, deciding officials will approve these documents, as discussed in paragraph (b) of this section.

Section 1601.0–5 Definitions

The final rule adds several new terms and definitions to this section. The final rule adopts, without revision, the proposed definitions of eight of these new terms: High quality information, Indian tribe, mitigation, plan revision, planning area, planning issue, responsible official, and sustained yield. The final rule revises the proposed definitions of five of these new terms: Deciding official, plan amendment, plan components, plan maintenance, and planning assessment. The final rule does not adopt the proposal to add the term implementation strategies.

Additionally, the BLM proposed to revise several existing definitions. The final rule adopts the proposed definition for the term areas of critical environmental concern or ACEC. The final rule further revises the other existing definitions that were proposed for revisions: Conformity or conformance, cooperating agency, local government, officially approved and adopted (land use) plans, and resource management plan.

The final rule, consistent with the proposed rule, removes the definitions of: Eligible cooperating agency, Field Manager, guidance, and resource area or field office. The final rule does not adopt, however, the proposal to remove the definition for ''consistent'' and instead revises the existing definition and rephrases the term as ''consistent with officially approved and adopted plans.'' The following paragraphs describe the changes to these definitions and the rationale for each. This discussion does not discuss the definitions of terms that are included in the final rule without amendment from existing regulations.

Areas of Critical Environmental Concern or ACEC. The final rule moves the last sentence of this definition (''[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.'') to the ACEC provisions in § 1610.8–2(b), consistent with the proposed rule. This change makes the definition of an ACEC in this section more consistent with FLPMA. This sentence is not part of the definition of an ACEC provided in FLPMA; rather, it describes the effect of the identification of such an area. The sentence is therefore most appropriately placed following the description of the criteria for identifying a potential ACEC (see § 1610.8–2(b)). This change is not a change in practice or policy.

Conformity or conformance. The final rule adopts the proposals to remove language that an action ''shall be specifically provided for in the plan'' and replace the phrase ''terms, conditions, and decisions'' with ''plan components'' of the approved resource management plan in the definition of conformity or conformance. These changes are consistent with changes to § 1610.1–2, which refer to plan components instead of ''terms, conditions, and decisions.'' The changes reflect that plan components provide the planning-level management direction that guides all future management actions and with which those future actions must be consistent.

The final rule provides a more precise definition of conformance, which will assist the BLM and the public in identifying whether a proposed action is in conformance with an approved resource management plan. The final rule also removes the words ''plan amendment'' from the end of the definition, as proposed. These words are not necessary; an approved plan

amendment is encompassed by an approved resource management plan (*i.e.,* following approval the plan amendment amends the resource management plan).

Finally, the final rule adds a reference to ''see § 1610.6–3,'' which is the corresponding policy provision related to conformance. This change between the proposed and final rule improves readability of the planning regulations by directing readers to related sections and does not represent a change in the meaning of the definition.

Consistent with officially approved and adopted plans. The BLM proposed to remove the definition of the term ''consistent'' because this is commonly used terminology. Several comments expressed concern over the proposed removal of the definition of consistency. In response to public comment, the final rule includes a revised term and definition.

The term ''consistent'' is replaced with ''consistent with officially approved and adopted plans.'' This change is necessary because the word ''consistent'' is used in the regulations in multiple contexts. For example, in final § 1610.3–3 the term ''consistent'' is used in the context of consistency with the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The definition of conformance, however, uses the word ''consistent'' in a different context that does not align with the definition for consistent in the existing regulations. The final rule uses a more precise term to avoid confusion regarding when this definition applies.

The definition of ''consistent with officially approved and adopted plans'' also varies from the existing definition of ''consistent'' in several ways. The final rule replaces ''adhere to'' with ''are compatible with'' in regards to the terms, conditions, and decisions of officially approved and adopted plans. This is an important distinction because the phrase ''adhere to'' could be misinterpreted to mean that BLM plans must use the exact terms, conditions, and decisions described in the plans of other governmental entities as plan components. These terms, conditions, and decisions, however, may not use the same terminology as resource management plans or reflect the requirements of plan components (see § 1610.1–2), may be smaller in scope or scale than a resource management plan, or may not provide integrated consideration of resources, for example. In these situations, a plan component might vary from the terms, conditions, and decisions of the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes while still maintaining compatibility with these terms, conditions, and decisions. The final rule affirms that such variance is acceptable, so long as the plan components are compatible with the terms, conditions, and decisions in the officially approved and adopted plan, subject to the qualifications of § 1610.3.

The final rule also replaces ''officially approved and adopted resource-related plans'' with ''officially approved and adopted plans'' for consistent use in terminology throughout. Please see the preamble to the definition for ''officially approved and adopted plans'' in this section for a more detailed explanation of this change.

The final rule includes the phrase ''to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations'' for consistency with final § 1610.3–3(a).

Finally, the final rule removes the existing phrase ''or in their absence, with policies and programs'' from this definition. This change is consistent with the removal of existing § 1610.3–2(b) and helps to distinguish between FLPMA requirements for coordination and for consistency.

FLPMA requires that the BLM ''coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located . . . by, among other things, considering the policies of approved State and tribal land resource management programs.'' (See 43 U.S.C. 1712(c)(9).) Coordination is addressed in final § 1610.3–2, which the final rule revises to address coordination on policies and programs (see §§ 1610.3–2(a)(1) and (2)). FLPMA also requires that resource management plans ''shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.'' (See 43 U.S.C. 1712(c)(9).) This FLPMA requirement does not include ''policies and programs,'' rather it limits consistency to ''State and local plans'' while the broader coordination requirements include the consideration of policies and programs. The final rule aligns the BLM regulations with FLPMA by requiring that the BLM coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, management programs, and inventory that are germane to the development of resource management plans, in order to assure that consideration is given to all of these documents and information during the planning process. The consistency requirements, however, only apply to ''officially approved and adopted plans,'' as provided by FLPMA. The final rule represents a change from the existing regulations, but more closely aligns the BLM regulations with the requirements of FLPMA.

Eligible cooperating agency. The final rule adopts the proposal to remove this definition and revise the definition of ''cooperating agency'' to cite the definition of ''eligible governmental entity'' in the DOI NEPA regulations (43 CFR 46.225(a)). The DOI definition was promulgated after the BLM Planning regulations were last amended in 2005. No change in meaning or practice is intended; the BLM merely seeks to make the planning regulations consistent with the DOI NEPA regulations.

Cooperating agency. In defining ''cooperating agency'' for resource management planning purposes, the BLM proposed to modify the existing definition in the planning regulations for improved consistency with the DOI NEPA regulations (43 CFR 46.225(a)) and to clarify existing language. Proposed changes were intended to make clear that while cooperating agencies are defined under the CEQ NEPA regulations, cooperating agencies have unique roles in the BLM land use planning and NEPA processes and that the BLM defines cooperating agencies in the same way for both processes. The final rule adopts the first two sentences of this definition, but does not adopt the third and final sentence of the proposed definition.

The final rule includes a reference to the definition of ''eligible governmental entity'' from the DOI NEPA regulations (43 CFR 46.225(a)) and clarifies that a cooperating agency agrees to participate in the development of an ''environmental impact statement or environmental assessment'' under NEPA and in the planning process. The final rule removes ''written'' from the first sentence of this definition, because a Federal cooperating agency—unlike State, local, or tribal governments—need not enter into a memorandum of understanding (MOU) or other written agreement to confirm its status under DOI NEPA regulations (see proposed § 1610.3–1(b)(2)), although this is typically recommended for other Federal agencies.

In response to public comment, the final rule removes the final sentence of the existing and proposed definitions.

The BLM proposed to add the words ''appropriate'' and ''scope of their expertise'' to the last sentence to indicate that cooperating agencies will participate in the planning process as feasible and ''appropriate,'' given the ''scope of their expertise'' and constraints of their resources. This sentence is not necessary or appropriate in the definition for a cooperating agency as it does not describe the meaning of the term, nor does it address eligibility to participate as a cooperating agency, as defined in 43 CFR 46.225(a).

Deciding official. The final rule adopts the proposed new definition of deciding official, with only minor edits. This new definition refers to the BLM official who is delegated the authority to approve a resource management plan or plan amendment. As discussed throughout this preamble, it replaces the term ''State Director'' throughout the planning regulations in order to facilitate planning across traditional BLM administrative boundaries, when appropriate.

The final rule adds a reference to ''see § 1601.0–4,'' which is the corresponding policy provision related to conformance. This change between the proposed and final rule improves readability of the planning regulations by directing readers to related sections and does not represent a change in the meaning of the definition.

Field Manager. The final rule adopts the proposal to remove this definition. The final rule replaces references to the Field Manager with ''responsible official'' or ''the BLM'' throughout, as proposed. This change is intended to facilitate planning across traditional BLM administrative boundaries, when appropriate.

Guidance. The final rule adopts the proposal to remove the definition of guidance. Internal BLM guidance must be in compliance with all applicable laws and regulations, so the term is not necessary in the regulations and further restrictions in the definitions section of these regulations is not necessary or appropriate. The removal of this unnecessary definition also improves readability of the regulations. This change is not a change in practice or policy.

High quality information. The final rule adopts the proposal to add this new definition to describe new terminology introduced into proposed §§ 1610.1–1(c) and 1610.4(b). High quality information is defined as ''any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.'' For more information, please see the preamble to § 1610.1–1(c).

Implementation strategies. The final rule does not adopt the proposal to add this new definition. This definition is no longer necessary as the term ''implementation strategy'' is not included in the final rule in response to public comment. For more information, please see the preamble to § 1610.1–3.

Indian tribe. The final rule adopts the proposal to add a new definition of Indian tribe for consistency with the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). The existing planning regulations were promulgated prior to this Act and this new definition clarifies the use of this term. Consistent with the proposed rule, the term Indian tribe refers to federally recognized Indian tribes in the final rule. This change is not a change in practice or policy.

In connection with this change, the final rule removes the words ''federally recognized'' from five locations where the existing regulations refer to ''federally recognized Indian tribes,'' as proposed. These references were added under the 2005 revision to the regulations (70 FR 14561), but other existing references to Indian tribes were not amended at that time. Consequently, the existing regulations are inconsistent in their use of terminology. The references to ''federally recognized'' Indian tribes are no longer necessary as a result of the revised definition, which includes only federally recognized Indian tribes. The five references are identified and clarified in the corresponding sections of this preamble.

Several public comments recommended including Tribal Historic Preservation Officers in sections referencing cooperation and coordination with Indian tribes. We have not adopted this recommendation since Tribal Historic Preservation Officers are part of tribal governments and therefore already encompassed by this definition.

It is important to note that the final rule does not affect government-to-government consultation with federally recognized Indian tribes during the preparation or amendment of a resource management plan and the final rule includes a statement of this requirement in section 1610.2–1(a). The final rule also does not affect implementation of the ''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations'' (2012). The BLM will continue to conduct government-to-government consultation with federally recognized Indian tribes and will also continue to consult with ANCSA corporations during the preparation and amendment of resource management plans, consistent with DOI policy.

Landscape. In response to public comment, the final rule includes a definition for the term ''landscape.'' This term is not found in the existing or proposed regulations, but was used throughout the preamble to the proposed rule, including in the discussion of the overarching goals of the Planning 2.0 initiative. The term ''landscape'' is added to § 1610.4(a)(1)(ii) of the final rule, which requires that the BLM consider ''relevant landscapes'' when identifying a preliminary planning area, and therefore a definition is warranted. The final rule defines a landscape as ''an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context.'' This definition aligns with the definition of a landscape adopted by DOI in the Departmental Manual on implementing mitigation at the landscape-scale (600 DM 6 6.4(D)). Please see the preamble discussion of § 1610.4(a)(1)(ii) for information about the BLM's use of this term.

Mitigation. The final rule adopts the proposal to add this new definition of mitigation to explain that mitigation includes the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. This sequence is commonly referred to as the ''mitigation hierarchy.'' By including this definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process. For example, during the preparation of resource management plans, the BLM first and foremost applies the principle of avoidance through the identification of planning issues and the formulation of alternatives that are guided by the planning issues (*i.e.,* identifying potential impacts and developing alternatives that avoid those potential impacts). During the preparation of a resource management plan, the BLM also identifies mitigation standards, which help to guide the future application of the principles of minimization and then compensation (for more information, see the discussion on mitigation standards at the preamble for § 1610.1–2(a)(2)). The definition is consistent with the Departmental Manual chapter on

''Implementing Mitigation at the Landscape-scale'' (600 DM 6).

Multiple use. The final rule includes the definition of multiple use with no changes from the existing and proposed rule. This definition is a direct quote of the definition in FLPMA.

Officially approved and adopted plans. The BLM proposed to replace the phrase ''resource related plans'' with ''land use plans'' in this definition and throughout both subparts. Several public comments stated that requiring consistency with ''land use plans'' would limit the scope of plans that the BLM would consider during the revision or amendment of resource management plans, and may leave out relevant plans that are specific to resources and uses such as water, weeds, dust control, and travel management. In response to public comments, the final rule instead replaces ''resource related plans'' with ''plans,'' and defines an ''officially approved and adopted plan'' as a ''resource-related plan.''

The final rule adopts the proposal to remove the words ''policies, programs, and processes'' from the definition of officially approved and adopted plans. The existing definition is inconsistent with existing § 1610.3–2 (final § 1610.3–3), which distinguishes between ''officially approved or adopted resource related plans'' in existing § 1610.3–2(a) and ''officially approved or adopted resource related policies and programs'' in existing § 1610.3–2(b), rather than combining them, such as in the existing definition.

These changes mean that the consistency requirements of final § 1610.3–3(a) applies to the ''resource-related plans'' of other Federal agencies, State and local governments, and Indian tribes, but is not required for their ''policies, programs, and processes.'' This change is consistent with FLPMA (see 43 U.S.C. 1712(c)(9)). For more information, please see the discussion on the definition for ''consistent with officially approved and adopted plans'' at the preamble for this section and the discussion on consistency requirements at the preamble for § 1610.3–3.

The final rule includes two revisions to this definition that were not included in the proposed rule. This definition includes the word ''tribal'' to clarify that the plans of Indian tribes are prepared pursuant to and in accordance with authorization provided by ''tribal'' constitutions, legislation, or charters. The final rule also removes the word ''State'' from the phrase ''which have the force and effect of [State] law.'' This change is intended to clarify that tribal constitutions, legislation, and charters have the force and effect of tribal law, not State law. These revisions were not addressed in the proposed rule, however, they do not result in a change to the meaning of this definition; rather, they fix an internal inconsistency in the definition.

Plan amendment. The final rule adopts the proposed new term ''plan amendment,'' with minor edits to the definition. The final definition clarifies that a plan amendment could either be an amendment to an approved resource management plan or a management framework plan. A management framework plan is a land use plan that was prepared and approved prior to FLPMA. In either case, the BLM will be required to follow the same amendment procedures, as described in this part.

In response to public comment, the final rule specifies that a plan amendment means an amendment to an approved resource management plan or management framework plan ''to change one or more plan components.'' This added language does not change the meaning of the proposed definition; rather it provides a more precise description that amendments are required to change one or more plan components.

Plan components. The final rule adopts the proposed new term ''plan component,'' with minor edits to the definition. This new definition identifies plan components as the elements of a resource management plan with which future management actions shall be consistent. Although other items could be prepared in conjunction with a resource management plan, such as a travel management plan, they are not considered a component of the resource management plan (for more information, see the discussions on plan components in the preamble for § 1610.1–2).

For improved clarity, the final rule identifies the six different types of plan components and adds a reference to § 1610.1–2, where plan components are described in more detail. These changes between the proposed and final rule provide clarity, but do not represent a change in the meaning of the definition.

Plan maintenance. The final rule adopts the proposed new term ''plan maintenance,'' with minor edits to the definition. Some comments expressed that the term ''minor changes'' was ambiguous and requested the BLM define this term. In response to public comment, we remove the word ''minor'' from the phrase ''minor change(s) to an approved resource management plan.'' The phrase ''minor changes'' is unnecessary here. The final definition more clearly describes plan maintenance as changes to an approved resource management plan to correct typographical or mapping errors or reflect minor changes in mapping or data. For example, the BLM might maintain a plan by fixing a misspelled word or by updating maps in the plan to correct a mistake in the location of a fence line. The BLM also might update maps in the plan to reflect minor changes in data, such as the location of a river that has migrated over time. The final rule retains the term ''minor changes'' when referring to changes in mapping or data because this term is necessary here, as not all changes in mapping or data would be considered plan maintenance. The BLM interprets this term, consistent with its use in existing § 1610.5–4, to mean a change that is small in both scope and scale, and will not alter or modify a plan component. The final language regarding ''minor changes in mapping or data'' is consistent with the maintenance section of the existing regulations (§ 1610.5–4), proposed rule (§ 1610.6–5), and final rule (§ 1610.6–5).

Changes between the proposed and final rule are intended to clarify that any corrections of typographical or mapping errors or changes reflecting minor changes in mapping or data are considered plan maintenance. For the purposes of this rule, a minor change in mapping or data is one that does not result in a substantial change to the scope of one or more plan components and must be considered within the context of any given resource management plan. For example, if a plan component designates a river corridor as a riparian protection area, and the riparian zone moves slightly from year-to-year based on normal hydrological processes, the movement of the riparian protection area would not be considered a substantial change in the scope of the planning designation.

Plan revision. The final rule adopts the proposed definition for plan revisions, as a revision of an approved resource management plan or major portions of the resource management plan. The final rule clarifies in this definition that the phrase ''preparation or development of a resource management plan,'' which is used throughout the proposed planning regulations, includes plan revisions. The added language improves understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see final § 1610.6–7).

Planning area. The final rule adopts the new definition ''planning area,'' as

proposed. This definition describes the geographic area for the preparation or amendment of a resource management plan and replaces the existing definition for ''resource area or field office.'' The final rule replaces the terms ''resource area'' or ''field office'' with ''planning area'' throughout the proposed rule. This change is consistent with the terminology the BLM currently uses to describe the geographic area for which resource management plans are prepared (see page 14 of BLM Handbook H–1601–1). The final rule provides revised direction for determination of planning area boundaries in §§ 1601.0–4 and 1610.4(a). This change is not a change in practice or policy.

Planning assessment. The final rule adopts the proposed new term ''planning assessment,'' with minor edits to the definition. This new definition describes an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area, which is developed to describe the current status of lands and resources in the planning area, project demand for those resources, and to assess how these demands can be met consistent with the BLM's multiple use and sustained yield mandate. The assessment will inform the preparation and, as appropriate, the implementation of a resource management plan or revision. Section 1610.4 of this preamble describes the proposed planning assessment step in the planning process, including opportunities for collaboration and public involvement. The planning assessment may also be used during the implementation of a resource management plan. For example, the BLM could use information from a planning assessment to evaluate whether a future proposed action conforms with an objective in the approved resource management plan related to the protection of a sensitive resource and could supplement that information with down-scaled information specific to the project area being considered. The BLM could also use information from a planning assessment to inform the preparation of a travel management plan.

Changes to this definition between the proposed and final rule add a reference to the planning assessment section of the final rule (§ 1610.4) for improved readability of the regulations. The BLM intends no change in the meaning of this definition from this change.

Planning issue. The final rule adopts the proposed new definition for ''planning issue'' without amendment. This new definition identifies planning issues as disputes, controversies, or opportunities related to resource management. For example, a planning issue might identify a potential dispute over resource management, such as a popular recreation area that coincides with important cultural sites, habitat, or another multiple use. A planning issue might also identify a potential opportunity, such as an opportunity to control the spread of invasive species through resource management. The new definition is consistent with current practice and policy.

Public. We proposed to retain the existing definition for ''public.'' In response to public comment, the final rule revises the existing definition to clarify that the ''public'' also includes officials of other Federal agencies. For example, officials from the Environmental Protection Agency are welcome to participate in BLM's planning process, including attending public meetings, submitting written comments, or any other opportunities for public involvement. This revision does not represent a change from existing practice or policy.

Public involvement. In response to public comment, the final rule includes a new definition for public involvement stating that public involvement means ''the opportunity for participation by the public in decision making and planning with respect to the public lands.'' This definition is based on the FLPMA definition of public involvement (see 43 U.S.C. 1702(d)). However, this definition is slightly broader than the FLPMA definition in that it includes all members of the ''public,'' as defined in these regulations, and not just affected citizens. The BLM believes that it is appropriate to provide opportunities for participation to any ''affected or interested individuals'' and not just affected citizens. For example, non-citizens that reside near public lands may be affected by a resource management plan, and therefore it is appropriate for these non-citizens to participate in opportunities for public involvement. By providing for opportunities for participation in public involvement activities by citizens, FLPMA does not preclude participation by non-citizens.

Public lands. The final rule adopts the proposal to replace Bureau of Land Management with BLM and to split the existing definition into two sentences for improved readability. These changes are not a change in practice or policy.

Resource area or field office. The final rule adopts the proposal to remove this definition, because the resource area or field office no longer will be the ''default'' planning area. The final rule replaces the terms ''resource area'' or ''field office'' with ''planning area'' throughout the final rule, as proposed.

Resource Management Plan. The final rule adopts the proposal to simplify the existing definition of a resource management plan with minor revisions, providing that a resource management plan is ''a land use plan as described under section 202 of the FLPMA, including plan revisions.'' Much of the existing language, and a more in depth discussion of what constitutes a resource management plan, is moved to final § 1610.1–2. ''Plan components'' described in final § 1610.1–2 replace some of the elements generally established in a resource management plan under the existing definition in § 1601.0–5(n), and some of these elements will be removed. As discussed in the preamble for § 1610.1, these changes aim to clarify that a resource management plan is a planning-level document that guides future management activities. They also aim to distinguish the land use planning-level components of a resource management plan (*i.e.,* plan components) from future actions that are taken during the implementation of the resource management plans.

The final rule clarifies that the term ''resource management plan'' includes plan revisions, consistent with the proposed rule. This change improves understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see proposed § 1610.6–7).

The final rule adopts the proposal to revise existing language at the end of this definition to read ''approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.'' The decision to approve a resource management plan is therefore not an approval of future actions within the planning area that require subsequent plans (such as a mining plan of operations), process steps (such as site-specific NEPA-analysis), or decisions (such as the decision to approve a future action based on the site-specific NEPA analysis).

Responsible official. The final rule adopts the proposed definition for ''responsible official'' without amendment. This new term replaces the term ''Field Manager'' throughout the planning regulations, acknowledging that the BLM employee authorized to prepare a resource management plan or plan amendment may not always be the Field Manager due to the need to plan across traditional BLM administrative

boundaries, when appropriate. The term is based on the definition of ''Responsible official'' in the DOI NEPA regulations, ''the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA'' (43 CFR 46.30). This term, as modified, is only applicable to the BLM land use planning process; no change to the DOI NEPA regulations is intended. However, note that in the DOI NEPA regulations, the responsible official has the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA. The final rule divides these responsibilities between the deciding official and the responsible official for purposes of this planning rule. Under the final rule, the responsible official prepares the resource management plan or plan amendment and related EISs and EAs, and the deciding official approves the resource management plan.

State and local government. The final rule replaces the proposed term ''local government'' with ''State and local government,'' and revises the definition to include the State. The revised definition describes ''the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.'' This change broadens the existing and proposed definitions of ''local government'' to include the State, but there is no change in the meaning of either the ''State'' or ''local government.'' This change improves readability of the regulations as the phrase ''State and local government'' is used throughout this part.

The final rule adopts the proposal to replace the existing language for ''regulation authority'' with ''regulatory authority'' for improved readability. No change in meaning is intended by this revision.

Several public comments recommended including State Historic Preservation Officers in sections referencing cooperation and coordination with State governments. We have not made this change since State Historic Preservation Officers are part of State governments, and therefore are already encompassed by this definition.

Sustained yield. The final rule adopts the proposed new definition of ''sustained yield.'' This new definition comes from the FLPMA definition (see 43 U.S.C. 1702(h)). This definition is added because the planning regulations already include the statutory definition of multiple use and the principles of multiple use and sustained yield guide the BLM's development and revision of land use plans under section 202(c)(1) of FLPMA, absent other applicable law. This definition is useful because this term is referenced throughout the existing, proposed, and final regulations.

Section 1601.0–6 Environmental Impact Statement Policy

The final rule replaces the existing word ''plan'' with ''resource management plan'' throughout this section and replaces the first sentence of this section, which states that the approval of a resource management plan is a major Federal action, with a requirement that the BLM will prepare an EIS when preparing a resource management plan. This change is intended to provide clarity on this existing requirement; the BLM intends no change in practice or policy.

The BLM did not receive public comments specific to this section.

Section 1601.0–7 Scope

The final rule adopts this section, which is identical to that in the existing and proposed regulations. The BLM did not receive public comments specific to this section.

Section 1601.0–8 Principles

The first sentence of this section requires that the ''development, approval, maintenance, amendment, and revision of resource management plans shall provide for public involvement and shall be consistent with the principles described in section 202 of FLPMA.'' Several public comments requested the final rule restate one or more of the principles described in this section of FLPMA (see 43 U.S.C. 1712). The final rule is not revised in response to these public comments because this provision requires the BLM to be consistent with all of the principles described in this section of FLPMA (see 43 U.S.C. 1712), although they are not individually listed. In this sentence, the final rule uses the word ''shall'' instead of ''will'' and replaces ''the Federal Land Policy and Management Act of 1976'' with ''FLPMA,'' for the reasons previously described. Existing regulations state that ''. . . plans will provide . . .'' and ''. . . shall be consistent,'' while the proposed rule used ''will'' in both places. Under this final rule, the BLM uses ''shall'' in both places in this sentence. The BLM intends no change in practice or policy from this change.

Under existing regulations, this section requires the BLM to consider ''. . . the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests. . . .'' The proposed rule rephrased this requirement for active voice and expanded it to include the consideration of ''. . . resource, environmental, ecological, social, and economic conditions at appropriate scales.''

In response to public comment, the final rule replaces the word ''appropriate'' with ''relevant'' to clarify that the BLM will consider scales that the agency has reason to believe are relevant to the decision. This broader range of potential impacts includes the consideration of impacts to local economies, in addition to impacts at other scales and on other conditions. The final language more accurately describes current practice to consider impacts of resource management plans at relevant scales, which provides important information for the deciding official. For example, it is important that the deciding official is aware of the socioeconomic impacts of a resource of national significance found within the planning area, such as the Federal Helium Reserve, which the BLM administers near Amarillo, Texas. The revised language is also consistent with the Planning 2.0 goal of addressing landscape-scale resource issues, which may occur at a range of different geographic scales.

We wish to clarify that consideration of the impacts of a resource management plan on local conditions, including local economies, is a relevant scale. At this time, the BLM cannot contemplate a situation where a resource management plan would not impact local conditions within the planning area; therefore the BLM will continue to consider impacts on local economies under the final rule. The intent of these revisions is to assure that BLM considers other relevant scales, in addition to local scales.

The proposed and final regulations do not prescribe additional weight of consideration to any scale or condition when rendering a decision. Rather, the BLM believes it is appropriate for a deciding official to consider all relevant scales and information before rendering a decision.

The last sentence of this section contains the requirement that the BLM consider the impacts of resource management plans on adjacent or nearby Federal and non-Federal lands, as well as the uses of adjacent or nearby Federal and non-Federal lands. The final rule expands the requirement in existing regulations to include

consideration of impacts on adjacent or nearby Federal lands in addition to non-Federal lands. This language is consistent with the Planning 2.0 goal to improve the BLM's ability to apply landscape-scale management approaches and facilitates coordination and collaboration with adjacent Federal land managers and landowners, as appropriate. No substantive changes are made to this sentence from the proposed to final rule.

Subpart 1610—Resource Management Planning

Section 1610.1 Resource Management Planning Framework

The final rule revises the heading of § 1610.1 by replacing the word guidance with framework, consistent with the proposed rule. The broader heading will reflect the entire section as revised.

Many of the provisions of existing § 1610.1 are found in §§ 1610.1–1 and 1610.1–2 of the final rule. The final rule does not adopt proposed § 1610.1–3 in the final rule. Those sections are discussed in greater detail as follows.

Section 1610.1–1 Guidance and General Requirements

The final rule adopts proposed § 1610.1–1, with revisions. This section addresses the development of guidance for resource management planning and general requirements for the preparation and amendment of resource management plans.

Section 1610.1–1(a) of the final rule contains provisions of existing § 1610.1(a). This section still refers to planning guidance, but references to ''State Director'' are replaced with ''deciding official'' and references to ''Field Manager'' are replaced with ''responsible official,'' consistent with the proposed rule. These changes facilitate planning across traditional BLM administrative boundaries, when appropriate. The final rule specifies that the word ''plan'' refers to a ''resource management plan,'' consistent with the proposed rule.

Section 1610.1–1(a)(1) contains provisions of existing § 1610.1(a)(1), and explains that guidance may include ''Policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands.'' The final rule adopts the proposed change to remove existing language limiting this guidance to ''National level policy'' in order to also include policy developed at the deciding official level as another type of guidance that may be developed to help the responsible official prepare a resource management plan. The final rule also adopts the proposed change to remove existing language that provides examples of policy, such as ''appropriately developed resource management commitments.'' These examples are unnecessary in the regulations and do not adequately cover the broad range of policy examples that could be included as guidance.

A public comment suggested that the phrase ''is consistent with'' Federal laws and regulations in paragraph (a)(1) of this section introduces potential for controversy and suggested replacing this language with ''shall comply with.'' In response to this comment, the final rule replaces the phrase ''is consistent'' in paragraph (a)(1) of this section with ''complies,'' to clarify that any policy must comply with Federal laws and regulations. The BLM intends no change in practice or policy from revisions to this section. Rather, these changes are intended to improve readability and reaffirm that the BLM may only develop or apply policy that complies with Federal laws and regulations.

The final rule adopts proposed § 1610.1–1(a)(2), which provides that guidance may include ''[a]nalysis requirements, planning procedures, and other written information and instructions required to be considered in the planning process.'' Section 1610.1–1(a)(2) of the final rule contains most of the provisions found in existing § 1610.1(a)(2), with some revisions from existing language, but remains unchanged from the proposed rule.

The final rule removes existing § 1610.1(a)(3), consistent with the proposed rule. This section is no longer necessary because guidance developed at the deciding official level is incorporated into § 1610.1–1(a)(1). The final rule also removes existing requirements for the State Director to reconsider inappropriate guidance during the planning process, consistent with the proposed rule. This language is vague and confusing, as it does not define what it means for guidance to be ''inappropriate.'' The BLM must comply with the requirements of Federal laws and regulations applicable to public lands and therefore guidance developed to inform the preparation of a resource management plan must also comply with Federal laws and regulations applicable to the public lands.

The final rule adopts the proposed change to remove existing § 1610.1(b), which states ''a resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.'' This language is no longer necessary because final § 1610.4(a) describes the process for developing a preliminary planning area and final § 1601.0–4 describes the responsibilities for determining the final planning area. For more information, see the discussions on planning areas at the preamble for §§ 1610.4(a) and 1601.0–4.

The final rule adopts proposed § 1610.1–1(b), with minor edits. Section 1610.1–1(b) contains the provisions of existing § 1610.1(c). The first sentence is revised to read ''the BLM shall use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences.'' This language highlights the objective of using an interdisciplinary approach, as described in FLPMA (see 43 U.S.C. 1712(c)(2)), as well as the importance of integrated consideration of sciences in the planning process. This list is not intended to be exhaustive; rather, it describes the disciplines provided in FLPMA (see 43 U.S.C. 1712(c)(2)), including the broader inclusion of ''other sciences,'' and identifies social sciences for consistency with the CEQ NEPA regulations (see 40 CFR 1502.6).

As proposed, the second sentence of § 1610.1–1(b) is revised to replace the word ''disciplines'' with ''expertise.'' This change reflects that BLM staff may have expertise outside of their formal discipline, and an ''interdisciplinary approach'' should be based on expertise, not limited to formal disciplines. This change is consistent with current practice under the existing regulations. The final rule adds the word ''resource'' before values, to clearly identify what type of values this sentence applies to and to specify that ''the expertise of the preparers will be appropriate to . . . the principles of multiple use and sustained yield, unless otherwise specified by law.'' The final rule replaces the proposed phrase ''or other applicable law'' with ''unless otherwise specified by law'' for grammatical clarity and for consistency with FLPMA (see 43 U.S.C. 1701(a)(7); 43 U.S.C. 1732(a)). No change in meaning, practice, or policy is intended by these changes.

Finally, the final rule adopts the proposed change to replace ''Field Manager'' with ''responsible official'' in the last sentence of proposed § 1610.1–1(b). This change is consistent with other changes in terminology in this final rule.

The final rule adopts proposed § 1610.1–1(c) with only minor revisions. This section requires the BLM to use high quality information to inform the

preparation, amendment, and maintenance of resource management plans. High quality information includes the best available scientific information, but the requirement extends to other information as well. For example, ''Traditional Ecological Knowledge'' (TEK) refers to the knowledge specific to a location acquired by indigenous and local peoples over hundreds or thousands of years through direct contact with the environment. Under the proposed rule, TEK would be considered a type of high quality information that could inform the preparation, amendment, and maintenance of resource management plans, so long as the TEK is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods.

As the BLM considers what constitutes high quality information for purposes of the planning process, the BLM is mindful of its obligations under the Information Quality Act, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, H.R. 5658), and implementing guidelines of OMB,[7] DOI,[8] and the BLM for ''ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' [9] The descriptions of objectivity, integrity, and utility provided in the BLM guidelines, as well as the principle of using the ''best available'' information, are particularly instructive with regard to information considered and shared with the public during resource management planning. In the planning process, the BLM also adheres to NEPA requirements for using ''high quality'' information and ''[a]ccurate scientific analysis'' (40 CFR 1500.1(b)), and for ensuring the ''professional integrity, including scientific integrity, of the discussions and analyses in [EISs]'' (40 CFR 1502.24).

In addition, the BLM intends that the March 2015 publication, ''Advancing Science in the BLM: An Implementation Strategy,'' will inform a responsible official's consideration of high quality information. This publication describes several principles and practices that pertain to the identification and consideration of high quality information in resource management planning. They include: Using the best available scientific knowledge relevant to a problem or decision, including peer-reviewed literature where it exists; acknowledging, describing, and documenting assumptions and uncertainties; and using quantitative data when it exists, together with professional scientific expertise from within and outside the BLM.[10] Moreover, all BLM employees are subject to the DOI scientific integrity policy in the Departmental Manual (305 DM 3, Dec. 16, 2014) when they use scientific information for DOI policy, management, or regulatory decisions. This policy states: ''Scientific information considered in Departmental decision-making must be robust, of the highest quality, and the result of as rigorous a set of scientific processes as can be achieved. Most importantly, the information must be trustworthy.'' (305 DM 3, section 3.4).

Together, these requirements, policies, and strategies relating to high quality information, including scientific information, will guide responsible officials as they consider information for planning purposes. The BLM anticipates that including the BLM's commitment to using high quality information in the planning regulations, and operating consistent with Departmental policy on scientific integrity and BLM's strategy for advancing science, will result in greater consistency in how BLM identifies and uses information, including scientific information, throughout the land use planning process. Section 1610.1–1(c) establishes an explicit regulatory requirement for using high quality information in the planning regulations, as the existing regulations do not address information quality.

Section 1610.1–2 Plan Components

The final rule adopts proposed § 1610.1–2 with some revisions, which are described in the discussion for each corresponding paragraph of § 1610.1–2.

Section 1610.1–2 describes the components of a resource management plan. The existing definition of ''resource management plan'' lists eight elements that a plan ''generally establishes'' (see existing § 1601.0–5(n)). The final rule incorporates many of these elements into the ''plan components'' and removes several of the elements (for more information on elements that are removed from the planning regulations, please see the discussion at the preamble for proposed, but not adopted, § 1610.1–3). The plan components provide planning-level direction with which future management activities and decisions must be consistent (*i.e.,* planning-level management direction).

Consistent with the proposed rule, final § 1610.1–2 describes the following six ''plan components'' which every resource management plan will include: goals, objectives, designations, resource use determinations, monitoring and evaluation standards, and as applicable, certain lands identified as available for disposal. Plan components provide planning-level management direction and will therefore only be changed through plan amendments or revisions under § 1610.1–2(c). Typographical and mapping errors, or minor changes in mapping or data for a plan component could be updated through plan maintenance (see § 1610.6–4). This is consistent with current BLM policy and practice (see § 1610.6–4).

The final rule clearly identifies the planning-level management direction reflected in the plan components of an approved resource management plan. This planning-level management direction is intended to guide future management activities towards the achievement of goals and objectives across the landscape, while also providing for use of the public lands by tracts or areas as required by FLPMA (see 43 U.S.C. 1712(a)). The plan components will not, however, prescribe future management actions, which require further specific plans, process steps, or decisions. By doing so, the final rule enables the BLM to establish clear management direction in a resource management plan, while allowing adaptive approaches to implement future actions under the plan. It also provides consistency throughout the BLM in how plans are structured.

The six plan components are based on the first four elements and the eighth element described in the existing definition of a resource management plan (see existing §§ 1601.0–5(n)(1) through 1601.0–5(n)(4) and 1601.0–5(n)(8)). Under the final rule, these elements are called plan components and each component is provided a

[7] Office of Management and Budget, ''OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication,'' (67 FR 8452, February 22, 2002).

[8] U.S. Department of the Interior, ''Information Quality Guidelines Pursuant To Section 515 Of The Treasury And General Government Appropriations Act For Fiscal Year 2001,'' *http://www.doi.gov/ocio/information_management/upload/515Guides.pdf.*

[9] Bureau of Land Management, ''Information Quality Guidelines—Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management,'' *http://www.blm.gov/style/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf.*

[10] The implementation strategy is available at: *http://www.blm.gov/wo/st/en/info/blm-library/publications/blm_publications/advancing_science.html.*

distinct name and a precise definition to facilitate understanding and consistent interpretation and inclusion in resource management plans.

The final rule adopts proposed §§ 1610.1–2(a)(1) and 1610.1–2(a)(2), with some revisions. These sections describe the first two types of plan components—goals and objectives—and explicitly require the inclusion of goals and objectives, as proposed. While not a major change from current practice, the final rule also provides clarity on the definition of the goals and objectives, which improve understanding and consistency in implementation.

Goals are defined in the final rule as broad statements of desired outcomes addressing resource, environmental, ecological, social, and economic characteristics within the planning area or a portion of the planning area. The BLM will direct the management of the land and resources within the planning area toward the goals of the resource management plan. This plan component replaces ''resource condition goals'' described in existing § 1601.0–5(n)(3). The final rule removes the words ''resource condition'' as goals may address other characteristics within a planning area as well. This is an important distinction as FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA, means, in part, the management of the public lands so that all resources are utilized in the combination that best meet the needs of the American people taking into account the long term needs of future generations for renewable and non-renewable resources. The final rule provides that these needs are reflected in the goals of a resource management plan. These needs may address a broad range of desired outcomes related to resource, environmental, ecological, social, or economic characteristics. For example, the needs of local communities may include economic outcomes related to development of the public lands, or they may include social outcomes such as access to public lands for recreation, solitude, or gathering of traditional plants. The BLM intends no change from existing practice; rather, providing a clear definition of ''goals'' in the regulations will improve consistency and reflect FLPMA's mandate to manage on the basis of multiple use and sustained yield.

The only change to proposed § 1610.1–2(a)(1) in the final rule is to replace the phrase ''within a planning area'' to ''within the planning area,'' for grammatical clarity. The BLM intends no change in meaning by this grammatical clarification.

Objectives are described in paragraph (a)(2) of this section and replace the ''resource condition . . . objectives'' described in existing § 1601.0–5(n)(3). An objective is a concise statement of desired resource conditions that guides progress toward one or more goals. In response to public comment, we add language to the first sentence of paragraph (a)(2) of this section to make clear that an objective is a statement of desired resource conditions ''within the planning area, or a portion of the planning area.'' This new language clarifies that a single objective may apply to the entire planning area, or it may only apply to a portion of the planning area. For example, an objective related to the achievement of National Ambient Air Quality Standards would likely apply to the entire planning area, whereas an objective related to vegetation composition may only apply to a portion of it.

The final rule adopts the proposed new requirement that objectives must be specific and measurable and should have established time-frames for achievement. Measurable objectives will be defined using the most appropriate scale of measurement for that objective. For example, an objective to manage an area as visual resource class one, two, or three is based on an ordinal scale of measurement. An ordinal scale ranks categories in order (1st, 2nd, 3rd, etc.), but there is no relative degree of difference between the categories. In contrast, an objective related to managing for a specific proportion of vegetation cover (*e.g.,* total acreage) is based on a ratio scale of measurement. A ratio scale has a fixed zero value and allows the comparison of differences of values.

Establishing measurable objectives will improve the BLM's ability to evaluate whether the objectives are being met, to track progress toward their achievement, and to change management direction, as appropriate, to meet established objectives. Since future resource management actions will be required to conform to the plan components, including the objectives (see the definition of ''conformity or conformance'' in § 1601.0–5), the requirement for measurable objectives will assist the BLM when determining if a proposed action is in conformance with the resource management plan objectives. For example, if the NEPA analysis reveals that a proposed action will prevent the achievement of an objective, the proposed action would not be in conformance with the resource management plan. These changes also support the use of adaptive management, where appropriate, as a measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold is identified as part of a measurable objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met (see the discussion on monitoring and evaluation at the preamble for § 1610.6–4).

The final rule adopts the proposal that objectives should identify standards to mitigate undesirable impacts to resource conditions, with minor edits. This change supports implementation of the BLM mitigation policy. For example, an objective might identify a mitigation standard for no net loss to a sensitive species, which would provide a standard to guide future authorizations in avoiding, minimizing, and compensating for any unavoidable remaining impacts to the sensitive species.

Changes between the proposed and final rule replace ''to the extent practical'' with ''as appropriate'' in paragraph (a)(2) of this section. This change is intended to clarify that there may be situations when it is not appropriate to identify a mitigation standard in a resource management plan, such as within a wilderness area where development is not allowed, or when there is insufficient scientific information available to develop a standard. The final rule also replaces the word ''effects'' with ''impacts'' in paragraph (a)(2)(i) of this section for consistency with the proposed and final definition of mitigation (see § 1601.0–5). The BLM intends no substantive change in meaning from these changes between the proposed and final rule.

The final rule adopts the proposal that objectives should provide integrated consideration of resource, environmental, ecological, social, and economic factors (see 43 U.S.C. 1712(c)(2)), however, this provision will also be applied ''as appropriate'' instead of ''as practical'' for improved clarity that there may be situations when it is not appropriate to provide integrated consideration of these factors. For example, when establishing measurable objectives for vegetation communities, social factors may or may not be pertinent depending on the location and circumstances.

Finally, in response to public comment, the final rule establishes an additional requirement (final § 1610.1–2(a)(2)(iii)) that, as appropriate, objectives should identify indicators for

evaluating progress toward achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives will be the same indicators as described in the monitoring and evaluation standards. Identifying these same indicators in both the objectives and the monitoring and evaluation standards more clearly links the achievement of objectives to monitoring and evaluation and will ensure that BLM is able to determine if the plan objective is being met through monitoring and evaluation. This provision is applied ''as appropriate'' because in some circumstances an objective may include more than one indicator, whereas in other circumstances an indicator may not be relevant or necessary in order to measure progress towards the achievement of the objective.

Section 1610.1–2(b) of the final rule describes four additional plan components that are developed either to achieve the goals and objectives of the resource management plan, or to comply with applicable legal requirements or policies. These four plan components include designations, resource use determinations, monitoring and evaluation standards, and lands identified as available for disposal, as applicable. These plan components will also provide planning-level management direction while supporting achievement of the goals and objectives of the resource management plan. The final rule adopts proposed section 1610.1–2(b), with the revisions described in the following paragraphs.

Paragraph (b)(1) of this section describes ''*designations,*'' which replaces the existing element of a resource management plan described as ''land areas for . . . designation, including ACEC designation'' (see existing § 1601.0–5(n)(1)). Designations identify areas of public land where management is directed toward one or more priority resource values or resource uses. A designation highlights these areas to clearly communicate the BLM's intention to prioritize these resource values or resource uses when developing management direction or making future management decisions in the area. Changes between the proposed and final rule replace ''uses'' with ''resource uses'' for improved clarity. No change in meaning is intended by this revision.

Designations include both ''planning designations,'' which are identified through the BLM land use planning process, and ''non-discretionary designations,'' which are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. The final rule adopts, with no changes, proposed paragraphs (b)(1)(i) and (b)(1)(ii) of this section which describe planning designations and non-discretionary designations.

Planning designations will be identified through the BLM land use planning process in order to achieve the goals and objectives of the plan or to comply with applicable legal requirements or policies. Examples of existing designations or allocations that will become planning designations that could be identified in a resource management plan are an ACEC, a research natural area, a special recreation management area, a backcountry conservation area, a wildlife corridor area, or a solar energy zone.

The BLM intends to include a list of planning designations available for use during the planning process in the revisions to the Land Use Planning Handbook. The BLM recognizes that new information or unique circumstances in a planning area may warrant the development of new planning designations; thus, the list in the handbook will not preclude development of additional designations in the future. The purpose of developing a list of available planning designations in the forthcoming revision of the Land Use Planning Handbook is to provide consistent terminology and naming conventions for use across BLM resource management plans. Further, it is not the BLM's intention that all public lands will be included in a planning designation; rather, the final rule and the forthcoming revision of the Land Use Planning Handbook will clarify that this is an existing planning tool that is available during the planning process to highlight and prioritize unique or special areas that require management that is different from surrounding lands.

Non-discretionary designations, in contrast, are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. For instance, Under the Wilderness Act of 1964, Congress has the exclusive authority to designate or change the boundaries of wilderness areas. The BLM and other Federal land management agencies manage wilderness areas consistent with Congressional direction. The BLM manages National Conservation Areas (NCA) and similarly designated lands such as Cooperative Management and Protection Areas, Outstanding Natural Areas, and the Headwaters Forest Reserve in northern California pursuant to Congressional direction.

Non-discretionary designations are not established or amended through the BLM land use planning process. These non-discretionary designations will, however, be identified in a resource management plan, and management direction for the designation, including plan components, will be developed, consistent with applicable direction provided in the proclamation, legislation, or order that established the non-discretionary designation.

This section of the final rule does not represent a substantive change from the existing rule, other than identifying designations as a plan component and specifying that planning designations can be applied either to achieve the goals and objectives of the resource management plan or to comply with legal requirements or policies. Further, the final rule clarifies the difference between a designation and other plan components, such as a resource use determination. The BLM believes that differentiating between resource use determinations and designations in the regulations will help to improve general understanding of terminology.

Resource use determinations are another type of plan component described in final § 1610.1–2(b). Resource use determinations replace several existing elements of a resource management plan, including ''land areas for limited, restricted, or exclusive use,'' ''allowable resource uses,'' and ''program constraints,'' (see existing § 1601.0–5(n)). A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. Resource use determinations include the specific restrictions to an allowed use that will be required for all future activities and authorizations within the area. Examples of resource use determinations include: Areas identified as available or unavailable for livestock grazing, open or closed to mineral leasing, or open to mineral leasing subject to standard terms and conditions or major or moderate constraints, or open, limited, or closed to Off-Highway-Vehicle use. In most circumstances, a resource use determination indicating that a use is allowed, or allowed with restrictions in an area, will not represent a final decision allowing future use authorizations in the area, rather it will indicate that future authorizations for the activities may be considered for

approval following site-specific NEPA analysis.

In response to public comment, the final rule adds language to paragraph (b)(2) of this section to clarify that a resource use determination is ''subject to valid existing rights.'' The final rule includes this language in paragraph (b)(2) of this section, although it is not necessary, as determinations are always subject to valid existing rights, because we believe it is instructive in regards to resource use determinations, which provide for the use of public lands. This change between proposed and final rule does not represent a change in the meaning of this section, nor does it represent a change from current practice or policy.

Also in response to public comment, the final rule adds language to paragraph (b)(2) of this section stating that ''resource use determinations shall be consistent with or support the management priorities (*i.e.,* the resource values and resource uses) identified through designations.'' In contrast to designations, which indicate where one or more resources or uses is prioritized over other resources or uses, resource use determinations identify where a use is excluded, restricted, or allowed, but do not identify a priority for one or more multiple-uses. Resource use determinations may be developed for the designation, or they may be developed for another purpose, but overlay a designation; in these situations, the resource use determinations must be consistent with or support the management priorities established through the designations, subject to valid existing rights.

Final § 1610.1–2(b)(2) provides terminology for the ''allowable resource uses'' and ''land use allowances, exclusions, and restrictions'' identified in the existing definition of a resource management plan. This change improves the identification of these elements in a resource management plan and consistent use of terminology. The BLM intends no substantive change in practice or policy associated with this new terminology; however, under the final rule there are changes in how the various parts of a resource management plan are categorized.

For example, under this final rule, some common ''management actions'' described in resource management plans prepared under the existing planning regulations are classified as ''resource use determinations,'' such as any explicit restrictions to an allowed use at the land use planning level. For example, mineral lease stipulations such as No Surface Occupancy or Controlled Surface Use will be considered resource use determinations, as these constraints represent restrictions to an allowed use that are explicitly required at the land use planning level. Resource use determinations will be changed only through plan amendments or revisions. This change does not represent a change in current practice under the existing regulations, as planning-level restrictions to an allowed use are currently subject to protest procedures and may be changed only through plan amendments.

With these changes, the BLM also affirms that planning designations and resource use determinations may be defined explicitly by geographic boundaries, or implicitly by describing the specific conditions or criteria under which a resource or use will be prioritized, or a use will be excluded, restricted, or allowed. In situations where a criteria-based approach is used, the BLM will develop maps showing where the criteria apply based on current data and conditions. These options for defining planning designations and resource use determinations are consistent with current practice and do not represent a change from existing policy, though it does represent a change in terminology.

For example, under the existing planning regulations, the BLM applied both approaches when developing the ''Approved Resource Management Plan Amendments and Record of Decision (ROD) for Solar Energy Development in Six Southwestern States'' (Western Solar Energy Plan). In this Plan the BLM developed a list of areas where utility-scale solar energy development was prohibited. Some of these areas were defined by explicit geographic boundaries, such as lands in the Ivanpah Valley in California and Nevada. Others were defined by the presence of a specific land use designation in an applicable land use plan (*e.g.,* ACECs) or the presence of a specific resource or condition (*e.g.,* designated or proposed critical habitat for ESA-listed species). The geographic boundaries for these areas may change over time as land use plans are revised or amended and new information on resource conditions is developed. When developing the Western Solar Energy Plan and its associated NEPA analysis, the BLM mapped and estimated the acreage for all exclusion areas based on best available information; however, those maps will be updated over time through plan maintenance.

Monitoring and evaluation standards are another type of plan component. These standards are described in paragraph (b)(3) of this section and replace the existing element of a resource management plan entitled ''Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision'' (see existing § 1601.0–5(n)(8)). The final rule adopts proposed paragraph (b)(3) of this section with no changes. Monitoring and evaluation standards include ''indicators and intervals for monitoring and evaluation to determine whether the objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.'' Indicators and intervals for monitoring will be tied directly to the measurable objectives to clearly indicate how each objective will be measured (*i.e.,* the indicator) and how often it will be measured (*i.e.,* the interval). The indicators described in the monitoring and evaluation standards will be the same indicators as described in the objectives (see § 1610.1–2(a)(2)(iii)). Intervals for evaluating the resource management plan identify the frequency for evaluating the resource management plan to determine whether the resource management plan objectives are being met or if there is relevant new information that may warrant amendment or revision of the resource management plan. The forthcoming revision of the Land Use Planning Handbook will provide guidance on developing appropriate indicators and intervals for monitoring and evaluation.

Lands identified as available for disposal from BLM administration constitute the final type of plan component and replace the existing element of a resource management plan described as ''land areas . . . for transfer from Bureau of Land Management Administration'' (see existing § 1601.0–5(n)(1)). The final rule adopts proposed paragraph (b)(4), which specifies that lands identified as available for disposal will be considered a plan component. This paragraph is revised to clarify that lands identified for disposal may include, but are not limited to sales under section 203 of FLPMA. FLPMA provides for the disposal of tracts of public land where the BLM determines that the disposal meets specified criteria (see 43 U.S.C. 1713; 43 U.S.C. 1716; and 43 U.S.C. 1719).

Identification of lands available for disposal is ''as appropriate'' because they may not be applicable to every resource management plan. For example, it is unlikely that a resource management plan developed for a national monument or national conservation area will identify lands as

available for disposal. As a plan component, identification of lands as available for disposal will only be changed through amendment or revision. This is consistent with current BLM policy.

Collectively, the plan components described in this final rule provide the framework for a land use plan (*i.e.,* a resource management plan), as contemplated by FLPMA. FLPMA provides direction that the present and future use of public lands and their resources be projected through land use planning (*i.e.,* resource management planning) (43 U.S.C. 1701(a)(2)), and similarly, that land use plans provide, by tracts or areas, for the use of public lands (43 U.S.C. 1712(a)). In the development of land use plans, FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield. In doing so, the BLM must manage the various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions (see 43 U.S.C. 1702(c)).

Under the final rule, the plan components are designed to accomplish each of these FLPMA mandates. The needs of the American people are articulated through the goals of the resource management plan, the management of resource values is provided through the objectives, as well as the designations and resource use determinations. The resource use determinations also provide, by tracts or areas, for the use of the public lands. Finally, the standards for monitoring and evaluation provide the means to respond to changing needs and conditions, by ensuring the BLM monitors changes to the resource values identified in the plan objectives. This rule sets forward what the BLM will include in resource management plans, and a process for developing those plans, consistent with FLPMA.

Proposed Section 1610.1–3 Implementation Strategies

The final rule does not adopt proposed section 1610.1–3. Proposed § 1610.1–3 described implementation strategies that the BLM proposed to develop in conjunction with a resource management plan, but that would not represent planning level management direction and would not be considered components of the resource management plan. As proposed, implementation strategies would be included as an appendix to the resource management plan. The proposed rule described implementation strategies as examples of how the BLM would implement future actions consistent with the planning-level management direction. After careful consideration of public comment, the BLM believes that this proposed concept is not appropriate for inclusion in this rule.

Many public comments indicated that the concept of implementation strategies, as described in the proposed rule, was confusing. Namely, commenters questioned why implementation strategies would be developed during the planning process and described in this subpart if they were not intended to be a part of the resource management plan. Several public comments suggested that implementation strategies should follow the same procedures as those required for the preparation and amendment of a resource management plan, which would effectively make implementation strategies a plan component. The BLM does not believe that implementation strategies would be appropriate as a plan component, however, because this approach would limit the BLM's ability to efficiently and effectively apply adaptive management approaches to ensure that the goals and objectives of land use plans are being met. Therefore, this proposed change would not support the goals of the Planning 2.0 initiative and this rulemaking.

As a consequence of not adopting proposed § 1610.1–3(a)(1), several elements described in the existing definition of a resource management plan are not retained in the final rule. These elements do not represent requirements under existing regulations, as they are described as ''generally'' included in a resource management plan. The existing elements include ''general management practices,'' the ''need for an area to be covered by more detailed and specific plans,'' ''general implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action,'' and some ''support action[s].'' These existing elements are removed from the final rule because they require site-specific information before a final decision can be rendered, or they describe procedures and are not associated with a formal decision, and therefore they do not represent planning-level management direction.

Under current practice, some of these existing elements are generally described as ''management actions'' (for a definition of management actions, please see the current Land Use Planning Handbook, H–1601–1) and the removal of these existing elements represents a change from current practice; however, not all ''management actions'' are removed from the final rule, those that represent planning level management direction will be incorporated into the plan components. For example, under the final rule a restriction on use, such as a lease stipulation, will be a resource use determination; similarly a statement that describes desired resource conditions, such as a desired vegetation composition, will be a plan objective.

The removal of these existing elements in existing § 1601.0–5(n), combined with new requirements in final § 1610.1–2 related to plan components, represents a transition in the overall resource management planning framework applied by the BLM through the resource management planning process. This change is necessary in order to apply adaptive approaches to resource management and is based on new research and information that was not available when the existing definition of a resource management plan was promulgated (44 FR 46386). Under the final rule the plan objectives describe specific and measurable desired resource conditions, including indicators, as appropriate, for measuring progress towards their achievement. Further, the BLM will develop standards for monitoring and evaluating to determine if objectives are being achieved. These new requirements ensure that resource management plans will provide clear direction for the desired objectives to be achieved.

By identifying objectives, while maintaining flexibility to vary the actions taken to achieve the objectives, the BLM will be able to more readily respond to change. These changes are consistent with current guidelines for applying adaptive management. The DOI technical guide on adaptive management describes ''adaptive management'' as a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Adaptive management requires explicit and measurable objectives so that progress toward their achievement can be assessed, and performance that deviates from objectives may trigger a change in management. Adaptive management also requires flexibility to change management actions when necessary. The final rule supports the use of these types of adaptive approaches, while still

providing direction in resource management plans regarding the areas of public lands available for use, and the goals and objectives to be achieved, as provided for in FLPMA. The final rule does not preclude development of the information described in the two types of proposed implementation strategies—management measures and monitoring procedures. Rather, it affirms that while this information is not required as planning level management direction and need not be included in a resource management plan this information is important for resource management and essential to the effective implementation of adaptive management procedures. In some situations, the BLM may choose to develop this information concurrently with resource management planning, and the final rule does not preclude this option.

Section 1610.2 Public Involvement

In the heading of this section and throughout the planning regulations, the final rule adopts the proposal to replace the term ''public participation'' with ''public involvement'' to be more consistent with FLPMA. The BLM intends no change in practice or meaning from this revision. Public involvement is central to the BLM land use planning process under FLPMA, which directs the Secretary, ''with public involvement'' and consistent with FLPMA, to ''develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.'' (See 43 U.S.C. 1712(a).) FLPMA also requires that the Secretary ''allow an opportunity for public involvement and by regulation shall establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.'' (See 43 U.S.C. 1712(f).) FLPMA broadly defines the term ''public involvement'' as ''the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance'' (see 43 U.S.C. 1702(d)). The final rule provides a similar definition to public involvement as ''the opportunity for participation by the public in decision making and planning with respect to the public lands.'' This is also discussed in the preamble discussion of the definition of public involvement § 1601.0–5.

The BLM interprets this definition (see § 1601.0–5) as encompassing notice by varied means, including by making a planning document available electronically (*e.g.,* on the BLM Web site), providing direct notice to individuals or groups that have asked to receive notice about public involvement opportunities (*e.g.,* by electronic means such as email or by U.S. mail), or publishing general notice for the public (*e.g.,* in a local newspaper or in the **Federal Register**). The final rule adopts the proposal to revise § 1610.2 to indicate more clearly the points in the planning process when the BLM will provide notice through one or more of these means.

In addition, the final rule adopts the proposal to distinguish in the regulations between making a document ''available for public review'' and specifically requesting public comments. Where the BLM makes documents available for public review, the BLM believes it is important for the public to have an opportunity to see the BLM's progress. The public is welcome to bring any questions or concerns to the responsible official's attention based on public review and, to the extent that it is practical, the responsible official will consider their input and document it in the decision file associated with the resource management plan or plan amendment.

When the BLM makes a document ''available for public review'' the BLM is not required to provide a formal opportunity for public comment, including a time-period for submission of comments or a formal summary or response to any public comments received. This is not a change from existing practice, but clarifies the BLM's intent when we use this terminology.

In contrast, where the BLM ''requests written comments,'' the BLM will provide a minimum of 30 days for response (see § 1610.2–2(a)). As appropriate, the BLM will also summarize and respond to substantive comments. For example, the BLM will summarize public comments raised during scoping, develop planning issues based on the comments, and issue a scoping report. Similarly, the BLM will summarize and respond to substantive public comments submitted on a draft resource management plan and draft EIS. In some situations, the BLM may request written comments, but will not provide a written response to commenters. For example, the BLM may request public comment on a draft EA-level amendment without issuing a written response. Again, this is not a change from existing practice, but will clarify to the public the BLM's intent when we use this terminology.

The final rule also makes it clear that the requirements to make a document ''available for public review,'' as described in this subpart, represent a minimum requirement and do not preclude the BLM from providing additional or enhanced opportunities for public involvement during any given planning effort. For example, a responsible official may choose to request written comments and provide a time-period for submission of comments when making the preliminary alternatives available for public review, should the responsible official believe that it would add value to that particular planning effort. The responsible official may not provide a summary of these written comments, but would describe in the draft resource management plan how public involvement informed the development of the draft alternatives (see § 1610.5–4(a)(1)).

The final rule adopts the proposal to restructure § 1610.2 to clearly indicate the different aspects of public involvement in the land use planning process. General provisions are outlined in final § 1610.2, which is followed by specific sections, including: Public notice (see final § 1610.2–1); public comment periods (see final § 1610.2–2); and availability of the resource management plan (see final § 1610.2–3). The following table and paragraphs explain the specific changes to § 1610.2 and the supporting rationale.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Planning assessment	Not applicable: The planning assessment will be a new requirement under the proposed rule, and therefore is not applicable to the existing regulations.	1610.4: The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which could include public meetings. The planning assessment would be documented in a report, which would be made available for public review. The BLM could waive the requirement to conduct a planning assessment for project-specific or minor EIS-level amendments.	1610.4: Same as proposed regulations, except for option to waive a planning assessment. The BLM could waive the requirement to conduct a planning assessment for project-specific or other minor EIS-level amendments.
Identification of planning issues	1610.2(c) and 1610.4–1: The BLM publishes a NOI in the **Federal Register** and publishes a notice in appropriate local media. The public is provided a minimum of 30-days to comment.	1610.2–1(f) and 1610.5–1: Same as existing regulations.	1610.2–1(f) and 1610.5–1: Same as existing and proposed regulations.
Development of planning criteria	1610.4–2: Proposed planning criteria are published in a NOI in the **Federal Register** and made available for public comment through the scoping period and comment on the draft resource management plan.	1610.5–2 and 1610.5–3: Planning criteria would no longer be required under the proposed rule. Instead, the BLM would describe the rationale for the differences between alternatives as well as the basis for analysis. Preliminary versions of both would be made available for public review prior to the publication of the draft resource management plan or EIS-level amendment.	1610.5–2 and 1610.5–3: Same as proposed regulations, except the public review of the rationale for alternatives and basis for analysis will be made available for public review ''as appropriate'' for EIS-level amendments.
Inventory data and information collection.	1610.4–3: No opportunities for public involvement are provided at this step.	1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which may include public meetings. The planning assessment would be documented in a report, which would be made available for public review.	1610.4: Same as proposed regulations.
Analysis of the management situation.	1610.4–4: No opportunities for public involvement are provided at this step.	1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which could include public meetings. The planning assessment would be documented in a report, which would be made available for public review.	1610.4: Same as proposed regulations.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS—Continued

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Formulation of resource management alternatives.	1610.4–5: No opportunities for public involvement are provided at this step.	1610.5–2: The preliminary alternatives and preliminary rationale for alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment.	1610.5–2: Same as proposed regulations, except the public review of the rationale for alternatives and basis for analysis will be made available for public review ''as appropriate'' for EIS-level amendments.
Estimation of effects of alternatives	1610.4–6: No opportunities for public involvement are provided at this step.	1610.5–3: The preliminary procedures, assumptions, and indicators to be used when estimating the effects of alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment.	1610.5–3: Same as proposed regulations, except the preliminary procedures, assumptions, and indicators to be used when estimating the effects of alternatives will be made available for public review ''as appropriate'' for EIS-level amendments.
Preparation of the draft resource management plan and selection of preferred alternatives.	1610.4–7: No opportunities for public involvement are provided at this step.	1610.5–4: Same as existing regulations.	1610.5–4: Same as existing and proposed regulations.
Publication of the draft resource management plan.	1610.2(e): The BLM requests public comment on the draft resource management plan and draft EIS and provides 90 calendar days for response.	1610.2–2: When requesting written comments on a draft resource management plan and draft EIS, the BLM would notify the public and provide at least 60 calendar days for response. When requesting written comments on an EIS-level amendment, the BLM would notify the public and provide at least 45 calendar days for response.	1610.2–2: When requesting written comments on a draft resource management plan and draft EIS, the BLM will notify the public and provide at least 100 calendar days for response. When requesting written comments on an EIS-level amendment, the BLM will notify the public and provide at least 60 calendar days for response.
Selection of the proposed resource management plan.	1610.4–8: The BLM publishes the proposed resource management plan and final EIS.	1610.5–5: The BLM would publish the proposed resource management plan or plan amendment and final EIS and also will publish any implementation strategies. The BLM expects that the implementation strategies will be included as appendices to the proposed resource management plan.	1610.5–5: Same as existing regulations.
Protest	1610.5–2: The BLM provides 30 calendar days for the public to protest plan approval. The public must submit a hard-copy of the protest to the BLM.	1610.6–2: The BLM would still provide 30 calendar days for the public to protest plan approval, but the proposed rule would describe more specific requirements on what constitutes a valid protest and allow for dismissal of any protest that does not meet these requirements. The public could submit a hard-copy or an electronic-copy of the protest to the BLM.	1610.6–2: Same as proposed regulations.
Resource management plan approval.	1610.5–1: The BLM must provide public notice and opportunity for comment on any significant change made to the proposed plan before approval of the plan.	1610.6–1: If the BLM intends to select an alternative that is substantially different than the proposed resource management plan or plan amendment, the BLM would notify the public and request written comments on the change before approval of the resource management plan or plan amendment. The BLM would notify the public when a resource management plan or plan amendment has been approved.	1610.6–1: Same as proposed regulations.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS—Continued

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Monitoring and evaluation	1610.4–9: No opportunities for public involvement are provided at this step.	1610.6–4: The BLM would document the evaluation of the resource management plan in a report made available for public review.	1610.6–4: Same as proposed regulations.
Plan maintenance	1610.5–4: No opportunities for public involvement are provided at this step.	1610.5–4: When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.	1610.5–4: Same as proposed regulations.

The final rule adopts proposed § 1610.2(a) with only minor revisions. Final § 1610.2(a) remains relatively unchanged from existing regulations and states that the BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. The final rule removes references to ''related guidance'' in order to focus this provision on the preparation and amendment of resource management plans. During the planning process, the public may submit comments on ''related guidance'' to the BLM and the BLM will consider substantive comments as they relate to the preparation of the resource management plan, but the BLM does not provide a separate and distinct comment period for related guidance. This is not a change in existing practice or policy, but will provide clarity to the public on opportunities for comment.

The final rule also removes language on giving ''early notice of planning activities'' from existing § 1610.2(a). This language is vague and unnecessary because final § 1610.2–1(e) carries forward the existing and proposed requirement that the BLM notify the public at least 15 days before any public involvement activities. The BLM will provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

Final § 1610.2(a) will also carry forward the existing requirement that public involvement in the planning process conform to the requirements of NEPA and its associated implementing regulations. The final rule also revises the paragraph to use active voice for improved readability. No substantive revisions were made to paragraph (a) of this section between the proposed and final rule.

The final rule removes existing § 1610.2(b) and includes several of its provisions in final § 1610.2(c), consistent with the proposed rule.

Existing § 1610.2(b) requires the BLM to publish a planning schedule early in each fiscal year in order to advise the public of the status of each plan being prepared or scheduled to start during the year, the major planning actions expected during the fiscal year, and the projected new planning starts for the next three fiscal years. The final rule revises this requirement. Final § 1610.2(c) replaces existing § 1610.2(b) and requires the BLM to post the status of each resource management plan in the process of being prepared, or scheduled to be started, on the BLM's Web site before the close of each fiscal year. The BLM often does not know its budget, priorities, or on-the-ground needs several years in advance; in recent years the BLM has operated under a continuing resolution to the budget for several months into the fiscal year, and is therefore unable to accurately predict a planning schedule with the specificity required in the existing regulations.

The BLM's current practice is to post a planning schedule for resource management plans currently under preparation or approved to initiate preparation on the national BLM planning Web site when this information is available. This change in the regulations will give the BLM flexibility in communicating its planning schedule, including by posting the schedule electronically, and will be consistent with current practice. It also reflects the fact that budgetary constraints and the need to address new and emerging resource issues make it difficult to accurately predict a planning schedule beyond the current fiscal year.

Final paragraph (c) of this section does not include the related requirement for requesting public comments on the projected new planning starts so that comments can be considered when refining priorities. This existing requirement is not practical, as the BLM often does not know its budget, priorities, or on-the-ground needs far enough in advance to request public comments on projected planning starts. However, by posting the status of resource management plans scheduled to be started, the BLM will provide transparency to the public, while also retaining adequate flexibility to respond to emerging resource management issues or changes in available budgets. This change will make the planning regulations consistent with current BLM practice, but will represent a change from existing regulations.

The final rule adopts proposed § 1610.2(b) with some revisions. Final § 1610.2(b) is adapted from §§ 1610.2(d) and (e) of the existing planning regulations. This section maintains the existing requirement that public involvement activities conducted by the BLM be documented either by a record or by a summary of the principal issues discussed and comments made. This requirement applies to ''activities'' the BLM hosts for the public during the preparation or amendment of a resource management plan, such as public meetings, listening sessions, or workshops. The final rule is revised to clarify that the BLM may provide ''either'' a record or a summary. No change in meaning is intended by this clarifying change. This provision further provides that the record or summary will be available to the public and open

for 30 days to any participant who wishes to review the record or summary. There will be no change in BLM operation or impact on the public from this change under the final rule. For example, the BLM will continue to prepare a scoping report following the identification of planning issues (see § 1610.5–1), which summarizes scoping meetings and written scoping comments under § 1610.2(b).

Existing § 1610.2(c) requires the BLM to publish a Notice in the **Federal Register** whenever beginning any new plan, revision, or amendment. This requirement is carried forward in final § 1610.2–1(f) and is discussed in the corresponding section of this analysis.

Section 1610.2–1 Public Notice

The final rule adopts proposed § 1610.2–1 with some revisions. Final § 1610.2–1 describes the requirements for when and how the BLM will provide public notice related to opportunities for public involvement.

Final § 1610.2–1(a) contains the provisions of existing § 1610.2(f) with edits for consistency with other proposed changes. Final § 1610.2–1(a) lists the points in the planning process when the BLM will notify the public and provide opportunities for public involvement that are appropriate to the areas and people involved in the preparation of a resource management plan, or an EIS-level amendment. We replace the existing and proposed phrase ''steps in the planning process'' with ''points in the planning process'' to clarify that the planning regulations do not require a sequential order for all of these ''points'' in the process. For example, the BLM intends that the review of the preliminary alternatives and the rationale for alternatives will generally be made available for public review concurrently with the basis for analysis, however there is no requirement that these occur concurrently. The BLM intends no change in meaning from this clarifying edit.

The following paragraphs describe each of these points in the planning process and any changes between the existing, proposed, and the final rule. These points will include new opportunities for public involvement early in the planning process, such as during the planning assessment, as appropriate.

The final rule adopts proposed paragraph (a)(1) of this section, with minor edits. This paragraph requires that the BLM notify the public and provides opportunities for public involvement during the preparation of the planning assessment, subject to § 1610.4. The BLM intends that such notification will occur when the BLM initiates the planning assessment and provides opportunities for public involvement during the planning assessment. The final rule is revised to replace ''as appropriate'' with ''subject to § 1610.4'' in this provision to clarify that under § 1610.4 the deciding official may waive the requirement to prepare a planning assessment for project-specific or other minor EIS-level amendments. In these specific circumstances, a planning assessment will not be conducted, and therefore the BLM cannot provide opportunities for public involvement. However, when a planning assessment is conducted, the BLM must notify the public and provide opportunities for public involvement. For more information on this waiver, please see the discussion at the preamble for § 1610.4(f). The planning assessment is a new requirement under the final rule, so this represents a new opportunity for public involvement.

The final rule adopts proposed paragraph (a)(2) of this section, with minor revisions. Final § 1610.2–1(a)(2) requires that the BLM notify the public and provide opportunities for public involvement during the identification of planning issues. Changes between the proposed and final rule include the ''review of the preliminary statement of purpose and need'' in this section. This added language identifies a new opportunity for public involvement, as there is no similar requirement under existing regulations, but does not represent a substantive change between the proposed and final rule, as this new opportunity for public review was described in proposed § 1610.5–1. The BLM will include this language simply for improved readability and consistency with the requirements of § 1610.5–1.

The final rule adopts and combines proposed paragraphs (a)(3) and (a)(4) of this section into a single final paragraph (a)(3). Final § 1610.2–1(a)(3) requires that the BLM notify the public and provide opportunities for public involvement during the public review of the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis. Changes between the proposed and final rule will add the phrase ''subject to §§ 1610.5–2(c) and 1610.5–3(a)(1)'' for consistency with these sections. Under §§ 1610.5–2(c) and 1610.5–3(a)(1) the BLM will provide a public review of preliminary alternatives, rationale for alternatives, and the basis for analysis for all resource management plans and ''as appropriate'' for EIS-level amendments. When the public review is conducted, the BLM must notify the public and provide opportunities for public involvement.

The public review of the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis is a new opportunity for public involvement and therefore a change from existing regulations. Please see the discussions at the preamble for §§ 1610.5–2(c) and 1610.5–3(a)(1) for more information on this change between the requirements of the existing, proposed, and final rule.

The final rule adopts proposed paragraph (a)(5) of this section, however, this paragraph will instead be designated as final § 1610.2–1(a)(4). Paragraph (a)(4) of this section requires that the BLM notify the public and provide opportunities for public involvement during the public comment period on the draft resource management plan. There will be no change from existing requirements.

The final rule adopts proposed paragraph (a)(6) of this section, however, this paragraph will be designated as final § 1610.2–1(a)(5). Paragraph (a)(5) of this section requires that the BLM notify the public and provide opportunities for public involvement during the protest period of the proposed resource management plan. This is not a change from existing requirements.

In the proposed rule, the BLM requested public comment on whether the provisions of proposed § 1610.2–1(a) should apply to the preparation of a resource management plan, but not apply to EIS-level amendments because plan amendments are generally smaller in scope than the preparation of a resource management plan. Under this alternative, the BLM would have notified the public and provided opportunities for public involvement in the preparation of an EIS-level amendment, as appropriate to the areas and people involved during: (1) Identification of planning issues; (2) Comment on the draft resource management plan; and (3) Protest of the proposed resource management plan. In response to public comment, the final rule does not adopt this proposal; however, final § 1610.2–1(a)(3) is revised, from the proposed rule, to specify that the BLM will provide a public review of the preliminary alternatives, rationale for alternatives, and the basis for analysis, ''as appropriate.'' Please see the discussions at the preamble for §§ 1610.5–2(c) and 1610.5–3(a)(1) for more information on this change between the proposed and final rule and for response to public comments related to this change.

The final rule adopts proposed § 1610.2–1(b), with minor edits. Final § 1610.2–1(b) lists the points in the planning process when the BLM will notify the public and provide opportunities for public involvement in the preparation of a plan amendment where an EA is prepared (EA-level amendment), as appropriate to the areas and people involved. Changes between the proposed and final rule will replace the word ''steps'' with ''points'' for consistency with the changes made to paragraph (a) of this section. The BLM intends no change in the meaning of this section from this change between proposed and final rules.

The final rule adopts proposed paragraphs (b)(1) through (b)(3) without edits. These paragraphs identify the points where the BLM will notify the public and provide opportunities for public involvement. The points include: (1) Identification of planning issues; (2) Comment on the draft resource management plan amendment, as appropriate; and (3) Protest of the proposed resource management plan amendment.

The existing regulations do not require that BLM provide opportunities for public involvement during the identification of planning issues for EA-level amendments, however, the BLM often chooses to provide such opportunities. Under the final rule, public involvement will be required when identifying planning issues for EA-level amendments. This change supports the goal of establishing early opportunities for public involvement in the planning process, including EA-level amendments. The final rule will not, however, require that the BLM request public comment on draft EA-level amendments, consistent with the existing regulations. However, the BLM often chooses to request public comments on draft EA-level amendments, and in such circumstances the public will be provided 30 calendar days for response (see final § 1610.2–2(a)).

The final rule adopts proposed §§ 1610.2–1(c) through (e), with some revisions. Sections 1610.2–1(c) through (e) are general provisions that will apply whenever the BLM provides public notice relating to the preparation or amendment of a resource management plan.

The final rule adopts proposed § 1610.2–1(c), which establishes new requirements that the BLM announce opportunities for public involvement by posting a notice on the BLM Web site and at all BLM offices within the planning area. In response to public comments, the final rule also includes a new requirement that the responsible official identify additional forms of notification to reach local communities located within the planning area, as appropriate. The BLM acknowledges that in many rural communities, Internet access may not be readily available and residents often live many hundred or more miles from BLM offices. In these situations, the BLM will provide additional notifications using formats that are relevant and accessible to the various publics interested in or affected by the planning effort, including local communities. For example, the BLM may also post an announcement at a local library, post-office, or other frequently visited location; issue a local, regional, or national press release; notify community leaders of the opportunity; or post an announcement using various social media. The use of these additional formats will vary based on the location and public interest in the planning effort.

These new notification requirements are consistent with current practice in many BLM offices and ensure consistency in implementation throughout the BLM. Final § 1610.2–1(c) provides certainty to the public on where, at a minimum, they can find information on all public involvement opportunities.

The final rule adopts proposed § 1610.2–1(d) with only minor revisions. This section provides that individuals or groups could ask the BLM to notify them of opportunities for public involvement related to the preparation and amendment of a resource management plan. The BLM will notify those individuals or groups through written or electronic means, such as a letter sent by U.S. mail or email.

Under existing regulations (§ 1610.2(d)), the Field Manager must maintain a mailing list of those individuals or groups known to be interested in or affected by a resource management plan or that have asked to be placed on the list and notify those individuals or groups of public participation activities. The final rule removes the requirement for the BLM to maintain a list of groups or individuals ''known to be interested in or affected by a resource management plan,'' which places an unnecessary burden on the BLM to find contact information for groups or individuals that may not be readily available. The final rule instead requires the BLM to notify any groups or individuals that have explicitly requested to be notified of opportunities for public involvement.

The BLM will continue its current practice of conducting outreach to all individuals or groups known to be interested in or affected by a resource management plan. The BLM believes that such outreach is important to a successful planning process. The final rule reflects the fact that the BLM cannot ''guarantee'' that such individuals or groups and their correct contact information will be added to the mailing list unless they request to be added and provide the BLM with current contact information. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on best practices for providing public notifications and public involvement.

The final rule adopts proposed § 1610.2–1(e) with only minor revisions. Under this section, the BLM will notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting. This requirement is the same as that in § 1610.2(e) of the existing regulations. It is intended to allow members of the public to plan their schedules and make arrangements to attend scoping meetings, ''open house'' style workshops, or other public meetings that are part of the BLM land use planning process. The BLM will provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

In response to public comment, final § 1610.2–1(f) retains the existing requirement that the BLM publish a notice in the **Federal Register** when initiating the identification of planning issues for a resource management plan or plan amendment. The proposed rule would have removed this requirement for EA-level amendments; however, in response to public comments, the BLM will retain this existing requirement. The final rule combines proposed paragraphs (f)(1) and (f)(2) of this section into final paragraph (f)(1). Separate paragraphs distinguishing between the notice requirements for EA-level amendments and EIS-level amendments are no longer necessary, as the final notice requirements are the same.

Final § 1610.2–1(f)(1) provides that when initiating the identification of planning issues for the preparation of a resource management plan or plan amendment, in addition to posting a notice on the BLM's Web site and at all BLM offices in the planning area and providing direct notice to those individuals or groups who have requested notification, the BLM will also publish a notice in appropriate local media, including in newspapers of general circulation in the planning area

and publish a notice of intent (NOI) in the **Federal Register**. This requirement will apply regardless of the level of NEPA analysis (*e.g.,* whether the BLM prepares an EA or an EIS). This section retains existing language stating that the NOI also may constitute the NEPA scoping notice (see 40 CFR 1501.7 and 43 CFR 46.235(a)).

Final § 1610.2–1(f)(1) maintains the existing requirement (see existing §§ 1610.2(c) and (f)(1)) to publish a NOI in the **Federal Register** where the BLM prepares an EIS for a resource management plan or plan amendment. Publishing a NOI to prepare an EIS for a resource management plan or plan amendment in the **Federal Register** is consistent with NEPA requirements (40 CFR 1501.7 and 1508.22) and CEQ direction that agencies ''integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts'' (40 CFR 1501.2). Publishing an NOI for these EISs also contributes to an efficient, integrated process by offering an opportunity to integrate planning with NEPA scoping requirements.[11]

The final rule does not include the existing language in § 1610.2(c) allowing the Field Manager to decide whether it is appropriate to publish a notice in media in adjoining States. This language is no longer needed because final § 1610.2–1(f) allows the BLM discretion to identify ''appropriate local media,'' and this encompasses media in adjoining states. There will be no change in practice in the implementation of this section.

The final rule adopts proposed § 1610.2–1(f)(3), with minor edits; however, this section will be redesignated as § 1610.2–1(f)(2) in the final rule. This section outlines the information that will be included in the notices described in § 1610.2–1(f)(1) and contains the provisions of existing § 1610.2(c)(1) through (8), respectively, as follows.

There will be no changes to the requirement in final 1610.2–1(f)(2)(i) from existing requirements (see existing § 1610.2(c)(1)). The final rule adopts the proposal to specify in paragraph (f)(2)(ii) of this section that the ''plan'' in reference is a ''resource management plan.'' In response to public comment, we replace ''geographic area'' with ''planning area'' for consistent use in terminology throughout this part. There will be no change in the meaning of this provision from this change between the proposed and final rule. Final paragraph (f)(2)(iii) of this section remains unchanged from the existing and proposed requirements. In paragraph (f)(2)(iv) of this section, the final rule adopts the proposal to replace ''disciplines'' with ''expertise,'' to reflect that BLM staff may have expertise outside of their formal discipline, and an ''interdisciplinary approach'' should be based on expertise, not formal disciplines. The final rule also adopts the proposal to specify that the ''plan'' in reference is a ''resource management plan'' and the purpose of having a range of expertise represented is to ''achieve an interdisciplinary approach.'' There is no substantive change in practice or policy. Final paragraph (f)(2)(v) of this section adopts the proposal to add language indicating that the notice should include the kind and extent of public involvement activities ''as known at the time.'' Although there is no substantive change in practice or policy, this clarifies that the BLM may always provide additional opportunities for public involvement as planning proceeds. There are no substantive changes to the requirements in paragraphs (f)(2)(vi) through (f)(2)(viii) of this section.

The final rule adopts proposed §§ 1610.2–1(g) and (h) with only minor revisions. Final § 1610.2–1(g) contains the provisions of existing § 1610.2(f)(5) and provides that if the BLM intends to select an alternative that is substantially different than the proposed resource management plan, the BLM will notify the public and request written comments on the change. This requirement is intended to ensure that the public has an opportunity to comment on important changes that are made late in the planning process, such as those that result from protest resolution or the recommendations of a Governor during the Governor's consistency review.

Final § 1610.2–1(h) establishes a new regulatory requirement for the BLM to notify the public when a resource management plan or plan amendment has been approved, consistent with current practice. The BLM expects to post this notification on the BLM Web site, at the local BLM office where the plan was prepared, and by direct notification to those individuals and groups that have asked to receive notice of specific planning efforts. This notification will help those who are interested to stay up-to-date on plans and increase transparency.

The BLM did not receive public comments related to paragraph (h) of this section.

The final rule adopts proposed § 1610.2–1(i), with minor edits that require the BLM to notify the public any time changes are made to an approved resource management plan through plan maintenance and to make those changes generally available to the public at least 30 days before the change is implemented. This change will provide transparency to the public on any changes made to the resource management plan through plan maintenance, including the correction of typographical or mapping errors or changes made to reflect minor changes in mapping or data. The BLM expects to notify the public by posting the changes to the BLM Web site.

The final rule does not adopt proposed § 1610.2–1(j). This section would have required that the BLM notify the public any time a change is made to an implementation strategy and make those changes available to the public at least 30 days before their implementation. This provision is no longer necessary because the final rule does not include the concept of implementation strategies. For more information, please see the discussion on implementation strategies at the preamble for § 1610.1–3.

Section 1610.2–2 Public Comment Periods

The final rule adopts proposed § 1610.2–2, with revisions to the proposed lengths of public comments periods and inclusion of a new provision to address public comment requirements when a resource management plan or plan amendment involves the possible designation of ACECs.

Final §§ 1610.2–2(a) through (c) address the length of public comment periods when the BLM requests written comments and this final section also replaces most of existing § 1610.2(e). Final § 1610.2–2(a) requires that when requesting written comments, the BLM will provide a comment period of at least 30 calendar days, unless a longer period is required by law or regulation, in which case the longer period will be provided as a minimum. For example, when the BLM requests scoping comments, a minimum 30 day comment period will be required; if the BLM offers a public comment period for a

[11] CEQ and DOI NEPA regulations encourage such integration. See 40 CFR 1501.7(b)(4) (providing that as part of the NEPA scoping process, a lead agency may ''(h)old an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has'') and 43 CFR 46.235(a)) (stating that scoping ''provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process'').

plan amendment where an EA is prepared, a minimum 30 day comment period will be required. This section maintains the requirement from existing § 1610.2(e) to provide at least 30 calendar days for public comment, while also clarifying that in certain circumstances the BLM is legally required to offer a longer comment period.

Final § 1610.2–2(b) describes the public comment period the BLM will provide for draft EIS-level amendments. The BLM proposed to require at least 45 calendar days for public comment on the draft plan amendment and draft EIS. This would have been shorter than the 90-day public comment period that applies to all EIS-level plan amendments under the existing planning regulations, but consistent with existing NEPA requirements. Many public comments did not support the reduction in the length of any public comment period, although a few comments did indicate support for the proposal. In response to public comments, the final rule requires at least 60 calendar days for public comment for draft EIS-level amendments.

The BLM acknowledges the importance in providing adequate lengths of time for the public to review and comment on draft plan amendments. At the same time, the BLM recognizes that the scope and scale of draft EIS-level amendments varies substantially. In many circumstances, an EIS-level plan amendment may be narrow in scope and scale, such as a project-specific amendment for a small geographic area. In these situations, a mandatory comment period of 90 calendar days is unnecessary and inefficient. The final rule provides a balanced approach by requiring a minimum of 60 calendar days for public comment, a period longer in length than the proposed rule, but shorter in length than the existing regulations. For those plan amendments that are broad in scope or scale, such as a multi-State programmatic plan amendment, the BLM expects to typically offer a longer public comment period, commensurate with the complexity of the draft plan amendment. The forthcoming revision of the Land Use Planning Handbook will provide guidance to responsible officials regarding the length of the public comment period.

Final § 1610.2–2(c) describes the public comment period the BLM will provide for draft resource management plans and draft EISs. The BLM proposed to provide at least 60 calendar days for public comment on the draft resource management plan and draft EIS. This would have been shorter than the 90-day public comment period that applies to all draft resource management plans under the existing planning regulations. Although a few public comments supported this proposal, the majority of public comments did not, and some public comments suggested the BLM should provide a longer comment period than the existing regulations. In response to public comment, the final rule revises § 1610.2–2(c) to provide at least 100 calendar days for public comment, a period longer in length than the existing requirement.

Final § 1610.2–2(c) retains the existing provision that the public comment period begins when the EPA publishes a notice of availability (NOA) of the draft EIS in the **Federal Register**. The BLM will continue to comply with public involvement and notification requirements of NEPA, including 40 CFR 1506.6(b)(2), which provides that agencies must provide public notice of availability of environmental documents in the **Federal Register** for actions with effects of national concern. In many cases where the BLM prepares an EIS for a resource management plan or plan amendment, the BLM expects to continue its current practice of publishing a NOA in the **Federal Register** for Draft and Final EISs and the record of decision for these EIS level planning efforts.

Final § 1610.2–2(d) includes a new requirement that when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall request written comments on the designations under consideration. This paragraph is added between in the final rule for consistency with changes to § 1610.8–2 and in response to associated public comments. Existing regulations require a minimum of 60 calendar days be provided for public comments on a proposed ACEC designation (see existing § 1610.7–2(b)), and the proposed rule would have removed this requirement. The BLM received several public comments indicating that a public comment period is necessary any time an ACEC is being considered for designation. In response to public comments, the final rule requires the BLM to provide a public comment period of at least 30 calendar days. The BLM intends that this comment period will normally be integrated with the public comment period on the draft resource management plan or plan amendment; therefore, a longer period will be provided for EIS-level amendments (at least 60-days) and resource management plans (at least 100-days). For more information, please see the discussion at the preamble for final § 1610.8–2(b)(1).

Consistent with the existing regulations, the final rule does not explicitly address situations where the BLM prepares an EA for a plan amendment (EA-level amendment) and the BLM elects to offer an opportunity for public comment. In this situation, however, the BLM will provide at least 30 calendar days for public comment on the draft plan amendment, unless a longer period is required by law or regulation, consistent with the requirements of final § 1610.2–2(a). The public comment period will begin on the date the BLM notifies the public of the availability of the draft plan amendment and EA.

While the BLM often offers a public comment period on an EA-level plan amendment, this is not required by NEPA,[12] the existing planning regulations, or the final planning regulations. There may be situations where there is no public interest in a minor EA-level amendment and a formal public comment period is not necessary. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on this topic.

The following table provides a comparison of some public involvement opportunities in the final rule for EA-level amendments, EIS-level amendments, and resource management plans.

[12] NEPA requires public involvement, to the extent practicable, in the preparation of an environmental assessment, but it need not take the form of a public comment period. 40 CFR 1504.1(b) and 43 CFR 46.305(a); see 40 CFR 1506.6; *BLM National Environmental Policy Act Handbook* (H–1790–1), 8.2, p. 76.

TABLE 2—PUBLIC NOTIFICATION AND INVOLVEMENT OPPORTUNITIES UNDER THE FINAL RULE

Step in the planning process	EA-level amendments	EIS-level amendments	Resource management plans
Planning Assessment	The BLM is not required to conduct a planning assessment for EA-level amendments.	When the BLM conducts a planning assessment for EIS-level amendments, to formally initiate the planning assessment, the BLM will post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	To formally initiate the planning assessment, the BLM will post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.
Plan initiation and identification of planning issues.	The BLM will publish a NOI in the **Federal Register** and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.	The BLM will publish a NOI in the **Federal Register** and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.	The BLM will publish a NOI in the **Federal Register** and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.
Review of the preliminary alternatives, rationale for alternatives, and the basis for analysis.	These steps do not apply to EA-level amendments.	The BLM will provide this step for EIS-level amendments, as appropriate. The BLM will post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web site. The BLM will post notice of their availability on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web site. The BLM will post notice of their availability on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.
Comment on the draft plan or amendment.	If the BLM requests written comment, BLM will offer a minimum 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 60 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the **Federal Register**.	The BLM will offer a 100 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the **Federal Register** under separate authorities.
Protest	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the **Federal Register**.	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the **Federal Register** under separate authorities.
Comment on a substantive change made after release of a proposed plan or amendment (*i.e.,* if the BLM intends to select an alternative that is substantially different than the proposed plan or amendment).	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.

TABLE 2—PUBLIC NOTIFICATION AND INVOLVEMENT OPPORTUNITIES UNDER THE FINAL RULE—Continued

Step in the planning process	EA-level amendments	EIS-level amendments	Resource management plans
Plan approval	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.

Section 1610.2–3 Availability of the Resource Management Plan

The final rule adopts proposed § 1610.2–3, with some revisions. This section addresses the availability of resource management plans.

Final § 1610.2–3(a) contains revised language from existing § 1610.2(g) and requires that the BLM make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available for public review. The final rule requires, at a minimum, that the BLM make copies of these documents available electronically and at all BLM offices within the planning area.

For example, the BLM could make documents available electronically by posting documents on the BLM Web site, or if Internet access is limited in an area, by sending participants a Compact Disc or a USB flash drive in the mail. The BLM will also make resource management plans available for public viewing at all BLM offices within the planning area. While this is a change from existing regulations, it is consistent with current practice for most BLM offices. This language replaces the existing requirements to make copies of the resource management plan available at the State, district, and field office (see existing §§ 1610.2(g)(1) through (3)) and copies of supporting documents available at the office where the plan was prepared. These changes will increase electronic availability of documents and change the BLM offices where the document is required to be available for viewing.

The final rule adopts the proposal to remove the existing requirement to make ''supporting documents'' available to the public as this term is vague and it is unclear what is considered a supporting document. In response to public comments, we will include new language in final § 1610.2–3(a) that the BLM will make scientific or technical reports that the responsible official uses in preparation of a resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law. For the purposes of this provision, the BLM considers scientific or technical reports to be final documents that describe the results of scientific research or technical analysis related to the preparation of the resource management plan or plan amendment. The BLM includes pertinent scientific and technical information and reports in the project file and generally makes certain scientific or technical reports, such as a biological opinion, available to the public as appendices to the resource management plan or plan amendment, or on the BLM's Web site. We expect that in most situations, the BLM will continue to post these types of scientific or technical reports on its Web site, make them available for viewing at BLM offices within the planning area, or make them available as appendices to the resource management plan. While this is a new requirement in the regulations, it is consistent with current BLM practice.

The BLM will not, however, post the entire project file, including email records or other types of communication, to the BLM's Web site or make the entire project file available at BLM offices within the planning area. This would be inconsistent with current practice and policy and would place an unnecessary administrative and personnel burden on the BLM. These types of supporting documents are made available to the public through other means, such as a Freedom of Information Act request.

The new requirements in § 1610.2–3(a) to make resource management plans available electronically reflect that digital technology and Internet access is far more widely available than it was when these regulations were last updated. These requirements will advance BLM policy on transitioning to electronic distribution of NEPA and planning documents (IM 2013–144, Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats (June 21, 2013), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html*), and with the DOI Environmental Statement Memorandum No. 13–7, ''Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods'' (Jan. 7, 2013), *http://www.doi.gov/pmb/oepc/upload/ESM13-7.pdf*). These changes will also ensure consistency in how the BLM makes documents available to the public, increase transparency, and help to ensure that the public has access to current versions of plans without missing amendments that only appear in paper copies. Electronic posting of planning documents also may help to reduce high printing costs.

The BLM recognizes, however, that there are many communities with limited technological and Internet availability, such as rural communities and some environmental justice communities.[13] The BLM will continue to work to involve these communities in the development of resource management plans and make planning documents available in the most appropriate formats. For example, resource management plans could be made available at public libraries, community centers, or other locations frequented by local communities.

The final rule adopts proposed § 1610.2–3(b) without any substantive revisions. This section clarifies the requirements in existing § 1610.2(g) that the BLM will make single printed copies of a resource management plan available to individual members of the public upon request during the public involvement process, and that after the BLM has approved a plan, the BLM may charge a fee for additional printed copies. The BLM considered an alternative option, which was discussed in the preamble for the proposed rule, to make these copies available through digital means, such as a compact disc or

[13] ''Executive Order 12898—Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations'' directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States (59 FR 7629, February 16, 1994).

other digital storage device, instead of printed copies and requested public comment on this option. This option would have allowed the agency to continue to move away from printing paper copies in the future as technology continues to become more available to the public. Although some public comments supported this approach, others indicated that a paper copy is necessary because not everyone uses or has the available resources to access digital media. In response to public comments, the final rule does not include this alternative, and the BLM will continue to provide paper copies as provided in final § 1610.2–3(b).

Final § 1610.2–3(b) also maintains the language in existing § 1610.2(g) concerning fees for reproducing requested documents beyond those used as part of the public involvement process, although this section refers to a ''resource management plan'' instead of a ''revision'' and ''public involvement'' instead of ''public participation.'' This word change will reflect changes made throughout this final rule and the use of the FLPMA term ''public involvement.'' These changes are not a change in practice or policy.

The final rule adopts the proposal to remove existing § 1610.2(j) and (k). The BLM prepared the coal program regulations simultaneously with the first land use planning regulations under FLPMA in the late 1970's and certain coal-related provisions remain in 43 CFR subpart 1610. The BLM believes that these coal-related provisions are inappropriate in the planning regulations, as they are either duplicative of the coal program regulations, or reference procedures that are inconsistent with current practice and policy.

Existing § 1610.2(j) requires consultation with surface owners when resource management plans involve areas of potential mining for coal by means other than underground mining. Input and consent from a qualified surface owner is required at the leasing stage under 43 CFR 3427.1, therefore existing 1610.2(j) is duplicative of the consultation requirements at 43 CFR 3427.1 and unnecessary.

Existing § 1610.2(k) is also removed in the final rule. Existing § 1610.2(k) is consistent with a process of ''regional coal leasing,'' described in subpart 3420, which the BLM used in designated coal production regions (defined in § 3400.5) at the time the planning regulations were originally published. Since 1990, all coal production regions have been decertified and the BLM currently uses the ''lease by application'' process described in subpart 3425, where approval for coal leasing is conducted for each individual application, as opposed to at the resource management plan level. Since publication of the resource management plan only designates areas as suitable for coal leasing and no longer approves coal leases over the entire suitable area, this public hearing is no longer appropriate during the land use planning process. Under the ''lease by application'' process, a hearing will be held for each coal lease application, consistent with the BLM coal regulations at § 3425.4(a)(1) and current BLM practice.

The BLM received a few comments in opposition to the removal of existing § 1610.2(j) and (k). These comments stated that the planning process is the appropriate time for BLM to contact surface owners about their preferences regarding leasing, and that the similar notice prescribed in the BLM's leasing regulations may come after coal-related decisions in a resource management plan or plan amendment have been finalized. Additionally, comments stated that the BLM should not make coal-related regulatory changes until the ongoing review of the Federal coal program and its associated Programmatic EIS are completed.

The final rule is not revised in response to this comment. The BLM believes that removing § 1610.2(k) will help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal-specific requirements in the coal regulations, where they are more appropriate. Further, the BLM will provide for public involvement during the preparation and amendment of resource management plans, including for any coal-related issues. These regulatory changes will not be a change in current practice or policy during coal leasing.

As a separate matter, Secretarial Order 3338 issued on January 15, 2016, requires the BLM to conduct a comprehensive review to modernize the Federal coal program, including a Programmatic EIS. The regulatory changes in this final rule are unrelated to and will not impact the Secretarial Order or the BLM's comprehensive review.

Section 1610.3 Consultation With Indian Tribes and Coordination With Other Federal Agencies, State and Local Governments, and Indian Tribes

The final rule revises the proposed heading of section 1610.3 to include ''consultation with Indian tribes.'' This change is necessary for consistency with final § 1610.3–1, a new section in the final rule.

The final rule adopts the proposal to remove the words ''federally recognized'' before Indian tribes throughout final §§ 1610.3–1, 1610.3–2, and 1610.3–3 for consistent use in terminology. These references are no longer necessary with the inclusion of the proposed definition for Indian tribes in § 1601.0–5. For further information on this revision, see the preamble discussion of the definition for ''Indian tribe.'' The final rule is revised to replace any existing uses of ''will'' in this section with ''shall,'' for the reasons previously described. These changes are not a change in practice or policy.

Section 1610.3–1 Consultation With Indian Tribes

In response to input received during consultation with federally recognized Indian tribes regarding the proposed rule, as well as public comments, the final rule includes a new section on tribal consultation. Proposed § 1610.3–1 is redesignated as § 1610.3–2 in the final rule. This section provides that the BLM will initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This section is added to the final rule to reflect the fact that the BLM is required to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM's request for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. Although this will be a new provision in the planning regulations, this is an existing requirement for the BLM under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments (2000) and Secretarial Order 3317—Department of the Interior Policy on Consultation with Indian Tribes (2011).

This government-to-government consultation shall be initiated regardless of an Indian tribe's status as a cooperating agency or any on-going coordination with the Indian tribe. Should an Indian tribe choose to participate as a cooperating agency or to coordinate with the BLM, the BLM is still required to initiate government-to-government consultation.

Section 1610.3–2 Coordination of Planning Efforts

Proposed § 1610.3–1 is redesignated as § 1610.3–2 in the final rule. Final § 1610.3–2 contains the provisions of existing and proposed section 1610.3–1, with revisions. This section retains the

heading ''coordination of planning efforts.''

The final rule adds introductory language to final § 1610.3–2(a) to clarify that this section describes the ''objectives of coordination.'' Final § 1610.3–2(a) contains the provisions of existing § 1610.3–1(a), but replaces the reference to ''State Directors and Field Managers'' with ''the BLM'' because the responsibility of coordination are those of the BLM and they extend beyond any individual.

Elsewhere throughout final §§ 1610.3–2(b) through (f), the final rule replaces references to ''Field Manager(s)'' with ''responsible official(s)'' and replaces references to ''State Director(s)'' with ''deciding official(s),'' as proposed. The new terms, which are defined in final § 1601.0–5, refer to specific official responsibilities.

Proposed § 1610.3–1(a) (final § 1610.3.2(a)) would have added language to clarify that coordination is accomplished ''to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.'' Several public comments noted that this proposed requirement would exceed the statutory requirement that coordination occur ''to the extent consistent with the laws governing the administration of the public lands'' (43 U.S.C. 1712(c)(9)). In response to public comment, the final rule replaces the proposed language with ''to the extent consistent with Federal laws and regulations applicable to public lands.'' Although FLPMA only mentions the ''laws governing the administration of the public lands,'' the BLM interprets this phrase to encompass the regulations implementing the laws, as these regulations have the full force and effect of law and the BLM is required to comply with Federal laws and regulations. Final § 1610.3–2(a) does not represent a change from current practice or policy.

Final §§ 1610.3–2(a)(1) and (a)(2) are revised in response to public comments. Several public comments expressed concern over the proposal to remove existing § 1610.3–2(b) regarding consistency between resource management plans and the policies and programs of other Federal agencies, State and local governments, and Indian tribes as well as references to these ''policies and programs'' in other sections of the existing regulations (please see the discussion for the definitions of ''consistent with officially approved and adopted plans'' and ''officially approved and adopted plans'' at the preamble for final § 1601.0–5 as well as the discussion for final § 1610.3–3(b)). Comments expressed concern that the BLM would no longer consider these policies and programs during the planning process and suggested that such a change would be in violation of FLPMA. The BLM acknowledges and affirms that coordination on relevant policies and programs of other Federal agencies, State and local governments, and Indian tribes is important to the success of a planning effort, consistent with FLPMA.

FLPMA requires that the BLM ''coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located. . . by, among other things, considering the policies of approved State and tribal land resource management programs.'' (See 43 U.S.C. 1712(c)(9).) The final rule revises paragraphs (a)(1) and (a)(2) of § 1610.3–2 (proposed § 1610.3–1) to incorporate this direction provided by FLPMA and in response to concerns raised in public comments, stating that objectives of coordination are for the BLM to ''[k]eep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes'' and to ''[a]ssure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands.''

The final rule supports the achievement of these objectives. For example, final § 1610.4(b)(2) requires that during the planning assessment the responsible official ''identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.'' Further, final § 1610.4(b)(3) requires that the responsible official provide opportunities for other Federal agencies, State and local governments, and Indian tribes to suggest other law, regulations, policies, guidance, strategies, or plans. The responsible official will fulfill these requirements through coordination, as contemplated by FLPMA, and in doing so the responsible official will assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands.

In addition, final § 1610.3–2(b) describes the procedures for establishing a cooperating agency relationship with governmental entities. Cooperating agencies are provided a special role during the preparation of resource management plans. Cooperating agencies work closely with the BLM at every stage of the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives, and review preliminary documents. This unique partnership is provided only to governmental entities and helps the BLM develop a resource management plan that is responsive to the needs and concerns of local communities. Further, this partnership helps the BLM to achieve the objectives described in final § 1610.3–2(a)(1) and (a)(2). Should a governmental entity choose not to participate as a cooperating agency, final § 1610.3–2(c) provides additional requirements for coordination, to ensure that BLM achieves the objectives of coordination.

In response to public comments, the final rule also removes the existing and proposed phrase ''non-BLM'' plans in final § 1610.3–2(a)(1), and clarifies that this section refers to the plans, policies, and management programs of ''other Federal agencies, State and local governments, and Indian tribes.'' This distinction is important, as the objectives of this section apply uniquely to other governmental entities. This is not a change in practice or policy; rather, this change improves readability of these regulations.

The final rule adopts proposed paragraph 1610.3–2(a)(3) of this section without revision. The existing word ''practicable'' (see existing § 1610.3–1(a)(3)) is replaced with ''practical'' in the final rule for consistency with FLPMA (see 43 U.S.C. 1712(c)(9)). Several public comments noted that this represents a substantive change from existing regulations, as ''practicable'' and ''practical'' are not exact synonyms, and suggested that the proposed rule did not adequately address this subtle distinction. The BLM disagrees there is a substantive difference but acknowledges the subtle distinction in the meaning of these terms; however, we believe this change is appropriate for consistency with FLPMA, which uses the term ''practical.'' (See 43 U.S.C. 1712(c)(9) (''the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans . . .'').)

The final rule adopts proposed paragraph (a)(4) of this section. Changes to this section will remove the word ''public'' from ''early public notice'' for improved clarity. The BLM intends no change in practice or policy from this change.

The final rule adopts proposed paragraph (a)(5) of this section, which is identical to the existing regulations.

The final rule adopts the proposal to add introductory language to § 1610.3–2(b) (proposed § 1610.3–1(b)) to indicate that this section describes procedures and requirements related to ''cooperating agencies.'' This paragraph is also broken down into subparagraphs to improve readability and is revised as follows.

The final rule adopts proposed paragraph (b) of this section, with no substantive changes. The final rule is revised to replace the existing word ''will'' with ''shall'' for the reasons previously described. The first sentence of final § 1610.3–2(b) replaces ''developing'' with ''preparing'' for consistent use in terminology. The BLM intends no change in meaning or practice. The final rule also replaces ''eligible Federal agencies, State and local governments, and Indian tribes'' with ''eligible governmental entities'' for consistency with the DOI NEPA regulations, and to specify that the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities, including the DOI NEPA regulations at 43 CFR 46.225. The BLM intends no change in practice or policy from these changes.

The second sentence of final § 1610.3–2(b) is revised to reflect the fact that a plan is not amended by an EIS, rather the EIS is prepared to inform the amendment.

The final rule does not adopt the proposal to remove the last three sentences of existing § 1610.3–1(b), which provided for State Director review of a Field Manager's decision to deny requests for cooperating agency status. Several public comments noted that the DOI NEPA regulations do not provide an opportunity for governmental entities to appeal a denial to a request for cooperating agency status beyond the responsible official and suggested that the existing opportunity to appeal a denial provides more certainty to governmental entities that their request for cooperating agency status will be given due consideration. In response to public comments, the final rule will retain this opportunity to appeal, with revisions, by adding § 1610.3–2(b)(1) to the final rule.

Final § 1610.3–2(b)(1) states that the ''responsible official shall consider any request by an eligible governmental entity to participate as a cooperating agency. If the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or she shall inform the deciding official of the denial. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the [EIS].'' In the first sentence, we replace ''State Directors and Field Managers'' with the ''responsible official'' for consistency with new terminology and to specify that the responsible official is the BLM employee responsible for considering cooperating agency requests. We revise the second sentence of this paragraph to use active voice, replace ''field manager'' with ''responsible official,'' and improve consistency with the DOI NEPA regulations (43 CFR 46.225(c)). In addition to denials of requests, responsible officials will also inform the deciding official if he or she determines it is inappropriate to extend an invitation to an eligible governmental entity (*i.e.,* any Federal agency or non-Federal agency (State, tribal, or local) that is qualified to participate by virtue of its jurisdiction by law or its special expertise (see 43 CFR 46.225(a))). This is a broader requirement than the existing regulations, which only apply to denials of requests and will ensure that deciding officials are aware of all eligible governmental entities that were not provided cooperating agency status. Finally, the third sentence replaces ''State Director'' with ''deciding official'' and will establish a new requirement that deciding officials ''state the reasons for any denials in the [EIS].'' Although this requirement is new to the planning regulations, it is already required under the DOI NEPA regulations (43 CFR 46.225(c)) and therefore does not represent a change in practice or policy.

The final rule adopts proposed § 1610.3–1(b)(1) with only minor revisions, however this section will be redesignated as final § 1610.3–2(b)(2). This section will describe that a memorandum of understanding (MOU) must be used for a non-Federal cooperating agency and must include a commitment to maintain confidentiality of documents and deliberations prior to their public release. The change reflects an existing requirement in the DOI NEPA regulations (see 43 CFR 46.225(d)) and therefore would not be a change in practice or policy. Although a written agreement is not explicitly required for Federal cooperating agencies, the BLM often chooses to prepare such an agreement to clarify the roles and responsibilities of all parties, and the final rule will not preclude the continuation of this practice. No change in practice or policy is intended.

The final rule adopts proposed § 1610.3–1(b)(2), with some revisions. This section is redesignated as final § 1610.3–2(b)(3).

This section identifies the various steps during the planning process when the responsible official will collaborate with cooperating agencies. The BLM promulgated regulations in 2005 (70 FR 14561), which required BLM Field Managers to collaborate with cooperating agencies at steps throughout the planning process (see existing § 1610.4). The final rule adopts the proposal to consolidate these references that are currently inserted throughout existing § 1610.4 and to identify additional steps where cooperating agencies will be involved, including the preparation of the planning assessment and the preparation of the proposed resource management plan. The BLM intends no change in practice or policy by consolidating these references; rather, the BLM believes that consolidating these references improves readability and clarity.

Under the final rule, the BLM provides an additional role for cooperating agencies during the new planning assessment. While NEPA regulations require a lead agency to invite cooperating agencies to participate in the NEPA process ''at the earliest possible time'' (40 CFR 1501.6(a)(1); *see* 43 CFR 46.200(a) and (b)), the BLM recognizes that eligible governmental entities may be reluctant to agree to serve as cooperating agencies for a planning effort before the scoping process yields a fuller understanding of the scope of the plan or revision and the supporting NEPA analysis.

The BLM further recognizes that DOI NEPA regulations and the final rule (see final § 1610.3–2(b)(2)) require the BLM to work with non-Federal cooperating agencies to develop an MOU that outlines agencies' respective roles, assignments, schedules, and other commitments and such a cooperating agency MOU may not yet be completed during the planning assessment step.

Nonetheless, the BLM does not foresee any problems working with eligible governmental entities without an MOU during the planning assessment step, because this step primarily involves information gathering by the BLM. Additionally, the BLM believes the planning assessment will afford the BLM and eligible governmental entities alike valuable time to build working relationships and share information that will inform the planning assessment and contribute to the formation of fruitful cooperating agency relationships. However, the BLM may need to withhold confidential information, such as locations of

sensitive cultural resources, until an MOU has been executed.

In response to public comments, final § 1610.3–2(b)(3) (proposed § 1610.3–1(b)(2)) is revised to provide ''[t]he responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.'' We remove the proposed phrase ''as feasible and appropriate given their interests, scope of expertise and the constraints of their resources.'' These changes are consistent with the DOI NEPA regulations which provide ''the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise'' (43 CFR 46.230). The proposed language was adapted from the final sentences of the existing definition of a cooperating agency (see existing § 1601.0–5) which states ''[c]ooperating agencies will participate in the various steps of BLM's planning process as feasible, given the constraints of their resources and expertise.'' In response to public comments noting that it is the decision of a potential cooperating agency, and not the BLM, as to whether the potential cooperator has adequate resources to participate as a cooperating agency, the BLM will not retain this existing language in the definition of a cooperating agency, nor will it be retained in final § 1610.3–2(b)(3). Further, the final rule more precisely reflects the DOI NEPA regulations regarding the constraints of a cooperating agencies expertise.

The final rule adopts proposed §§ 1610.3–1(b)(2)(i) through (b)(2)(vi) (redesignated as final §§ 1610.3–2(b)(3)(i) through (b)(3)(vi)). The only change between the proposed and final rule is the removal of the phrase ''and implementation strategies'' from final paragraph (b)(2)(vi) of this section. This language is no longer necessary, as the concept of implementation strategies is not included in the final rule. For more information on this topic, please see the discussion on implementation strategies at the preamble for proposed § 1610.1–3.

The final rule adopts proposed § 1610.3–1(c), with some revisions. This section is designated as final § 1610.3–2(c). This section describes requirements for coordination with other Federal agencies, State and local governments, and Indian tribes, consistent with FLPMA (43 U.S.C. 1712(c)(9)). These requirements are in addition to the opportunities for public involvement described in § 1610.2, which apply to governmental entities (see the definition of public in § 1610.0–5).

We adopt the proposal to add introductory language to paragraph (c) of this section to indicate that this section describes general ''coordination requirements'' and to divide the existing paragraph (c) into three separate paragraphs (paragraphs (c), (c)(1), and (c)(2) in the final rule) for improved readability.

The final rule adopts the proposed change to replace the existing phrase ''State Directors and Field Managers'' with ''[t]he BLM'' in the first sentence of paragraph (c) of this section because the responsibility of coordination are those of the BLM and they extend beyond any individual. Some public comments noted that although it is the BLM's responsibility to provide for coordination, by not identifying the BLM employee who is responsible for this important task, there would be no accountability to the public regarding which BLM official will ensure the task is completed. The BLM believes it is appropriate to use ''the BLM'' when describing a role that applies to multiple BLM employees and describes a requirement related to coordination in general, such as in paragraph (c) of this section. Paragraphs (c)(1) through (c)(5) of this section, however, identify specific coordination requirements and these responsibilities are assigned to either the deciding official or the responsible official. In response to public comments, the final rule is revised to use ''responsible official'' instead of ''the BLM'' in a few sections that describe specific coordination requirements (see final §§ 1610.3–2(c)(5), 1610.3–2(d)).

Final § 1610.3–2(c)(1) provides that ''deciding officials should seek the input of the Governor(s) on the timing, scope and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.'' We adopt the proposed changes to replace ''policy advice'' with ''input'' because the topics listed in this provision are not ''policy,'' therefore the phrase ''policy advice'' is inaccurate. We also adopt the proposal to replace ''plan components'' with ''resource management planning'' because the existing language would be inconsistent with new terminology and definitions in the final rule (see § 1610.1–2). The final rule does not adopt the proposal to replace ''multiple use'' with ''resource management'' because this change is unnecessary. The term ''multiple use'' already includes the various aspects of resource management (see 43 U.S.C. 1702(c)). The final rule is instead revised to replace ''multiple use'' with ''multiple use and sustained yield'' for consistency with FLPMA (see 43 U.S.C. 1712(c)(2)) and throughout these regulations. The BLM intends no change from current practice or policy from these changes.

The final rule adopts the proposal to remove existing § 1610.3–1(d), which describes how the State Director will provide guidance to the Field Manager. This existing section is unnecessary as it describes an internal BLM process. Further, existing § 1610.3–1(d) exceeds the statutory requirements of FLPMA, which provides for consistency with resource management plans, but not BLM guidance. (See 43 U.S.C. 1712(c)(9).) Several public comments raised concerns over the removal of existing § 1610.3–1(d), stating that this is a significant and unjustified change from current regulations. The final rule is not revised in response to these comments. The removal of existing § 1610.3–1(d) represents a change from existing requirements; however, the BLM believes that this change is appropriate.

The final rule adopts proposed § 1610.3–1(c)(3), with some revisions. This proposed section will be split into two paragraphs and redesignated as §§ 1610.3–2(c)(3) and 1610.3–2(c)(4) in the final rule, for improved readability. Final § 1610.3–2(c)(4) contains the first sentence of proposed § 1610.3–1(c)(3) and final § 1610.3–2(c)(3) contains the remaining provisions of proposed § 1610.3–1(c)(3), with revisions.

Final §§ 1610.3–2(c)(3) and (c)(4) contains the provisions of existing § 1610.3–1(e) and are revised to reflect changes to § 1610.2 concerning public involvement, to use active voice for improved readability, and to respond to public comments.

Final § 1610.3–2(c)(3) requires that ''[t]he responsible official shall notify Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment.'' The final rule does not adopt the proposal to clarify that heads of county boards are ''elected,'' and to replace ''Tribal Chairmen'' and ''Alaska Native Leaders'' with ''elected government officials of Indian tribes.'' Instead, the final rule replaces existing language with a more general statement to notify ''Federal agencies, State and local governments, and Indian tribes.''

A few comments noted that the proposed changes to replace ''Tribal Chairmen or Alaska Native Leaders''

with ''elected government officials of Indian tribes'' would effectively exclude Alaska Native Corporations from the required notice. The final rule is not revised in response to these comments. Section 1610.3–2 applies to coordination with other Federal agencies, State and local governments, and Indian tribes, consistent with FLPMA (43 U.S.C. 1712(c)(9)). This section does not apply to Alaska Native Corporations, which are not a governmental entity. The BLM will, however continue to notify any Alaska Native Corporations that have requested to be notified or that the responsible official believes may be interested in a resource management plan. The BLM intends no change from current practice; rather, this change is intended to clarify that § 1610.3–2 applies to coordination as described in FLPMA (43 U.S.C. 1712(c)(9)). It is also important to note that the final rule does not affect implementation of ''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations'' (2012). BLM remains committed to meaningful consultation with Alaska Native Corporations during the planning process.

We also rephrase the end of this sentence in final § 1610.3–2(c)(3), stating that the BLM shall notify Federal agencies, State and local governments, and Indian tribes that the responsible official has reason to believe would be ''interested in'' the resource management plan or plan amendment instead of ''concerned with'' the resource management plan or plan amendment. This revised language encompasses the existing requirement to notify those ''concerned with'' a resource management plan or plan amendment while broadening the requirement to also include those ''interested in'' a resource management plan or plan amendment. This is consistent with current BLM practice and reflects the fact that the BLM believes that any interest in the resource management plan or amendment, not just concern, warrants notification.

Final § 1610.3–2(c)(4) of this section adopts the first sentence of proposed § 1610.3–1(c)(3), and specifies that State procedures for coordination with Federal agencies will be followed, ''if such procedures exist.'' The BLM intends no change in practice or policy from this added language; rather, we wish to clarify that such procedures can only be followed if they exist.

The final rule adopts proposed § 1610.3–1(c)(4), with some revisions. This section is redesignated as final § 1610.3–2(c)(5).

Final § 1610.3–2(c)(5) contains the provisions of existing § 1610.3–1(f). The final rule adopts the proposed change to replace ''resource management plan proposals'' with ''resource management plans and plan amendments'' to clarify that this paragraph refers to all of the opportunities for public involvement described in § 1610.2, and not just the ''proposed'' resource management plan. The BLM intends no change from current practice or policy.

The final rule adopts the proposal to revise and move the final sentence of existing § 1610.3–1(f) to final § 1610.3–3(a)(3) (proposed § 1610.3–2(a)(3)). The existing language refers to consistency requirements and is therefore more appropriately addressed in the consistency section of the final rule, final § 1610.3–3.

The final rule adopts proposed § 1610.3–1(d), with some revisions. This section is redesignated as § 1610.3–2(d) in the final rule and the final rule replaces the existing word ''will'' with ''shall'' for the reasons previously described. Final § 1610.3–2(d) contains the provisions of existing § 1610.3–1(g). The final rule adopts the proposal to include introductory language indicating that this section describes requirements related to ''resource advisory councils.'' In response to public comments, the final rule replaces the existing word ''BLM'' with ''responsible official'' to specify that the responsible official is the BLM employee responsible for ensuring that this requirement is fulfilled. No substantive changes are intended other than to specify which BLM employee is responsible for ensuring that resource advisory councils are informed and their views considered during the planning process.

Section 1610.3–3 Consistency Requirements

The final rule adopts proposed § 1610.3–2, with revisions; however, this section is redesignated as § 1610.3–3 in the final rule. Unless otherwise noted, the final rule adopts the proposal to replace references to ''Field Manager(s)'' with ''responsible official(s)'' and references to ''State Director(s)'' with ''deciding official(s)'' throughout this section to reflect these individuals' roles or responsibilities.

Final § 1610.3–3(a) revises existing § 1610.3–2(a) to read as follows: ''Resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.'' The final language reflects FLPMA requirements for consistency with the plans of other Federal agencies, State and local governments, and Indian tribes (see 43 U.S.C. 1712(c)(9)) while retaining several existing requirements regarding the extent to which such consistency may be achieved.

In response to public comment, the final rule removes the words ''practical and'' from the phrase ''to the maximum extent the BLM finds practical and consistent . . .'' in final § 1610.3–3(a). FLPMA states that ''the Secretary shall . . . assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans,'' (see 43 U.S.C. 1712(c)(9)); however, this language is already described under the objectives of coordination (see final § 1610.3–2(a)(3)) and is therefore unnecessary in this section. Through coordination, the BLM will assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans.

Final § 1610.3.3(a) retains the existing requirement that the plans of other Federal agencies, State and local governments and Indian tribes must be ''officially approved and adopted,'' but does not adopt the proposal to specify that these must be ''land use plans.'' For more information on this change throughout the final rule, please see the discussion on ''officially approved and adopted plans'' at the preamble for § 1601.0–5. The final rule also corrects an inconsistency in the use of terminology in the existing and proposed rule by replacing ''officially approved *or* adopted'' with ''officially approved *and* adopted'' as used elsewhere throughout this final rule.

Final § 1610.3–3(a) also retains the existing requirement that consistency with officially approved and adopted plans will be achieved to the extent consistent with the purposes of Federal laws and regulations applicable to public lands and the ''purposes, policies and programs'' implementing Federal laws and regulations. Changes between the proposed and final rule clarify that these purposes, policies and programs ''implement'' Federal laws and regulations.

The BLM received public comments in opposition to this existing requirement, noting that under FLPMA the obligation for consistency with local plans does not hinge on whether or not they are consistent with Federal purposes, policies and programs, only whether they do not contradict Federal

Laws. The BLM disagrees with these comments. The BLM does not interpret FLPMA to require resource management plans to be consistent with the described non-BLM plans if those plans are simply lawful under Federal law and FLPMA. Rather, and particularly given 1712(c)(9)'s explicit reference to the *purposes* of FLPMA, and BLM's and the Secretary's ultimate responsibility as the manager of the public lands, BLM interprets FLPMA to authorize it to evaluate whether those non-BLM plans are consistent with the policies underlying BLM management of the public lands. Inclusion of language stating that plan consistency shall only be achieved to the extent consistent with the purposes of Federal laws and regulations and the policies and programs implementing such laws and regulations is necessary in order for the Secretary of the Interior to fulfill his or her responsibilities under FLPMA. Through FLPMA, the Secretary of the Interior is provided the authority to administer the public lands (through the BLM) and the responsibility to implement the statutory direction provided in public land statutes, including FLPMA. In order to implement public land statutes and administer the public lands, the Secretary considers the purposes of the statutes and develops regulations, policies, and management programs to implement the statutes. These regulations, policies, and management programs are an important component of implementing public lands statutes. Consistent with FLPMA, the existing regulations include a requirement that acknowledges the need for BLM to comply with and follow the direction provided through regulations, policies, and programs developed to implement public lands statutes, and the final rule retains this requirement in the final rule.

Changes adopted in § 1610.3–3(a) of the final rule represent, in part, a change from current regulations, but will be consistent with the statutory direction provided by FLPMA. The BLM believes these changes clarify the BLM's plan consistency requirements and will assist other Federal agencies, State and local governments, and Indian tribes in engaging in the consistency process by providing those entities additional information on the BLM's process.

The final rule adopts the proposal to remove existing § 1610.3–2(b). The existing section exceeds the statutory requirements of FLPMA (see 43 U.S.C. 1712(c)(9)) by providing that in the absence of officially approved and adopted plans, resource management plans should be consistent with ''policies and programs'' of other Federal agencies, State and local governments, and Indian tribes.

FLPMA provides that resource management plans ''shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.'' This FLPMA requirement is reflected in final § 1610.3–3(a) and applies to ''State and local plans,'' which constitute a formal decision regarding resource management, but does not apply to ''policies and programs,'' which do not constitute a formal decision regarding resource management; rather, policies and programs are tools for implementing laws and regulations and developing formal decisions.

FLPMA limits consistency requirements to ''State and local plans'' while the broader coordination requirements of FLPMA include the consideration of policies and management programs. In response to public comments, the final rule aligns with FLPMA (see 43 U.S.C. 1712(c)(9)) by requiring that the BLM coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, and management programs that are germane to the development of resource management plans in order to assure that consideration is given to all of these documents during the preparation of resource management plans (see final § 1610.3–2(a)).

The BLM believes that coordination on and consideration of plans, policies, and management programs is important to a successful planning effort and this coordination is appropriately addressed in § 1610.3–2 of the final rule. The consistency requirements of final § 1610.3–3, however, only apply to ''officially approved and adopted plans'' as these plans constitute a formal decision regarding resource management. The BLM believes that such an approach more closely aligns with the statutory requirements of FLPMA. The final rule also removes references to consistency with ''policies and programs'' throughout § 1610.3–2. These changes represent a change from the existing regulations.

By removing existing § 1610.3–2(b) from the regulations, the final rule removes the reference to ''Federal and State pollution control laws,'' which are listed as an example of Federal laws that BLM resource management plans and guidance must be consistent with. Resource management plans must comply with Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. It is unnecessary to identify all relevant laws the BLM must abide by in the regulations, as the BLM is required to comply with all applicable laws and regulations. The BLM does not intend any change in policy or practice with this change.

The final rule adopts proposed § 1610.3–2(a)(1) with only minor revisions. This section is redesignated as final § 1610.3–3(a)(1). The final rule removes the term ''land use'' from ''officially approved and adopted [land use] plans.'' For more information on the removal of ''land use'' please see the discussion on the definition of ''officially approved and adopted plans'' at the preamble for § 1601.0–5. The final rule also includes the plans of ''other Federal agencies'' in this section for consistency with paragraph (a) of this section.

Final § 1610.3–3(a)(1) contains the first sentence of existing section 1610.3–2(c). The first two references to ''State Directors and Field Managers'' in the first sentence are replaced with ''the BLM,'' because the requirement to keep apprised of State and local governmental and Indian tribal policies, plans, and programs is attributed to the BLM, rather than specific employees. The final rule also replaces ''practicable'' with ''practical'' for consistency with section of FLPMA (see 43 U.S.C. 1712(c)(9)) and final § 1610.3–2(a)(3). Several public comments noted that this represents a substantive change from existing regulations, as ''practicable'' and ''practical'' are not exact synonyms, and suggested that the proposed rule did not adequately address this subtle distinction. The BLM disagrees this is a substantive change, however acknowledges the subtle distinction in the meaning of these terms. We believe this change is appropriate for consistency with FLPMA, as this is the term used in FLMPA (43 U.S.C. 1712(c)(9)).

Final § 1610.3–3(a)(1) specifies that the ''BLM shall, to the extent practical, keep apprised of the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.'' The final rule removes the words ''policies'' and ''programs'' from the existing phrase ''policies, plans, and programs'' in existing § 1610.3–2(c) (for more information, see the discussion on consistency at the preamble for existing § 1610.3–2(b)) and adds language requiring that BLM consider those plans that are germane to the resource management plan. It would place an

unnecessary and inappropriate burden on the BLM to give consideration to plans that are not germane to the planning effort, thereby diminishing efficiency without adding value to the planning effort. These changes are consistent with FLPMA (see 43 U.S.C. 1712(c)(9)). This change reflects existing policy and procedure, as the BLM currently does not consider plans that are not germane to the planning effort. Therefore, this change provides clarity to other Federal agencies, State and local governments, and Indian tribes about the types of plans the BLM will consider.

The final rule adopts proposed § 1610.3–2(a)(2) (final § 1610.3–3(a)(2)), with minor revisions. The final rule includes the phrase ''Federal agencies'' for consistency with paragraphs (a) and (a)(1) of this section. This section is redesignated as § 1610.3–3(a)(2) in the final rule.

Final § 1610.3–3(a)(2) contains the second sentence of existing § 1610.3–2(c). The final rule replaces ''accountable for ensuring consistency'' with ''required to address the consistency requirements of this section.'' The BLM cannot ''ensure'' consistency, but seeks to achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the policies and programs implementing such laws and regulations. For example, if a State, local, or tribal plan is not consistent with a Federal law or regulation, the BLM will not be able to ensure consistency with the State, local, or tribal plan.

The final rule also replaces the reference to State Directors and Field Managers (''they'') with ''responsible official,'' thereby providing that the BLM will not be accountable for addressing the consistency requirements of final § 1610.3–3 if the ''responsible official'' has not received written notice of an apparent inconsistency from other Federal agencies, State and local governments, or Indian tribes, rather than ''State Directors and Field Managers.'' Because the responsible official is the BLM employee who is delegated the authority to prepare a resource management plan or plan amendment, it is important that the responsible official receives written notice of an apparent inconsistency so that it can be considered during the planning process. The BLM cannot ensure that notice sent to someone other than the responsible official will be redirected and delivered in a reasonable time-frame, although we will attempt to do so to the best of our ability.

This change provides clarity to other Federal agencies, State and local government officials, and Indian tribes of the appropriate BLM official to notify of inconsistencies; however, it also reduces the number of individuals that could be notified under the existing regulations from two individuals (the State Director and Field Manager) to one individual in the final rule (the responsible official). The BLM believes that this change will improve the BLM's ability to consider potential inconsistencies at the earliest time possible, thereby promoting efficiency in the planning process.

The final rule adopts proposed § 1610.3–2(a)(3), with revisions. This section is redesignated as § 1610.3–3(a)(3) in the final rule and contains the provisions of existing § 1610.3–1(f). The final rule removes the term ''land use'' from ''officially approved and adopted [land use] plans.'' For more information on the removal of ''land use'' please see the discussion on the definition of ''officially approved and adopted plans'' at the preamble for § 1601.0–5.

Some public comments requested that the final rule provide a clearly-defined process for resolution of inconsistencies with local plans. In response to public comments, final § 1610.3–3(a)(3) is revised to clarify an important step in this process, stating that if the BLM is notified of specific inconsistencies between the BLM draft resource management plan and officially approved and adopted plans, the proposed resource management plan shall show how these inconsistencies were addressed and, if possible, resolved.

Changes between the proposed and final rule specify that inconsistencies should be identified in writing regarding the BLM's ''draft'' resource management plan. The BLM believes that this is the appropriate stage to formally identify inconsistencies as this represents the first formal review of and comment on the resource management plan. Prior to the publication of the draft resource management plan, the BLM will coordinate with governmental entities and collaborate with cooperating agencies to identify and resolve potential inconsistencies, subject to the qualifications of § 1610.3. Upon publication of the draft resource management plan, the BLM will notify governmental entities of its availability (see § 1610.3–2(c)(3)) for review and comment (see §§ 1610.3–2(c)(5) and 1610.2–2(c)). During this public comment period, governmental entities may identify inconsistencies, in addition to any other comments they may have on the draft resource management plan.

Final § 1610.3–3(a)(3) is also revised to replace ''the resource management documentation'' with ''the proposed resource management plan.'' This change provides transparency to governmental entities and to the public on where they can look for information on how the identified inconsistencies were addressed and, if possible, resolved; it also ensures governmental entities and the public will have access to this information during the protest period (see § 1610.6–2). This is important because it provides them the opportunity to protest should they believe an inconsistency, or the resolution of an inconsistency, does not comply with Federal laws or regulations, or is inconsistent with the purposes, policies, and programs implementing such laws and regulations.

The final rule adopts proposed § 1610.3–2(a)(4), with minor revisions. This section is redesignated as § 1610.3–3(a)(4) in the final rule and contains the provisions of existing § 1610.3–2(d). This paragraph states that where officially approved and adopted plans of State and local governments differ from each other, those of the higher authority will normally be followed. There are no substantive changes to this section from the existing requirements; the only revisions are to use active voice and consistent terminology for improved readability. The final rule removes the term ''land use'' from ''officially approved and adopted [land use] plans.'' For more information on the removal of ''land use'' please see the discussion on the definition of ''officially approved and adopted plans'' at the preamble for § 1601.0–5.

The final rule adopts proposed § 1610.3–2(b), with revisions. This section is redesignated as § 1610.3–3(b) in the final rule. The final rule also removes the words ''land use'' from ''officially approved and adopted [land use] plans'' throughout this section (please see the discussion on the definition of ''officially approved and adopted plans'' at the preamble for § 1601.0–5).

Final § 1610.3–3(b) contains the provisions of existing § 1610.3–2(e) and describes the Governor's consistency review process. Several public comments stated that these provisions improperly bypass local governments by attempting to satisfy consistency requirements through Governors. In response to public comments, we wish to clarify that the Governor's consistency review is a unique step in the planning process that affords the

Governor, as the elected representative of the State, a final opportunity to identify, discuss, and provide recommendations to remedy any relevant inconsistencies between a BLM resource management plan or amendment and State and local plans. The Governor may consider various State and local plans during the review. The BLM does not define a process for the Governor to consider those plans because creating a uniform process to apply to all Governors would be inappropriate. The Governor's consistency review, however, does not represent the only opportunity to identify, discuss, and remedy inconsistencies. A key objective of coordination, as described in final § 1610.3–2, is for the BLM to work with representatives from State and local governments to avoid or resolve inconsistencies with State and local plans. As outlined in final § 1610.3–2, the BLM will seek to coordinate during every stage of the planning process, including during the planning assessment (§§ 1610.3–2(b)(3)(i) and 1610.4(b)); the identification of planning issues (§§ 1610.3–2(b)(3)(ii) and 1610.5–1(b)); the review of the preliminary alternatives (§§ 1610.3–2(b)(3)(iii) and 1610.5–2(c)); the preparation of, and comment period on, the draft resource management plans (§§ 1610.3–2(b)(3)(v) and 1610.5–4(c)); preparation of the proposed resource management plan (§§ 1610.3–2(b)(3)(vi) and 1610.5–5); and the protest period on the proposed resource management plan (§ 1610.6–2(a)). Further, representatives from State and local governments are invited to participate as cooperating agencies, and therefore have the opportunity to partner with the BLM, and in doing so, identify and resolve inconsistencies during the development of key planning documents. The Governor's consistency review is not intended to replace early coordination, and the BLM intends that in most situations, inconsistencies will be avoided or resolved through early coordination.

Final § 1610.3–3(b) is revised for consistency with edits made throughout final § 1610.3–3. This section is also revised in response to public comments, and in order to provide clarity and align with other sections of these regulations and with FLPMA. The final rule breaks the provisions of the Governor's consistency review into multiple paragraphs to improve readability. In the following paragraphs, we describe the changes from the existing regulations that are adopted in the final rule.

The final rule adopts the proposal to replace references to ''State Director'' with ''deciding official,'' consistent with the new terms used throughout the final rule. There is no change in practice or policy, other than those changes described in the discussion on responsibilities in the preamble for § 1601.0–4.

The final rule adopts the proposal to specify that the document submitted to the Governor by the deciding official shall identify ''relevant'' known inconsistencies with ''officially approved and adopted plans of State and local governments.'' This revision limits the inconsistencies that the deciding official must identify to those that are relevant. It also requires the deciding official to identify only inconsistencies with officially approved and adopted plans, not with ''State or local plans, policies or programs'' (see existing § 1610.3–2(b)), consistent with §§ 1601.0–5 and 1610.3–3(a) in the final rule.

Final § 1610.3–3(b)(1) states that within 60 days after receiving a proposed resource management plan or plan amendment, the Governor(s) may submit a written document to the deciding official identifying inconsistencies with the officially approved and adopted plans of State and local governments and provide recommendations to remedy them.

Final § 1610.3–3(b)(1)(i) clarifies that the Governor's recommendations should address identified inconsistencies with State and local plans, rather than other aspects of a resource management plan. This language reflects the fact that the Governor's consistency review is not intended to replace early coordination with State and local governments; rather, this unique step affords the Governor a final opportunity to discuss and remedy inconsistencies. These changes do not preclude the BLM from considering or responding to a Governor's recommendations on other subjects, but it underscores that the BLM's focus at this late stage of the planning process is on consistency with State or local plans. There is no change in meaning or practice associated with the change other than focusing the Governor's consistency review on consistency with officially approved and adopted State and local plans.

The final rule adopts proposed paragraph (b)(1)(ii) of this section, which introduces a new provision that allows the Governor to waive or shorten the 60-day consistency review period in writing. This provision facilitates a more efficient planning process by reducing the length of the review period in situations where the Governor has no comments to submit. For example, if representatives from the Governor's Office participated as cooperators and found the plan to be adequately consistent with officially approved and adopted State and local plans, then the Governor may have no further comments and wish to expedite the review period. This change is consistent with current practice under the existing regulations, as the Governor is not precluded from waiving or shortening the consistency review period under the existing regulations. The addition of this language, however, provides more transparency to the public on the Governor's consistency review process and affirms the availability of this option for the Governor.

The final rule adopts proposed paragraph (b)(2) of this section, with no changes. This section retains existing language that the plan or amendment is presumed to be consistent if the Governor(s) does not respond to the BLM within the 60-day period, but is revised from the existing regulations to improve readability. There is no change in practice or meaning associated with these changes.

Final § 1610.3–3(b)(3) is revised to clarify existing language and reflect terms used in this rule. This paragraph provides that ''[i]f the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM shall notify the public and provide opportunity for public comment on these changes.'' This clarifies that the public must be provided an opportunity to comment on any substantive changes recommended by the Governor to remedy inconsistencies between the BLM's proposed resource management plan and officially approved and adopted plans that were not previously raised or considered during the public involvement process, and this opportunity must be provided before the Director renders a decision. While this is not a change from BLM practice under existing regulations, these clarifications provide a more precise description of the public's opportunity to comment on the Governor's recommended changes to remedy inconsistencies.

The final rule adopts proposed paragraph (b)(4) of this section with only minor revisions. This section provides that the deciding official (revised from the State Director) shall notify the Governor(s) in writing of his or her decision regarding the Governor(s)' recommendations. The final rule adopts the proposed new requirements that the notification include the deciding official's reason for the decision and that the notification be

mandatory, replacing the existing requirement to notify the Governor only if their recommendations are not accepted. These changes are not a change in practice or policy, other than ensuring that the Governor is notified of any decision related to the Governor's recommendations.

Final paragraph (b)(4)(i) of this section maintains the existing process by which the Governor(s) may submit a written appeal to the BLM Director within 30 days after receiving the deciding official's decision.

The final rule adopts proposed paragraph (b)(4)(ii) of this section, with revisions. The final rule removes existing language requiring the BLM Director to accept the recommendations of the Governor(s) if the BLM Director determines that the recommendations ''provide for a reasonable balance between the national interest and the State's interest.'' This existing language does not reflect the broader range of considerations that need apply. For example, the Director must consider whether the recommendations of the Governor are consistent with the purposes of FLPMA and other Federal laws and regulations, as well as the purposes, policies, and programs implementing such laws and regulations, as described in final § 1610.3–3(a). The Director must also consider whether the recommendations of the Governor are consistent with the purpose and need statement for the resource management plan revision or amendment, whether they were encompassed by the range of alternatives and analyzed in the effects analysis, as well as the environmental effects of the recommendations. We proposed to replace the existing language, instead stating that the BLM Director will consider the Governor(s)' comments in rendering a final decision. Several public comments opposed this proposed change, stating that the Congressional intent of FLPMA is to reach a reasonable balance between the national interests and the State or local interests without undue impacts to either the State or local governments. In response to public comments, final paragraph (b)(4)(i) of this section is revised to replace ''comments'' with ''appeal'' and to include additional language requiring that the Director also consider the consistency requirements of this section. In particular, this reference points the Director to the standard reflected in § 1610.3–3(a) that resource management plans shall be consistent with officially approved and adopted State and local plans to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The Director will review the Governor's appeal and determine whether the proposed resource management plan meets this standard, which encompasses the broader range of considerations described above.

Final § 1610.3–3(b)(4)(ii) retains the existing requirement, with clarifying edits, that the BLM Director will notify the Governor(s) in writing of his or her decision regarding the appeal. Final § 1610.3–3(b)(4)(ii) also replaces the existing requirement to publish the reasons for the BLM's decision in the **Federal Register** with commitments to notify the public of the decision and to make the written decision available to the public. The BLM will instead provide this notification on the BLM Web site, by posting a notice at BLM offices within the planning area, by sending an email to the mailing list, or by other means as appropriate.

The BLM received several public comments that expressed concern over the removal of the existing requirements to publish **Federal Register** notices. The BLM believes that it is appropriate to move away from relying on **Federal Register** notices at this step, given that Internet communications are both readily available and widely used. Further, at this late stage of the planning process, individuals or organizations interested in the planning effort will have had many opportunities to request to be added to the mailing list (see § 1610.2–1(d)) to receive notifications related to the planning effort. In locations where Internet is not readily available, the responsible official will identify additional forms of notification to reach local communities within the planning area (see § 1610.2–1(c)). Removal of the unnecessary requirement to publish a notice in the **Federal Register** provides for a more efficient planning process.

In the proposed rule, the BLM requested public comments on whether to adjust the timeline or appeal process for the Governor's consistency review. Although some comments expressed support for shortening the timeline to 30 days and requested the BLM eliminate the appeal process, the BLM received many comments expressing concern over any changes that would reduce opportunities for coordination or achievement of consistency. In light of these comments, the final rule does not adjust the timeline or appeal process.

Section 1610.4 Planning Assessment

Existing § 1610.4 consists only of the section heading ''Resource management planning process.'' This section is revised in the final rule as follows.

The final rule adopts proposed § 1610.4, ''Planning assessment,'' with revisions. This section combines and revises the existing sections for inventory data and information collection (existing § 1610.4–3) and the analysis of the management situation (AMS) (existing § 1610.4–4) into a new planning assessment section. The planning assessment will occur before the BLM initiates the preparation of a resource management plan and will be consistent with the nature, scope, scale, and timing of the planning effort. The combination of those points in the planning process into this early planning assessment will result in a more informed scoping process; however, several existing provisions are removed because they will no longer be relevant at this early stage. These changes are described in detail at each corresponding section of the planning assessment provisions in this rule.

The planning assessment includes new opportunities for public involvement, coordination with other Federal agencies, State and local governments, and Indian tribes, and collaboration with cooperating agencies. The BLM anticipates that greater coordination, collaboration and public involvement, particularly early in the planning process, will result in efficiencies by ensuring that the BLM considers a wide range of relevant policies, information, and perspectives even before scoping.[14]

The planning assessment is intended to help the BLM better understand resource, environmental, ecological, social, and economic conditions, and identify public views and resource management priorities for the planning area. The planning assessment will occur early in the process, before the formal initiation of a planning effort and before the steps that the BLM traditionally has taken first—namely, the identification of issues and the

[14] See OMB and President's CEQ Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), 4.b., p. 3 (''Given possible cost savings through improved outcomes, fewer appeals and less litigation, department and agency leadership should identify and support upfront investments in collaborative processes and conflict resolution . . .'') and 5, p. 4 (Federal departments and agencies should prioritize integrating collaboration and conflict resolution objectives and ''a focus on up-front collaboration as a key principle in agency mission statements and strategic plans''), available at: *https://ceq.doe.gov/ceq_regulations/OMB_CEQ_Env_Collab_Conflict_Resolution_20120907.pdf.*

development of planning criteria. The BLM believes that conducting an upfront assessment will provide useful baseline information to inform subsequent steps, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives. The planning assessment will include new opportunities for collaboration and public involvement and measures that will increase transparency. Further, the planning assessment is similar to the assessment procedures in the U.S. Forest Service 2012 Planning Rule (*see* 36 CFR 219.6(a)), and therefore create a new opportunity for inter-agency coordination.

The final rule adopts proposed § 1610.4, which serves as an introduction and provides that the planning assessment shall be required before the BLM initiates the preparation of a resource management plan.

In response to public comment, the final rule adds new § 1610.4(a), which addresses the determination of a planning area. Several public comments suggested that the planning regulations would benefit from more direction on how the BLM will determine future planning areas. Some comments requested that the BLM clarify how the planning assessment informs and helps to establish the planning area boundary. Other comments recommended that planning areas be based on common management concerns. This new paragraph requires that the BLM identify a preliminary planning area for use as the basis for the planning assessment.

Paragraph (a)(1) and paragraphs (a)(1)(i) through (a)(1)(v) of this section describe the factors that the BLM will consider when identifying a preliminary planning area. First, the BLM will consider relevant management concerns identified through monitoring and evaluation. These management concerns will be available to the public through the summary report of the plan evaluation (see § 1610.6–4). Next the BLM will consider any relevant landscapes associated with these management concerns. (See final § 1601.0–5). For example, if the plan evaluation indicates that the existing resource management plan does not adequately address the impacts of new resource uses on sensitive plant species, then the BLM would take into consideration the area of land where these new resource uses are relevant as well as the extent of the sensitive plant species. This does not mean that the planning area must encompass the full geographic extent of the resource use and sensitive plant species; rather, it means that the BLM must consider the geographic extent of this interaction when determining an appropriate planning area and the potential consequences for the species as a result of this interaction. The BLM also must consider any relevant guidance provided by the deciding official or the BLM Director, as well as the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, as well as other relevant information, as appropriate. For example, if a State wildlife action plan identifies a management area for an important wildlife species, then the BLM will take that into consideration when developing a preliminary planning area.

Several public comments raised concern that under the proposed rule, there would be no opportunity for public involvement in the determination of a planning area. In response to public comments, this section also includes a new requirement (final § 1610.6–4(b)) that the responsible official shall make the description and a rationale for the preliminary planning area available for public review prior to the publication of the NOI in the **Federal Register**. The BLM intends that this description and rationale will normally be made available at the onset of the planning assessment, which will take place before an NOI is published. The planning area will be revised, as necessary, based on any feedback provided by other Federal agencies, State and local governments, Indian tribes, or the public during the planning assessment. For example, the BLM intends to host public meetings during the planning assessment to assist in identifying public views (see § 1610.4(b)(4)). During these public meetings, the BLM will also discuss the preliminary planning area with participants and consider any input received. The BLM will also coordinate with other Federal agencies, State and local governments, and Indian tribes to receive feedback on the preliminary planning area. A planning area will be identified in the NOI (see § 1610.2–1(f)(2)(ii)) and will be informed by the input received during the planning assessment. For more information on the determination of a planning area, please see the discussion of § 1601.0–4 in this preamble.

The final rule adopts proposed § 1610.4(a), with revisions. This section is redesignated as § 1610.4(b) in the final rule. This section addresses ''information gathering'' and replaces and enhances the existing inventory data and information collection requirements (see existing § 1610.4–3), providing that the responsible official will follow the four requirements described in paragraphs (b)(1) through (b)(4) of this section.

Under paragraph (b)(1) of this section, the responsible official will arrange for relevant resource, environmental, ecological, social, economic, and institutional data or information to be gathered, or assembled if it is already available, including the identification of potential ACECs. This replaces language in existing § 1610.4–3 that requires the BLM to ''arrange for resource, environmental, social, economic and institutional data and information to be collected or assembled if already available.'' The final rule replaces the word ''collected'' with ''gathered'' to avoid potential confusion with the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The final rule includes ''the identification of potential ACECs'' in this step to specify when potential ACECs should be identified (see § 1610.8–2). It is important to note that as planning proceeds the BLM may identify the need for additional information gathering or new information may become available. The BLM will consider this new information, such as the identification of a potential ACEC.

Paragraph (b)(1) of this section encompasses the BLM's statutory obligation for inventory of ''public lands and their resource and other values,'' as described in FLPMA (see 43 U.S.C. 1711(a)), and also provides for the gathering and consideration of the best available scientific information, or other types of high quality information, provided by sources outside of the BLM.

The final rule does not carry forward language from existing § 1610.4–3 requiring that ''new information and inventory data . . . emphasize significant issues and decisions with the greatest potential impact.'' At this early stage in the planning process, the BLM recognizes that all significant issues may not yet be known and without conducting a broad assessment, the BLM may not be able to reasonably identify all of the significant issues. At the same time, the BLM must make every effort to conduct a planning assessment relevant to the issues and concerns associated with the incipient planning process recognizing existing budgets and timeframes. The BLM intends that ''relevant'' data and information will include inventory of the land and resources (see 43 U.S.C. 1711(a)) and any other available high quality information, including the best available scientific information, relevant

to the planning process and necessary to address the applicable factors described in proposed § 1610.4(d).

The final rule adopts the proposal to include a provision in final § 1610.4(b)(1) to avoid unnecessary data-gathering, similar to the existing provision in the development of planning criteria regulations (see existing § 1610.4–2(a)(2)), however, in response to public comment, this sentence is revised in the final rule to incorporate a new provision. Several public comments stated that the planning rule does not adequately address the FLPMA requirement for the BLM to ''coordinate the land use inventory'' (43 U.S.C. 1712(c)(9)). In response to public comments, this sentence is revised to provide that ''to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located, and in a manner that aids the planning process and avoids unnecessary data-gathering.'' This language aligns with FLPMA (see 43 U.S.C. 1712(c)(9)) and reflects the importance of early coordination with other Federal agencies, State and local governments, and Indian tribes on inventory and information gathering.

In addition, the BLM intends to emphasize that inventory data and information gathered for the planning assessment should be responsive to the relevant issues and geared to inform the overall planning process, including subsequent monitoring and implementation of the resource management plan. The responsible official will determine what information is relevant to the planning process based on available resources and existing requirements, such as inventory of the land and resources, the previous results of monitoring and evaluation, or existing assessments or strategies that overlay the planning area.

In paragraph (b)(2) of this section, the final rule adopts the new regulatory requirement, consistent with current practice, that the responsible official ''[i]dentify relevant national, regional, State, tribal or local laws, regulations, policies, guidance, strategies or plans for consideration in the planning assessment.'' In response to public comments, the final rule adds ''State'' and ''tribal'' to this list, as well as ''laws'' and ''regulations.'' This expands the relevant laws, regulations, policies, guidance, strategies, and plans for consideration, and better helps the BLM meet its consistency requirements by conducting this assessment early in the process. Examples identified in the final rule include Executive Orders issued by the President, Secretarial Orders issued by the Secretary of the Interior, DOI or BLM policy, BLM Director or deciding official guidance, mitigation strategies, interagency initiatives, State, multi-State, tribal, or local resource plans. In response to public comments, the final rule includes ''tribal'' and ''local'' resource plans as examples. Recent examples might include: Secretarial Order 3336—*Rangeland Fire Prevention, Management and Restoration* (Jan. 5, 2015); the *National Cohesive Wildland Fire Management Strategy* (Apr. 2014) (*http://www.forestsandrangelands.gov/strategy*); a State wildlife action plan such as the Nevada Wildlife Action Plan which was prepared by the Nevada Department of Wildlife and approved by the U.S. Fish and Wildlife Service (*http://www.ndow.org/Nevada_Wildlife/Conservation/Nevada_Wildlife_Action_Plan/*); or a community wildfire protection plan (*http://www.forestsandrangelands.gov/communities/cwpp.shtml*).

Identifying policies and strategies up front is important because successful planning needs to be informed by policies and strategies that cross traditional administrative boundaries. This step also enables the BLM Director and the deciding official to consider input during the planning assessment process, including information from other Federal and State agencies engaged in planning in the same or similar geographic area. Further, this step ensures that the BLM keeps apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes and considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands (see § 1610.3–2(a)).

The final rule adopts proposed paragraph (b)(3) of this section, with edits. The final rule adopts the proposal to add a new regulatory requirement that the responsible official provide opportunities for other Federal agencies, State and local governments, Indian tribes and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans for the BLM to consider in the planning assessment. For example, a State wildlife agency might ask the BLM to consider a conservation plan for a sensitive species; a member of the public might ask the BLM to consider the results of a peer-reviewed study relevant to the planning area; or a recreation user group might ask the BLM to consider data identifying areas of high recreation use in the planning area. This opportunity will be provided through a general request for information from the public. In addition to accepting written input, the BLM may provide opportunities through in-person meetings or workshops, webinars, collaborative Web sites, or other information gathering techniques. In response to public comments, and for consistency with revisions to paragraph (a)(2) of this section, the final rule includes relevant ''laws'' and ''regulations'' in this section. These could include Federal, State, or tribal laws and regulations, such as the California Environmental Quality Act.

The adoption of this new requirement in the final § 1610.4(b)(3) establishes a new public involvement opportunity during the planning assessment, which supports the Planning 2.0 goal to provide new and enhanced opportunities for collaborative planning. It will also help the BLM consider relevant data and information in the planning assessment.

The final rule adopts proposed paragraph (b)(4) of this section, with no edits, which requires that the BLM identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. The BLM intends that these views will be identified through a public ''envisioning process.'' This process will generally include public meetings, although the BLM may also use other techniques, such as a collaborative Web site, for example. Final § 1610.4(b)(4) will help the Bureau to better understand public views in relation to the planning area, including what is important to the public, where important areas are located, and why these areas are important to members of the public. Under current practice, the BLM identifies public views during the identification of planning issues. By providing this opportunity during the planning assessment, the BLM will be able to summarize public views in the planning assessment report (see § 1610.4(e)). This will provide increased transparency, will help to inform the preparation of a preliminary purpose and need statement, and will help inform the identification of planning issues.

The final rule adopts proposed § 1610.4(b) with revisions. This section is redesignated as § 1610.4(c) in the final rule. This new section addresses

''information quality'' for the planning assessment. The responsible official will evaluate the data and information gathered or provided to the BLM to ensure the use of high quality information in the planning assessment and to identify any data gaps or further information needs.'' In this new step, the responsible official must evaluate the information that has been gathered to ensure the use of high quality information in the planning assessment (for more information on high quality information, please see the discussions for §§ 1601.0–5 and 1610.1–1(c) in this preamble). Including this new requirement in the planning regulations is important because it clearly communicates to the public that any information submitted to the BLM must be high quality information to be considered further in the planning assessment. After evaluating information, the responsible official, in collaboration with any cooperating agencies, will use the high quality information to assess the resource, environmental, ecological, social, and economic conditions of the planning area.

Several public comments requested that the responsible official document his or her evaluations of information quality, including a rationale for any information excluded from use in the planning assessment, and make this information available to the public. The evaluation of high quality information will be documented in the administrative file for the planning effort and the BLM expects the evaluation will be summarized in the planning assessment report in most cases (see § 1610.4(e)). The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on these steps.

The final rule adopts proposed § 1610.4(c) with revisions. This section is redesignated as § 1610.4(d) in the final rule. This section describes the factors that the responsible official must consider when assessing the resource, environmental, ecological, social, and economic conditions of the planning area for the planning assessment. The responsible official will consider and document these factors whenever they are applicable, however, the responsible official will not be limited to the proposed factors.

These factors contain elements from the nine factors in § 1610.4–4(a) through (i) of the existing planning regulations, which outline the AMS. The planning assessment also includes some factors that were not included in the existing regulations regarding the AMS (see existing § 1610.4–4). These new factors are intended to help inform the planning process and include types of information the BLM already may consider under the existing regulations. The inclusion of these factors in the regulations provides the public with a better understanding of the types of information that will be considered during the preparation of a resource management plan. The BLM anticipates no direct impacts to the public from these proposed additions. The following paragraphs highlight the changes and rationales.

Paragraph (d)(1) of this section ((c)(1) in the proposed rule) revises existing § 1610.4–4(a), providing that the BLM consider ''the types of resource management authorized by FLPMA and other relevant authorities'' during the planning assessment. The final rule replaces Federal Land Policy and Management Act with the acronym FLPMA and replaces ''legislation'' with ''authorities.'' The proposed rule would have replaced ''resource use and protection'' with ''resource management.'' Several public comments suggested that the proposed change could be interpreted to mean that the BLM would no longer consider resource uses authorized by FLPMA. In response to public comment, the final rule maintains the term ''use'' from the existing regulations to clarify and affirm that resource use is considered in the assessment. There is no change in meaning or practice associated with these edits, as the term ''resource management'' encompasses ''resource use and protection'' as well as other types of management such as restoration.

The final rule adopts paragraph (d)(2) of this section ((c)(2) in the proposed rule) with revisions. The final rule includes ''land status and ownership . . . infrastructure, and access patterns in the planning area,'' consistent with the proposed rule. The final rule changes ''existing resource uses'' to ''existing resource management'' because existing resource uses are covered by other factors in this section (including, but not limited to § 1610.4(d)(7)), but existing resource management (as described in the existing land use plan) is not. Further, it is important to identify existing management direction that allows for a use, such as a known valid existing right, even if that use is not yet applied in the area. The final rule also adds ''including any known valid existing rights'' for the reasons discussed in the preamble to § 1610.1–2(b)(2). This factor, although often included in the AMS under current practice, is not identified in the current regulations and will provide important baseline information on current uses within the planning area to inform the identification of planning issues and the formulation of alternatives.

The final rule adopts paragraph (d)(3) of this section ((c)(3) in the proposed rule) without revisions. This paragraph refers to current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions. This information is typically included in the AMS under current practice, but is not identified in the current regulations. It is important that current conditions serve as a starting point for the planning assessment. This information provides the basis for the affected environment and assists in the identification of planning issues and formulation of a reasonable range of alternatives for analysis. Trends in resource or other conditions, such as economic trends, wildlife population trends, or recreation use trends, could also provide useful information for the planning process. If this information is available, the BLM will consider it during the planning assessment.

The final rule adopts paragraph (d)(4) of this section ((c)(4) in the proposed rule) with revisions. This paragraph refers to ''known resource constraints or limitations.'' The final rule removes the term ''thresholds'' because it is unnecessary and duplicative of the terms ''constraints or limitations.''

Paragraph (d)(4) of this section modifies and expands on existing § 1610.4–4(i), which refers to ''critical threshold levels which should be considered in the formulation of planned alternatives.'' Known resource constraints or limitations will be identified based on the best available scientific information. For instance, a known limitation might include a minimum viable population number for an endangered species as determined by the U.S. Fish and Wildlife Service, or a minimum area of critical habitat, such as breeding grounds or winter range, as determined by peer-reviewed scientific research. The BLM believes this concept is important to the planning process because it informs the development of plan components in the resource management plan, including disturbance limits, mitigation standards, or decision points for applying adaptive management. For example, a land use plan could establish an objective to support viable populations for a sensitive species by protecting important habitat. If a known minimum viable population for the species was identified in the planning assessment, this information could be used to

establish a decision point to consider a plan amendment if the population numbers dropped near or below the minimum.

Under this new provision, the BLM will identify any known constraints or limitations to resource management that should be considered in order to effectively manage resources consistent with its multiple use and sustained yield mandate, including any known and potential conflicts between multiple uses. For example, the BLM may identify uses that are known to be incompatible with important habitat for a sensitive species based on the best available scientific information in order to provide for the long-term sustainability of the species.

The BLM will also identify any related or indirect constraints to resource management. For example, wildfire propensity in an area might provide a constraint to future allowed uses, because in addition to use disturbance, the protection of habitat for a sensitive species could also be affected by natural disturbance. Or rights-of-way corridors might be constrained by natural features in certain areas, limiting where a transmission corridor could be located on the landscape. The BLM does not anticipate that all resource limitations will be identified at this stage of planning; many will be identified later through the formulation of alternatives and the estimation of their effects. At this early stage in planning, the BLM will identify known limitations based on best available scientific information, such as peer-reviewed research. This information will be useful to inform the identification of planning issues and resource management alternatives, and will promote a transparent and efficient planning process.

Paragraph (d)(5) of this section ((c)(5) in the proposed rule) refers to areas of potential importance within the planning area and is adopted in the final rule with revisions. This information is typically included in the AMS under current practice, but is not identified in the current regulations. The identification of these areas will inform the identification of planning issues and the formulation of alternatives. The following paragraphs describe the different types of ''areas of importance'' that are included.

Paragraph (d)(5)(i) of this section ((c)(5)(i) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of tribal, traditional, or cultural importance. These could include areas important for subsistence use, important cultural sites, traditional cultural properties, or a cultural landscape. Although the BLM will identify these areas during the planning assessment, sensitive or confidential areas may not be made available to the public or included in the planning assessment report.

Paragraph (d)(5)(ii) of this section ((c)(5)(ii) in the proposed rule) is adopted in the final rule with one revision. This paragraph refers to habitat for special status species, including state or federally listed threatened or endangered species. The final rule changes ''and/or'' to ''or'' because the ''and'' is unnecessary. No change in meaning is intended.

Paragraph (d)(5)(iii) of this section ((c)(5)(iii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat. The identification of these areas is important at the onset of planning because fish and wildlife habitat often crosses jurisdictional boundaries and conservation of such habitat will often require landscape-scale management approaches.

Paragraph (d)(5)(iv) of this section ((c)(5)(iv) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change. For example, areas of ecological importance might include refugia or migratory corridors identified to help sensitive species respond to the effects of climate change or wetlands that help to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods.

Paragraph (d)(5)(v) of this section ((c)(5)(v) in the proposed rule) is adopted in the final rule with revisions. This paragraph refers to lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scenic value. A comment stated that the term ''candidate wild and scenic rivers'' is unclear, and suggested the final rule replace ''candidate'' with ''eligible'' and adopt the Department of Interior's definition for eligible wild and scenic rivers as its definition for candidate wild and scenic rivers. In response to public comments, the final rule instead replaces ''candidate wild and scenic rivers'' with ''wild and scenic study rivers.'' This term is defined in BLM Manual 6400 and is therefore consistent with current BLM practice and policy.

A few comments requested the planning assessment include specific consideration of areas of scientific value. The comments stated that scientific value is listed in FLPMA (43 U.S.C. 1701(a)(8)), but the proposed rule does not account for it. In response to public comments, final paragraph (d)(5)(v) of this section is revised to include areas of significant ''scientific'' value, consistent with FLPMA (see 43 U.S.C. 1701(a)(8), 1702(c)).

Paragraph (d)(5)(vi) of this section ((c)(5)(vi) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of significant historical value, including paleontological sites. A comment urged the BLM to include archaeological sites to the list of areas of potential importance, among others. Archeological sites are encompassed by ''areas of significant historical value'' and may also be identified under this paragraph, subject to any requirement that the BLM keep the location of archeological sites confidential.

Paragraph (d)(5)(vii) of this section ((c)(5)(vii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to existing designations in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or existing ACECs.

Paragraph (d)(5)(viii) of this section ((c)(5)(viii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas with potential for renewable or non-renewable energy development or energy transmission.

The BLM received comments requesting that areas with mineral potential, as well as timber, be included in the planning assessment. In response to comments, the final rule includes new paragraphs (d)(5)(ix) and (d)(5)(x), which refer to areas with known mineral potential and areas with known potential for producing forest products, including timber. This information is typically identified in the affected environment section of a draft resource management plan and draft EIS under current practice, but is not identified in the current regulations. Identification of these areas at the outset of the planning process is important because minerals and forest products are among the resources that BLM manages under FLPMA's multiple use standard and other statutory mandates.

Paragraph (c)(5)(ix) of this section in the proposed rule is redesignated as paragraph (d)(5)(xi) in the final rule, but

otherwise is adopted without revisions. This paragraph refers to areas of importance for recreation activities or access. These might include high use recreation sites or areas with limited access points.

Paragraph (c)(5)(x) of this section in the proposed rule is redesignated as paragraph (d)(5) (xii) in the final rule, but otherwise is adopted without revisions. This paragraph refers to areas of importance for public health and safety, such as abandoned mine lands or natural hazards.

Paragraph (d)(6) of this section ((c)(6) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change. This information is not identified in the current regulations, but will be useful to inform the formulation of alternatives and assess the need for adaptive management approaches or cross-boundary collaboration with other land managers. For example, halting the spread of invasive species may require collaboration between adjacent landowners such as the BLM, the United States Forest Service, or willing private landowners.

Paragraph (c)(7) of this section in the proposed rule is adopted as paragraph (d)(7) in the final rule with revisions. We adapted this paragraph from the beginning of existing § 1610.4–4(d), which directs the BLM to consider the ''estimated sustained levels of the various goods, services and uses that may be attained.'' The proposed rule referred instead to identifying the ''various goods and services, including ecological services, that people obtain from the planning area.'' The phrase ''goods and services'' includes the many ecological services (*i.e.,* ecosystem services) that are provided by the public lands, in addition to the ''principal or major uses'' described in FLPMA (see 43 U.S.C. 1702(l)), and other multiple uses. ''Ecosystem goods and services include a range of human benefits resulting from appropriate ecosystem structure and function, such as flood control from intact wetlands and carbon sequestration from healthy forests.''

Several public comments expressed concern that, as a whole, the factors identified in proposed paragraph (c) (final paragraph (d)) of this section would not adequately address resource uses. In response to public comments, the final rule uses the phrase ''goods, services, and uses'' instead of the proposed language ''goods and services'' in final §§ 1610.4–7(d)(7) and (d)(7)(i) through (d)(7)(iii). Resource uses result in the production of ''goods and services;'' therefore, the inclusion of this word does not represent a substantive change in meaning. The inclusion of this word is intended to provide clarity that this provision applies to resource uses. This paragraph is also revised to refer expressly to those principal or major uses described in FLPMA, which include domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

''Uses,'' in this context, means existing or potential resource uses, but does not mean resource use determinations, which are also referred to as ''allowable uses'' in the existing Land Use Planning Handbook. At this early stage in the planning process, the BLM believes it is appropriate to identify the goods and services, including resource uses that people obtain from the planning area, but it is not yet appropriate to establish allowable uses (resource use determinations in the final rule).

Paragraph (c)(7)(i) of the proposed rule is redesignated as paragraph (d)(7)(i) in the final rule, but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph incorporates language from existing § 1610.4(g), which directs the BLM to consider the ''degree of local dependence on resources from public lands.'' The BLM will instead consider the degree of local, regional, national, or international importance of these goods and services. ''Resources'' is replaced with ''goods, services, and uses'' to provide a more precise explanation of what the BLM considers in regards to those resources. For example, the BLM could identify the degree of local dependence on potable water from groundwater recharge in the planning area (*i.e.,* local dependence on a service associated with water resources). The BLM believes that use of more precise terminology in the regulations improves understanding of this provision; no change in meaning is intended by this proposed word change.

In addition to the degree of local importance of goods and services, the BLM may also consider the degree of regional, national, or international importance of goods and services. This is particularly important when planning across traditional administrative boundaries and implementing landscape-scale management approaches. Examples of regional or national importance include goals for renewable energy generation on Federal lands under the President's Climate Action Plan (June 2013), (*https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*), and the Nation's reliance on the BLM-administered Federal Helium Reserve (*http://www.blm.gov/nm/st/en/prog/energy/helium_program.html*).

Paragraph (c)(7)(ii) is redesignated as paragraph (d)(7)(ii) in the final rule, but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph incorporates language from existing § 1610.4–4(c) and refers to ''available forecasts and analyses related to the supply and demand for these goods and services.'' The final rule broadens this provision to include both supply and demand and to apply to ''goods, services, and uses'' including ecological services, instead of ''resource demands.''

Paragraph (c)(7)(iii) is redesignated as paragraph (d)(7)(iii), but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph refers to ''the estimated sustained levels of the various goods and services that may be produced based on a sustained yield basis.'' For example, the BLM commonly estimates the sustainable levels of timber production. This factor is adapted from existing § 1610.4–4(d), which links estimated sustained levels to those that may be attained ''under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director [deciding official] guidance.'' The final rule simplifies the language in this factor for improved readability and understanding. At this early stage in the planning process, the BLM believes that the planning assessment should focus on the capability of resources to provide goods and services on a sustained yield basis. This information is important for the development of resource management plans based on the principles of multiple use and sustained yield and will assist the BLM in developing a range of alternatives that is consistent with FLPMA.

In addition to the foregoing changes, we removed some of the factors that are described in existing § 1610.4–4 regarding the AMS and will not include them in the planning assessment. The planning assessment will not include ''specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes'' (see existing § 1610.4–4(e)). At this early stage in the planning process, the BLM will identify

these plans, but will not have sufficient information to identify ''requirements and constraints'' related to consistency, as the BLM will not yet be developing resource management alternatives. This step is more appropriately considered when developing the draft resource management plan.

Paragraph (d) of this section also does not include ''[o]pportunities to meet goals and objectives defined in national and State Director guidance'' (see existing § 1610.4–4(b)). This language is no longer necessary, because final § 1610.4(b)(2) directs the responsible official to identify BLM guidance that is relevant to the planning assessment. That paragraph requires the responsible official to consider BLM guidance.

Another factor not included in the planning assessment section of the final rule is ''Opportunities to resolve public issues and management concerns'' (see existing § 1610.4–4(f)). The planning assessment will typically be conducted before the identification of planning issues (see § 1610.5–1), and the BLM may not yet have the information necessary to resolve public issues and management concerns. The BLM will instead identify these opportunities during the formulation of alternatives (see final § 1610.5–2). We believe that this is the appropriate step to consider these opportunities because it allows the BLM to consider more than one opportunity and compare their impacts through the effects analysis (see final § 1610.5–3). This is consistent with current practice and policy, as the AMS is currently prepared after the identification of planning issues.

The final rule also removes ''the extent of coal lands which may be further considered under provisions of § 3420.2–3(a) of this title'' from the existing regulations (see existing § 1610.4–4(h)) because it references a regulation that does not currently exist (§ 3420.2–3(a)). Removing § 1610.4–4(h) will help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal-specific requirements in the coal regulations where they are more appropriate. This does not change practice or policy.

Proposed § 1610.4(d) is redesignated as final § 1610.4(e) and adopted with revisions. This paragraph states that the responsible official will document the planning assessment in a report made available for public review and this report will include the identification and rationale for potential ACECs. The responsible official will post the report on the BLM Web site and make copies available at BLM offices within the planning area and other locations, as appropriate. This provision introduces a new requirement for the BLM, as the current regulations do not require the AMS to be made available to the public. In the final rule, we clarify that the responsible official must make the report available to the public before the NOI is published. The planning assessment report will be made available before scoping so that it can inform the scoping process and help in the identification of planning issues. The BLM intends that the planning assessment will inform stakeholders' input throughout the development of the resource management plan and provide increased transparency to the planning process.

This section also establishes that, to the extent practical, the BLM should make non-sensitive geospatial information used in the planning assessment available to the public on the BLM's Web site. This change provides for public transparency and supports meaningful public involvement in the planning process.

Finally, proposed § 1610.4(e) is redesignated as final § 1610.4(f) and adopted with revisions. This paragraph requires that the BLM conduct a planning assessment before initiating the preparation of an EIS-level amendment. The planning assessment only applies to the geographic area being considered for amendment, and the content of the planning assessment only includes information relevant to the plan amendment. For example, if the BLM were considering an amendment solely to a visual resource class, the planning assessment will only consider information relevant to a potential change in visual resource class within the geographic area of the potential amendment. In the final rule we clarified that the planning assessment is to be completed consistent with the requirements of final § 1610.4.

Proposed § 1610.4(e) would have provided the deciding official the discretion to waive the requirements of § 1610.4 for minor amendments or if he or she determined that an existing planning assessment was adequate (see proposed § 1610.4(e)). Several comments expressed that such discretion was too open-ended. In response to public comments, the final rule does not adopt the proposed language allowing for a ''waiver'' if an existing planning assessment is determined to be adequate. In the case when an existing assessment provides the needed information to inform the planning process, the responsible official will identify those parts of the existing assessment that are pertinent to the geographic area being identified and the issues to be addressed. This information, along with any new information, will be incorporated into the planning assessment for the plan amendment and made available for public review, consistent with final paragraph (e) of this section. The final rule retains the deciding official's discretion to waive the requirements of this paragraph for minor amendments, however, because the BLM believes there are situations for minor amendments where a planning assessment would not add value to the planning process and these situations need to be considered on a case-by-case basis.

Several public comments expressed confusion over the meaning of the term ''minor amendment.'' In this context, this term is intended to address amendments that are either small in scope or scale and the BLM prepares an EIS to inform the amendment. The most common type of minor amendments for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In these situations, a planning assessment may not add value to the amendment process and could unnecessarily delay the amendment process; the responsible official will have the discretion to assess whether the preparation of a planning assessment is necessary in these situations. Although less common, the BLM recognizes that there are other types of EIS-level plan amendments that are also small in scope or scale, and therefore the planning rule provides the discretion to identify these situations on a case-by-case basis.

Section 1610.5 Preparation of a Resource Management Plan

This section serves as an introduction to final §§ 1610.5–1 through 1610.5–5, which outline the process the BLM must follow when preparing a resource management plan, or an EIS-level plan amendment. These sections are based on existing § 1610.4 ''Resource management planning process.'' Other revisions from the existing regulations are discussed in the appropriate sections of this preamble.

The final rule removes existing § 1610.4–2 ''Development of Planning Criteria,'' consistent with the proposed rule. This section is no longer necessary under the final rule. Existing paragraph (a)(1) of this section is incorporated into final § 1610.5–2(b). Existing paragraph

(a)(2) of this section is incorporated into §§ 1610.4(b)(1) and 1610.5–3(a) of the final rule. For more information, see the discussion in the preamble for §§ 1610.4(b)(1), 1610.5–2(b), and 1610.5–3(a)). The final rule also removes existing §§ 1610.4–3 ''Inventory data and information collection'' and 1610.4–4 ''Analysis of the management situation'' and combines many of the provisions into final § 1610.4 ''Planning assessment,'' consistent with the proposed rule. Finally, the final rule removes existing § 1610.4–9 ''Monitoring and evaluation'' and incorporates many of the provisions from this section into § 1610.6–4 of the final rule.

The final rule removes the words ''federally recognized'' before Indian tribes throughout these sections for consistent use in terminology. These references will no longer be necessary with the inclusion of the definition for Indian tribes in § 1601.0–5 of the final rule. The final rule removes the phrase ''in collaboration with any cooperating agencies'' from throughout these sections. These references will be consolidated and moved to final § 1610.3–2(b)(3) (for more on ''cooperating agencies,'' see the preamble discussion of § 1610.3–1(b)(3)).

Section 1610.5–1 Identification of Planning Issues

Final § 1610.5–1 is based on existing § 1610.4–1, with revisions to clarify existing text, ensure consistency with other changes in this rule, and to require the preparation of a preliminary purpose and need statement.

Paragraph (a) of this section establishes a new requirement for the BLM to prepare a preliminary statement of purpose and need and to make this statement available for public review when initiating the identification of planning issues, consistent with the proposed rule. The preliminary statement of purpose and need will be informed by Director and deciding official guidance, preliminary public views, the planning assessment, the results of previous monitoring and evaluation, and Federal laws and regulations, and the purposes, policies, and programs implementing such laws and regulations. The latter language was revised consistent with the revisions to § 1610.3–3, discussed above.

Preparation of a statement of purpose and need is currently required under the DOI NEPA regulations (see 43 CFR 46.415(a) and 46.420(a)(1)). Final § 1610.5–1(a) adopts a new requirement that the preliminary statement of purpose and need be made available to the public when initiating the identification of planning issues, consistent with the proposed rule. The change provides transparency to the public and support the Planning 2.0 goal to provide earlier opportunities for public involvement.

Making the document available for public review does not constitute a formal request for public comment on the preliminary statement of purpose and need; however, the public is welcome to provide feedback on it, and, in particular, the BLM expects that the preliminary statement of purpose and need could be updated based on the issues identified during the scoping process (see § 1610.5–1(b)). This opportunity for public review is important because the statement of purpose and need informs the development of all subsequent steps in the preparation of a resource management plan. For example, the BLM does not typically formulate or analyze a resource management action alternative (see final §§ 1610.5–2 and 1610.5–3) to the no action unless it is consistent with the statement of purpose and need.

Final paragraph (b) of this section is based on existing § 1610.4–1. The final rule adopts the proposal to remove the existing language ''[a]t the outset of the planning process,'' due to the new planning assessment and the preparation of a preliminary statement of purpose and need, both of which will occur prior to the identification of planning issues. An upfront planning assessment will result in more information on resource, environmental, ecological, social and economic conditions for the planning area being available to the public and the BLM during the identification of planning issues. There will be no impact from this change, other than the availability of more information at this point in the process.

The final rule adopts the proposed language to include ''concerns, needs, opportunities, conflicts, or constraints related to resource management'' as types of suggestions the public can provide during the identification of planning issues step. The final rule removes ''resource use, development, and protection opportunities'' as these are encompassed by the final language and are therefore unnecessary. There will be no change from current practice.

Based on public comment, the final rule adds clarification to the first sentence of final paragraph (b) of this section. Proposed paragraph (b) of this section provided that the public, other Federal agencies, State and local governments, and Indian tribes would be given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management for consideration in the preparation of the resource management plan. Final paragraph (b) of this section is revised to include concerns, needs, opportunities, conflicts, or constraints, ''including those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes.'' This change is consistent with the purpose of identifying planning issues and responds to public comment. Several public comments requested that the final rule incorporate existing § 1610.4–4(e) into the planning assessment. This existing provision states that a factor which may be included in the existing AMS step is ''specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes.'' The BLM believes that this existing optional provision is more appropriately incorporated into § 1610.5–1(b), which includes the identification of ''constraints.'' The word ''requirements'' is not necessary, as the word ''constraints'' encompasses ''requirements.''

The final rule adopts the last sentence of proposed paragraph (b) of this section stating that the identification of planning issues ''should be integrated'' with the scoping process required by regulations implementing the NEPA. The final language does not represent a change in practice or policy, rather the final rule clarifies that although the identification of planning issues should be integrated with the NEPA scoping process, these are two distinct steps with distinct regulatory requirements that the BLM must comply with during the planning process.

Final paragraph (b) of this section also adopts proposed changes which reflect new terms used throughout the proposed and final rule. The term ''Field Manager'' is replaced with ''responsible official'' to maintain consistency with other proposed changes. The term ''planning issue'' replaces ''issues'' for consistency with the newly added definition for planning issues (see § 1601.0–5) and to clarify what type of ''issues'' are intended. The term ''information'' is added, to clarify that the BLM analyzes data and information when we determine planning issues, consistent with current BLM practice. ''Planning assessment,'' replaces the existing examples of other available data. The planning assessment includes the existing examples, thus the

change is consistent with new terminology introduced in the final rule (see final § 1610.4), but does not represent a change from current practice in the types of available data and information that the BLM analyzes.

Here, and throughout the final rule, the term ''information'' is used consistent with the definition of information provided in the OMB ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies'' (67 FR 8452). ''Information'' means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.'' As discussed in the preamble for § 1610.1–1(c), the BLM uses ''high quality'' information, which is includes the best available scientific information, to inform the resource management planning process.

The BLM intends no change in practice with the changes to final § 1610.5–1, other than to provide increased transparency by making a preliminary statement of purpose and need available to the public.

Section 1610.5–2 Formulation of Resource Management Alternatives

Final § 1610.5–2 is based on existing § 1610.4–5. The final rule revises the heading of this section to read ''[f]ormulation of resource management alternatives,'' consistent with the proposed rule. The words ''resource management'' are added to the heading to more precisely describe the ''alternatives'' and for consistent use in terminology. No change in practice or policy is intended by the change.

Paragraph (a) of this section describes the requirements for developing resource management alternatives. The first sentence in final paragraph (a) of this section includes the proposed introductory language indicating that this section describes ''[a]lternatives development,'' for improved readability. The final rule also adopts the proposed change to remove the phrase, ''At the direction of the Field Manager,'' because it is the obligation of the BLM, not of any individual, to consider all reasonable resource management alternatives and develop several for detailed study. The final rule adopts the proposal to add the abbreviation ''alternatives'' for ''resource management alternatives'' and remove the word ''[n]onetheless'' for improved readability in the final rule. No change in practice or policy is intended by these changes.

Final paragraph (a)(1) of this section adopts the proposed requirement that the alternatives developed be informed by Director or deciding official guidance, the planning assessment, and the planning issues and removes the existing requirement that alternatives ''reflect the variety of issues and guidance applicable to resource uses.'' This language is consistent with other changes and more accurately describes the information that informs the development of alternatives.

A public comment suggested that the final rule include language stating that all alternatives must be developed with the intent to achieve the purpose and need for the planning process. In response to this public comment, the final rule includes a new requirement that the alternatives developed shall also be informed by the statement of purpose and need (see § 1610.5–1). This change is consistent with the BLM's current practice and policy for the compliance with NEPA requirements, and also reflects the fact that the ''no action'' alternative must be included in the range of alternatives (see 43 CFR 1502.14) regardless of whether it would achieve the statement of purpose and need, as suggested in the public comment. There will be no substantive change from current practice or policy, other than the availability of the planning assessment to inform the development of alternatives.

Several public comments raised concerns that the BLM would not consider citizen-proposed alternatives under the proposed rule. Under the final rule, the BLM will continue to comply with NEPA requirements for alternatives, including the requirement that the BLM analyze all reasonable alternatives, and discuss the reasons for alternatives eliminated from detailed study (40 CFR 1502.14). This requirement applies to citizen-proposed alternatives. The final rule adopts proposed paragraph (a)(2) with no revisions. Final paragraph (a)(2) of this section is based on the fourth sentence of existing § 1610.4–5, and states that ''[i]n order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.'' The final rule replaces the phrase ''all reasonable variations shall be treated as subalternatives'' with ''reasonable variations may be treated as subalternatives.'' The change provides the BLM flexibility to develop subalternatives when appropriate, but will not explicitly require the use of subalternatives. In some instances, it may be appropriate to develop a new alternative, rather than a subalternative. In other situations, a subalternative may not be necessary because it is already covered under the full spectrum of examples in existing alternatives. The final changes are consistent with CEQ guidance that ''when there are a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of examples, must be analyzed.'' [15] The BLM intends no change from current practice or policy from this change.

Final paragraph (a)(3) of this section is based on the fifth sentence of existing § 1610.4–5 and requires the inclusion of a no action alternative. The final rule adopts the proposal to replace ''resource use'' with ''resource management'' because the no-action alternative applies to resource management in general, and not just resource use. There is no change in practice or policy from this change.

Final paragraph (a)(4) of this section is based on the sixth sentence of existing § 1610.4–5 and requires that the BLM note in the resource management plan any alternatives that are eliminated from detailed study, along with the rationale for their elimination. No substantive changes are made to this sentence.

Final paragraph (b) of this section establishes a new requirement that the BLM describe the rationale for the differences between alternatives, consistent with the proposed rule. This requirement incorporates and expands on the requirements of existing § 1610.4–2(a)(1) that the resource management plan be ''tailored to the issues previously identified.'' The proposed rationale for alternatives includes: A description of how each alternative addresses the planning issues, consistent with the principles of multiple use and sustained yield, unless otherwise specified by law; a description of management direction that is common to all alternatives; and a description of how management direction varies across alternatives to address the planning issues. The BLM believes that the rationale for alternatives will provide transparency to the public on the reasons for the formulation of alternatives and will ensure that the resource management plan is ''tailored to the issues previously identified.''

With regards to the rationale for the differences between alternatives, final paragraph (b)(1) modifies the proposed

[15] ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations.'' 46 FR 18026. *http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf.*

phrase ''consistent with the principles of multiple use and sustained yield, or other applicable law'' to state ''consistent with the principles of multiple use and sustained yield unless otherwise specified by law.'' This change between the proposed and final rule is made for consistency with the changes to § 1601.0–1 and throughout these regulations. For more information, please see the discussion to § 1601.0–1 for this preamble.

Final paragraph (c) of this section adopts the proposal to add a new public involvement opportunity. The responsible official must make the preliminary resource management alternatives and the preliminary rationale for these alternatives available for public review prior to the publication of the draft resource management plan and draft EIS. The BLM intends that the preliminary alternatives and rationale for alternatives ordinarily will be made available for public review prior to the estimation of effects of alternatives.

This public review is intended to serve as a ''check'' of the preliminary alternatives and affords the public an opportunity to bring to the BLM's attention any possible alternatives that may have been overlooked before the BLM conducts the environmental impact analysis and prepares a draft resource management plan and draft EIS. The BLM anticipates that this review will increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. Accordingly, the BLM will build time for this public review of preliminary alternatives and rationale for alternatives into their planning schedules. This public review also increases transparency in the BLM's planning process.

As previously discussed, the BLM does not request written comments when making documents available for public review. However, the public is welcome to contact the BLM with any appropriate concerns. For more information, please see the discussion at § 1610.2 for this preamble.

The preliminary alternatives and rationale for alternatives will be posted on the BLM's Web site and made available at BLM offices within the planning area. The BLM may consider hosting public meetings to discuss the alternatives and the forthcoming revision of the Land Use Planning Handbook will describe situations in which the BLM might hold public meetings.

In the preamble to the proposed rule, the BLM requested public comment on whether the requirements in paragraph (c) should apply to draft plan amendments. The BLM received some comments indicating that these requirements should apply to plan amendments as well as other comments suggesting that while in general this step should occur, the BLM should have the ability to skip this step on a case-by-case basis, when appropriate. In response to public comment, the final rule includes new language requiring the responsible official to make preliminary alternatives and preliminary rationale for alternatives available for public review, as appropriate, for draft EIS-level plan amendments. The BLM intends that in general this step will occur during draft plan amendments. In some situations, such as project-specific or other minor amendments, the public review of preliminary alternatives and rationale for alternatives may not be appropriate or necessary.

Final paragraph (d) of this section adopts proposed language stating that the BLM may change the preliminary alternatives and the preliminary rationale for alternatives as planning proceeds, if it determines that public suggestions or other new information make such changes necessary. The final language supports BLM's intent to consider public input on the preliminary alternatives and make changes accordingly. Further, a primary purpose of making preliminary documents available to the public is for the BLM to receive feedback and revise these documents, prior to issuing a formal draft. Therefore, the BLM expects that in most situations, the preliminary alternatives will be revised during the preparation of the draft resource management plan.

Several public comments suggested that the BLM should disclose changes made to the preliminary alternatives and the preliminary rationale for alternatives. In response to public comment, final paragraph (d) adds a requirement that a description of changes made to the preliminary alternatives and preliminary rationale for alternatives shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to these preliminary documents; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan. For example, a citizen-proposed alternative might be incorporated into the draft resource management plan as a result of public involvement activities associated with the review of the preliminary alternatives. In this situation, the draft resource management plan would describe the origin and purpose of the citizen-proposed alternative.

Section 1610.5–3 Estimation of Effects of Alternatives

Final § 1610.5–3 is based on existing § 1610.4–6 and incorporates elements of existing § 1610.4–2(a)(2).

Final paragraph (a) of this section establishes a new requirement that the responsible official identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of the alternatives considered in detail, consistent with the proposed rule. These procedures, assumptions, and indicators are referred to as the ''basis for analysis.'' Although this is a new requirement in the planning regulations, there are existing examples where the BLM has developed a ''basis for analysis,'' or similar document, before conducting an effects analysis. For example, in the preparation of the Western Oregon Resource Management Plans finalized in 2016, the BLM described the analytical methodology the BLM intended to use to estimate the effects of alternatives and made this available to the public.

Final paragraph (a)(1) of this section requires that the responsible official make the preliminary basis for analysis available for public review prior to the publication of the draft resource management plan and draft EIS, consistent with the proposed rule. The BLM expects that in most situations this information will be made available to the public concurrently with the preliminary alternatives and rationale for alternatives and prior to conducting the effects analysis. As previously discussed, the BLM does not request written comments when making documents available for public review (see the discussion at § 1610.2 for this preamble). However, the public is welcome to contact the BLM with any appropriate concerns.

In the preamble to the proposed rule, the BLM requested public comment on whether the requirements in paragraph (a)(1) should apply to draft plan amendments. The BLM received some comments indicating that these requirements should apply to plan amendments as well as other comments suggesting that while in general this step should occur, the BLM should have the ability to skip this step on a case-by-case basis when appropriate. In response to public comments, the final

rule will add a requirement to this paragraph requiring the responsible official to make preliminary alternatives and preliminary rationale for alternatives available for public review, as appropriate, for draft EIS-level plan amendments. The BLM intends that in general this step will occur for these amendments. In some situations, such as project-specific or other minor amendments, the public review of the basis for analysis may not be appropriate.

This paragraph is adapted from an existing requirement of § 1610.4–2(a)(2) that the ''BLM avoids unnecessary . . . analyses.'' The BLM believes that identifying the basis for analysis and making that information available to the public will provide a more precise description in the regulations of how to avoid unnecessary analyses than existing language. The final change also supports the Planning 2.0 goal to provide early opportunities for meaningful public involvement.

Final paragraph (a)(2) of this section adopts proposed language explaining that the BLM could change the preliminary basis for analysis as planning proceeds to respond to new information, including public suggestions. The final language supports BLM's intent to consider public input on the basis for analysis and make changes accordingly. A few public comments expressed concern that the proposed rule did not explain how the BLM will notify the public when the basis for analysis changes during planning process. In response to public comment, final paragraph (a)(2) adds a requirement that a description of changes made to the basis for analysis shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to basis for analysis; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan, including the basis for analysis.

Final paragraph (b) of this section is adapted from existing § 1610.4–6 and adopts the proposed introductory phrase ''[e]ffects analysis'' for improved readability. The term ''Field Manager'' is replaced with ''responsible official'' for the reasons previously explained.

The first sentence of final paragraph (b) of this section adopts the proposed change to replace the phrase ''physical, biological, economic, and social effects'' with ''environmental, ecological, economic, and social effects'' for consistent use in terminology. The final language encompasses the existing terminology. The BLM intends no change in practice or policy from this change in terminology.

In the second sentence of paragraph (b) of this section, the final rule adopts the proposal to replace the ''planning criteria'' with the ''basis for analysis'' and to add the ''planning assessment.'' Final paragraph (b) states ''the estimation of effects must be guided by the basis for analysis, the planning assessment, and procedures implementing NEPA.'' Changes to this section incorporate new terminology and reflect the fact that planning criteria are no longer required under the final rule. The planning assessment and the basis for analysis will provide the appropriate information to guide the effects analysis. No substantive changes were made to paragraph (b) of this section between the proposed and final rule.

Section 1610.5–4 Preparation of the Draft Resource Management Plan and Selection of Preferred Alternatives

This section is based on existing § 1610.4–7. This final section replaces references to ''Field Manager'' with ''responsible official,'' references to ''State Director'' with ''deciding official,'' and makes grammatical edits. The heading of the section is revised to include the new provision in paragraph (a) of this section regarding the preparation of the draft resource management plan.

Final paragraph (a) of this section states that the responsible official shall prepare a draft resource management plan based on Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives, consistent with the proposed rule. This language highlights the unique step in the BLM land use planning process of preparing a draft resource management plan, consistent with current practice, and it will facilitate public understanding of the planning process outlined in § 1610.5. There is no change from existing requirements associated with this final language, other than to reflect new terminology in this final rule and more broadly describe the information the BLM uses to prepare the draft resource management plan and draft EIS.

The final rule separates proposed paragraph (a) of this section into several subparagraphs for improved readability. No change in meaning is intended by this revision.

In response to public comment, final paragraph (a)(1) of this section includes a new requirement that the draft resource management plan and draft EIS shall ''describe any changes made to the preliminary alternatives and preliminary procedures, assumptions, and indicators.'' This description is not intended to identify each and every change made; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan. This revision is consistent with the revisions made to final §§ 1610.5–2(d) and 1610.5–3(a)(2).

Final paragraph (a)(2) of this section adopts the existing requirement that the draft resource management plan and draft EIS shall ''evaluate the alternatives,'' consistent with the proposed rule and removes the existing language requiring the BLM to ''estimate their effects according to the planning criteria'' because planning criteria will no longer be prepared under the proposed rule and the estimation of effects of alternatives is already addressed in proposed § 1610.5–4.

Final paragraph (a)(3) of this section requires that the draft resource management plan and draft EIS ''identify one or more preferred alternatives, if one or more exist.'' This represents a change from existing regulations which direct the field manager to ''identify a preferred alternative.'' The proposed rule would have broadened this requirement to allow the responsible official to select ''one or more'' preferred alternatives and in the preamble to the proposed rule, the BLM requested public comments on whether the final regulations should require a single preferred alternative, allow for multiple preferred alternatives, or allow for no preferred alternative if one does not exist. Several comments expressed that identifying multiple preferred alternatives could create confusion and uncertainty, making it more difficult for the public to provide meaningful comments. A few comments stated that it would increase the time needed for critical evaluation of the preferred alternative, and be time consuming and burdensome for the public. Other comments expressed support for the three options, noting that there may be instances where it is not possible to select only one preferred alternative, or alternatively any preferred alternative, and as such, it is appropriate to provide regulatory provisions addressing those instances.

The BLM considered these comments and has revised the proposed language to include the option of identifying no preferred alternative, if no preferred alternative exists. Under this change to existing regulations, the BLM might select a single preferred alternative,

multiple preferred alternatives, or no preferred alternative. The BLM expects that in most situations a single preferred alternative will be identified, consistent with current practice; however, there may be instances in which either several may be identified, or where none of the alternatives are preferred. The latter instances, in particular, are rare, and usually occur when a plan amendment is being initiated in conjunction with decision-making regarding a site-specific proposal, and it is unclear which of possibly several project alternatives, each designed to reduce adverse environmental consequences, might be preferred. The BLM also sought public comment on whether to include a specific regulatory provision addressing these circumstances, to clarify that these are the only kinds of instances in which a preferred alternative need not be identified. The BLM will not include this provision in the final rule. The BLM did not receive comments suggesting specific circumstances, and the BLM believes that these circumstances are more appropriately identified on a case-by-case basis. The final rule provides such flexibility. This change also makes the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)), which were promulgated after the BLM planning regulations were last amended. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on the selection of preferred alternatives.

The final rule adopts the proposal to replace the existing requirement to select a preferred alternative that ''best meets Director and State Director guidance'' with a requirement to explain the rationale for the preferred alternative(s) in final paragraph (a)(3) of this section. There are many factors that might influence the selection of a preferred alternative, in addition to Director or deciding official guidance, such as assessment findings, public involvement, local planning priorities, and identified planning issues. The preferred alternative(s) must be consistent with Federal laws, regulation, and policy guidance, and will represent the alternative that the deciding official believes is most responsive to the planning issues and the planning assessment, which includes Director and deciding official guidance. The final rule states that the BLM will identify one or more preferred alternatives, ''if one or more exist,'' and will explain the rationale for the preference ''or absence of a preference.'' The added language reflects the new option where a preferred alternative may not exist and requires the BLM to provide a rationale for the absence of a preference.

Final paragraph (a)(3) of this section further states that ''[t]he identification of one or more preferred alternatives remains the exclusive responsibility of the BLM.'' The final rule replaces the phrase ''the decision to select'' with the phrase ''the identification of'' to improve readability, clarify meaning, and for consistent use in terminology. The BLM intends no change in meaning from existing regulations. The final rule also specifies that this applies to the identification of ''one or more'' preferred alternatives, for consistency with changes made earlier in paragraph (a)(3) of this section.

Final paragraph (b) of this section adopts the last sentence of proposed paragraph (a). This change to create a new subparagraph is to improve readability. There is no substantive change to this provision, which provides that the draft resource management plan and EIS will be forwarded to the deciding official for publication and filing with the EPA.

Final paragraph (c) of this section is based on existing § 1610.4–7 and adopts the language from proposed § 1610.5–4(b), with revisions. The final rule adopts the proposal to replace ''draft plan and [EIS]'' with ''draft resource management plan and draft [EIS],'' for improved readability, and also adopts the proposal to pluralize the word ''Governor'' to acknowledge that a resource management plan may cross State boundaries and in that situation the draft resource management plan should be provided to the Governors of all States involved.

In response to public comment, the final rule is revised to include language requiring the BLM to provide a copy of the draft resource management plan and draft EIS to officials of other Federal agencies, State and local governments, and Indian tribes ''that have requested to be notified of opportunities for public involvement'' in addition to the proposed requirement to provide a copy to those officials that the deciding official has reason to believe would be interested. These changes are to address concerns expressed in public comments that the deciding official might exclude government officials if the deciding official has reason to believe an agency or unit may lack interest. This change is consistent with final § 1610.3–2(c)(3). The final rule adopts the proposal to replace the word ''concerned'' with ''interested'' because any type of interest from a government official, including concern, is sufficient reason for the BLM to provide such official with a copy of the draft resource management plan and EIS for review.

The final rule adopts the proposal to add a reference to § 1610.3–2(c) to improve readability of the regulations text. There is no change in practice or policy from this change.

Section 1610.5–5 Selection of the Proposed Resource Management Plan

Final § 1610.5–5 is based on existing § 1610.4–8. The final rule does not adopt the proposal to include ''preparation of implementation strategies'' in the heading to this section because the concept of implementation strategies was not adopted in the final rule (see the discussion to proposed § 1610.1–3 in this preamble).

The final rule adopts proposed paragraph (a) of this section. Changes to this section replace the existing reference to the ''Field Manager'' with ''responsible official'' stating that the ''responsible official'' shall evaluate the comments received after publication of the draft resource management plan and draft EIS and will prepare the proposed resource management plan and final EIS.

The final rule does not adopt proposed paragraph (b) of this section which would have provided that the responsible official prepare implementation strategies for the proposed resource management plan, as appropriate. This paragraph is no longer relevant because the concept of implementation strategies was not adopted in the final rule (see the discussion to proposed § 1610.1–3 in this preamble).

The final rule redesignates proposed paragraph (c) of this section as final paragraph (b) of this section. Final paragraph (b) requires that the deciding official publish the proposed resource management plan and file the final EIS with the EPA, consistent with current practice and policy. The final rule will no longer detail the BLM's internal review process. The final rule adopts the proposal to remove references to internal steps such as ''supervisory review'' because these internal review processes are better established through BLM policy. The BLM intends no change to existing policy or practice, but the final rule will provide the BLM discretion on how to conduct its internal review process, which is addressed through BLM policy.

Section 1610.6 Resource Management Plan Approval, Implementation and Modification

The final rule adopts proposed § 1610.6, with revisions. Final § 1610.6 is adapted from existing § 1610.5. This

section heading provides an introduction to final §§ 1610.6–1 through 1610.6–8. The final rule adopts the proposed change to replace the word ''use'' with ''implementation'' in the heading to final § 1610.6 to more accurately describe the provisions of these sections.

Section 1610.6–1 Resource Management Plan Approval and Implementation

Section 1610.6–1 is adapted from existing § 1610.5–1. There are no substantive revisions to § 1610.6–1 between the proposed and final rule.

The final rule replaces ''and administrative review'' with ''and implementation'' in the heading of this section to focus this section on resource management plan approval and implementation. Similarly, the final rule deletes the existing first paragraph, which refers to internal procedures such as ''supervisory review and approval.'' The BLM's internal review procedures are better established through BLM policy. The BLM intends no change in practice or policy from these changes.

Final paragraphs (a), (b), and (c) of this section contain the provisions of existing § 1610.5–1. The final rule adopts edits to this section to improve understanding of existing requirements, but does not anticipate any change in implementation from existing regulations.

Under final paragraph (a) of this section, the deciding official will approve a resource management plan, or EIS-level amendment, no earlier than 30 days after the EPA publishes a **Federal Register** notice of the filing of the final EIS. This is an existing part of the process and regulations, but the final rule uses ''deciding official'' instead of the State Director, to maintain consistency with other changes (see § 1601.0–4(b)). The final rule removes the provision that approval depends on ''final action on any protest that may be filed'' as this requirement is already addressed in 1610.6–1(b) and in the protest procedures at § 1610.6–2(b). This revision is not a change in practice or policy.

Final § 1610.6–1(b) contains some language from existing § 1610.5–1 (b), with clarifying edits. In addition to existing provisions stating that plan approval will be withheld until after protests have been resolved, paragraph (b) of this final section also clarifies an existing requirement to provide public notice and opportunity for public comment if the BLM intends to select a different alternative, or portion of an alternative, than the proposed resource management plan or plan amendment. Such a change may result from the BLM's decision on a protest or from the BLM's consideration of inconsistencies identified by a Governor. The final rule revises this sentence to explain that ''if, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is within the spectrum of alternatives in the final [EIS] or [EA] but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved.'' The final language will more precisely describe what is meant by the existing phrase ''any significant change made to the proposed plan.'' The final rule uses ''within the spectrum of'' instead of ''encompassed by'' for consistency with CEQ terminology.[16] The BLM intends no change from current practice or policy; rather this provision will provide a more precise description of existing requirements.

Final § 1610.6–1(c) contains language from the last sentence of existing § 1610.5–1(b) and provides that the approval of a resource management plan or a plan amendment for which an EIS is prepared must be documented in a concise public ROD, consistent with NEPA requirements (40 CFR 1505.2). Current language refers to ''the approval,'' and this change will specify that a ROD will be prepared for approval of a resource management plan or EIS-level amendment. Approvals of EA-level amendments need not be documented in a ROD; however, current BLM policy requires the preparation of a decision record to document these decisions (see BLM NEPA Handbook, H–1790–1).

Section 1610.6–2 Protest Procedures

Final § 1610.6–2 contains the protest procedures found at existing § 1610.5–2. The final rule revises this existing section to update the procedures for the public's submission and the BLM's action on protests of a resource management plan or plan amendment.

Under the introductory text in final paragraph (a) of this section, the final rule clarifies that a member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which ''may be adversely affected'' by the approval of a proposed resource management plan or plan amendment may protest such approval. The final rule adopts the proposed change to replace ''planning process'' with ''the preparation of the resource management plan or plan amendment'' to more precisely describe what steps of the ''planning process'' apply to paragraph (a) and for consistency with other changes. Under current practice, the BLM generally considers the ''planning process'' to mean the preparation of a resource management plan or plan amendment. The final rule clarifies that the preparation of a resource management plan is just one step of the planning process. Other steps include the planning assessment, the approval of the resource management plan, the implementation of the resource management plan, monitoring and evaluation, and future modification of the resource management plan through plan maintenance, amendment, or revision. A member of the public may only submit a protest, however, if they participated in the preparation of the resource management plan or plan amendment. This change is consistent with current practice and policy. Final § 1610.6–2(a) is revised to remove reference to § 1610.4, which was incorrect. The planning assessment is not considered a step in the preparation of a resource management plan; rather, it precedes the initiation of the preparation of a resource management plan. In order to be eligible to submit a protest, a member of the public must participate in the preparation of the resource management plan or plan amendment, and not just the planning assessment.

In response to public comment, final paragraph (a) of this section replaces the existing phrase ''[a]ny person'' with ''[a]ny member of the public.'' Some public comments suggested that the phrase ''any person'' should be revised to include cooperating agencies. The BLM currently interprets the phrase ''any person'' to include cooperating agencies. The term ''public,'' however, is defined at final § 1610.0–5 and therefore provides a more precise description of who may submit a protest, including cooperating agencies or other government officials. This change is consistent with current practice and policy under existing regulations, and is made for clarification and improved readability only. The BLM intends no change in the meaning of this provision.

The final rule adopts the proposal to remove language in paragraph (a) of this section stating that any person who has an interest which ''is or may be'' adversely affected by the approval or amendment of a resource management plan may protest such approval or

[16] NEPA's Forty Most Asked Questions, Question 29B. *https://ceq.doe.gov/nepa/regs/40/40p3.htm.*

amendment. Instead, the final rule states that any member of the public who has an interest which ''may be'' adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. The final rule replaces the phrase ''is or may be'' with ''may be'' to eliminate duplicative and unnecessary language. An interest that ''may be adversely affected'' includes an already affected interest. This final change is made to improve readability only; the BLM intends no change to the meaning of this provision.

Final paragraph (a) of this section is revised to include new language stating that a protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment ''unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.'' This change in the final rule is made throughout the subparagraphs of § 1610.6–2(a) and clarifies that if an issue arises after the close of the formal public comment period on a draft resource management plan, the public may submit a protest regarding that issue. This exclusion only applies to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue. For example, the issue may arise due to a change that was made to the draft resource management plan or due to new information that was not previously available. This revision is consistent with current practice and policy and is made for clarification purposes only.

The final rule adopts the proposal to split existing § 1610.5–2(a)(1) into paragraphs (a)(1) and (a)(2) of final § 1610.6–2. The final rule adopts proposed paragraphs (a)(1) and (a)(2) with only minor revisions. These paragraphs contain the requirements for filing protests, including new provisions for electronic submission.

Final paragraph (a)(1) of this section adopts the proposed introductory text ''Submission,'' and describes the procedures for submitting a protest. The final rule adopts the new provision which states that the protest may be filed as a hard-copy or electronically and that the responsible official will specify protest filing procedures for a resource management plan or plan amendment (beyond these general requirements in the planning regulations), including the method the public may use to submit a protest electronically. Under the existing regulations, a protest must be filed as a hard-copy. Although the BLM will continue to accept hard-copy protest submissions, providing an additional option for electronic submission will reduce the burden on the public by reducing the expense associated with mailing a hard-copy. An electronic format will also streamline the processing of protests, since the protest will already be digitized, thereby eliminating a step from the process. Further, a protest sent by mail may take many days to arrive at the appropriate BLM office and delay the start of the BLM's protest resolution process. Electronic means for protest submission are more readily available to the public today and electronic options will promote a more efficient protest resolution process. The final rule provides flexibility for how protests will be submitted electronically to the BLM to accommodate future advances in electronic technology. The BLM expects to provide an electronic submission option either through email submission or through the BLM Web site.

Although the BLM believes that electronic submission promotes efficiency, it is also important to note that providing an electronic option for protest submission could also lead to an increased burden on the agency by increasing the number of protest submissions, such as form letters. In this situation, it will take additional time to process protests. Under current practice, the BLM summarizes protest issues and provides a single response to each issue; regardless of how many times the issue was raised. We intend to continue this practice, thus a possible increase in form letters will not lead to an increase in the number of responses or the complexity of the final protest resolution report.

Final paragraph (a)(2) of this section adopts the proposed introductory text ''Timing.'' The final rule also adopts the proposal to maintain the existing time periods for submitting a protest and to make edits for improved readability and understanding. There are no changes to existing requirements. For resource management plans and EIS-level amendments, protests must be filed within 30 days after the date the EPA publishes a NOA of the final EIS in the **Federal Register**. For EA-level amendments, protests must be filed within 30 days after the date the BLM notifies the public of the availability of the proposed plan amendment.

Final § 1610.6–2(a)(3) adopts the proposed introductory text ''Content Requirements,'' and describes the required content of a protest.

The final rule adopts proposed paragraph (a)(3)(i) of this section with no revisions. This paragraph includes a new provision that protesting parties include their email address (if available) in addition to other identifying information in the protest letter in order to facilitate BLM communications with protesting parties in the event of a question regarding a protest or its filing. It often is easier to communicate by email than by telephone and this requirement is in line with the BLM's acceptance of protests electronically under final § 1610.6–2(a)(1). This provision includes the statement ''if available'' because the BLM recognizes that not all members of the public have easy access to the Internet, and the lack of an email address will not preclude a member of the public from submitting a protest. There is no change in practice or policy, other than to clarify that an email address, if available, should be included.

The final rule adopts proposed paragraph (a)(3)(ii) of this section with no revisions. Final paragraph (a)(3)(ii) of this section requires a statement of how the protestor participated in the preparation of the resource management plan. This is a change from existing language that requires a statement of the issue or issues being protested, which is instead included in final paragraph (a)(2)(iii) of this section. Although existing paragraph (a) states that only a person who participated in the preparation of a resource management plan may submit a protest, final paragraph (a)(3)(ii) places the burden on the protestor to demonstrate their eligibility for submitting a protest. This requirement is a more efficient method for the BLM to determine eligibility to protest and will help the BLM to more efficiently respond to all protests in a timely manner.

The final rule adopts proposed paragraph (a)(3)(iii) of this section with only minor revisions. Final paragraph (a)(3)(iii) replaces the requirement to provide a ''statement of the part or parts of the plan or amendment being protested'' with a new requirement to identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations. The change is consistent with other changes made in this final rule (see final § 1610.1–2). Plan components provide planning-level management direction. The final decision to approve a resource management plan or plan amendment represents the final decision to approve the planning level management

direction, which will guide all subsequent management decisions. The final rule replaces the proposed phrase ''purposes, policies, and programs of such laws and regulations'' with ''purposes, policies and programs implementing such laws and regulations'' for consistency with changes made throughout these regulations (see § 1610.3–3, for example). No change in meaning is intended by this revision; rather, this change improves readability and clarifies that purposes, policies, and programs are developed to ''implement'' laws and regulations. This revision is also made in paragraph (a)(3)(iv) of this section.

Final paragraph (a)(3)(iv) of this section requires the protest to include a concise explanation of why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations, and identification of the associated issue(s) raised during the planning process. This provision replaces existing paragraph (a)(1)(ii) and the final sentence of existing paragraph (a)(1)(iv) of this section. The final rule requires that protests include more specific grounds for challenging a plan component than the existing regulations, which require only ''(a) concise statement explaining why the State Director's decision is believed to be wrong.'' The identification of more specific grounds for protests will help the BLM to identify, understand, and respond thoughtfully to valid protest issues, such as inconsistencies with Federal laws or regulations.

This final change also provides a more clear distinction between the protest process and the earlier public comment period on a draft resource management plan and draft EIS. The earlier public comment period offers an opportunity to comment on a wide variety of matters relating to a draft plan. The protest procedures, in contrast, are intended to focus the BLM Director's attention on aspects of a proposed resource management plan that may be inconsistent with legal requirements or policies. These changes are not a change from existing practice or policy; rather they provide clarification to the public on how the BLM interprets and implements the regulations. The BLM believes that the change will more effectively communicate to the public what the BLM considers when addressing protests.

Final paragraph (a)(3)(iv) adopts the proposed requirement that a protest identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; however this section is revised to clarify that this requirement is not necessary if the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan. This exclusion would only apply to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue. For example, the issue may arise due to a change that was made to the draft resource management plan or due to new information that was not previously available. These changes do not represent a change from current practice or policy; rather they provide clarification to the public on existing requirements.

Final paragraph (a)(3)(v) of this section retains the existing requirement that protests include a copy of all documents addressing the issue(s) raised that the protesting party submitted during the planning process or an indication of the date the issue(s) were discussed for the record. These documents or dates will assist the BLM in responding to protests. The final rule clarifies that this requirement is not necessary if the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan and the public has not had an opportunity to raise the issue, for consistency with changes made throughout this section.

Final paragraph (a)(4) of this section adopts the proposed introductory text ''availability'' and establishes a new requirement that protests will be made available to the public upon request and this is independent of existing requirements under the Freedom of Information Act. This commitment demonstrates the value the BLM places on public involvement in resource management planning. The BLM intends for this commitment to promote transparency and consistency in practice. The BLM is exploring how to make protests available in a timely and efficient manner, including by posting all protest submissions to the BLM Web site. In response to public comment, final paragraph (a)(4) includes an additional provision that in making the protests available to the public, the Director shall withhold any protected information that is exempt from disclosure under applicable laws or regulation. Several public comments noted that sometimes it is necessary for a member of the public to include protected information as part of a protest, and the BLM may not make this information available to the general public. Comments provided as an example that release of commercial or financial information may violate the Trade Secrets Act. This change is consistent with current practice and policy.

Final paragraph (b) of this section includes the existing requirements at existing § 1610.6–1(b) that the BLM Director render a decision on all protests. The final rule adopts the proposal to remove ''promptly'' from this requirement, as the term is vague and does not account for the many variables that affect timelines for protest resolution, including the magnitude and complexity of protest issues, as well as available budgets and competing workloads. This edit clarifies that the timeline to resolve the protest varies extensively across planning efforts. This is not a change in practice or policy; the BLM will continue to resolve protests as quickly as possible.

Final paragraph (b) further provides that the BLM notify protesting parties of the decision and make both the decision and the reasons for the decision on the protest available to the public. The BLM expects that these typically will be posted on the BLM Web site and the BLM will notify individuals or groups that have requested notification in conjunction with the preparation or amendment of a resource management plan. The final rule adopts the proposal to remove the requirement that the BLM send its decision on a protest to the protesting parties by certified mail, return receipt requested. The BLM believes that the wide availability and ease of use of the Internet and electronic communications make these means of notifying the public well-suited for sharing protest decisions with the public. Electronic communications allow the BLM flexibility to make protest decisions available to a potentially large number of protesting parties or members of the public without an overly burdensome workload. These means are also consistent with BLM policy promoting the use of electronic communications in the land use planning process.[17]

[17] BLM, Instruction Memorandum No. 2013–144, ''Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats'' (June 21, 2013), *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html*); DOI Office of Environmental Policy and Compliance, Environmental Statement Memorandum No. 13–7, ''Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods'' (Jan. 7, 2013), *http://www.doi.gov/pmb/oepc/upload/ESM13-7.pdf.*

Nonetheless, where Internet access is limited or protesting parties or members of the public express concerns about electronic communications, the BLM will provide notice by other means, as necessary.

The second sentence of final paragraph (b) reflects existing § 1610.5–2(b) and explains that the BLM Director's decision is the final decision of the Department of the Interior. This decision may be subject to judicial review. The final rule adopts the proposal to change ''shall be'' to ''is,'' to comply with more recent style conventions and improve readability. There is no change in meaning from this style change.

In response to public comment, paragraph (b) of this section is revised to incorporate language from final § 1610.6–1(b), stating that ''[a]pproval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest.'' This does not represent a change in practice or policy, as this is an existing requirement. In conjunction with this revision, the first sentence of paragraph (b) is revised for consistency and readability; however, there are no changes in the meaning of this provision.

Final paragraph (c) of this section adopts the proposal to add a new provision stating that the BLM Director may dismiss any protest that does not meet the requirements of this section. For example, the BLM may dismiss protests where protestors lack standing or protests that are incomplete or untimely. The final text does not represent a change in requirements or in existing practice. The BLM Director may currently dismiss protests that do not meet the regulatory requirements. The BLM believes that adding this text will more effectively communicate to potential protestors that their protest may be dismissed if it does not meet the requirements for submission. In response to public comment, the final rule adds a new sentence to the end of paragraph (c) of this section stating that the Director shall notify protesting parties of the dismissal and provide the reasons for the dismissal. The Director will provide this notification either through written or electronic means, depending on available contact information. This revision provides transparency to a member of the public should their protest be dismissed. In a situation where the BLM is not provided contact information from a protesting party, we will not be able to provide such notification. The BLM intends that dismissals will also be described in a protest resolution report, consistent with current practice. These reports are generally posted to the BLM Web site; therefore protesting parties and any other members of the public could still find this information.

Section 1610.6–3 Conformity and Implementation

The final rule adopts proposed § 1610.6–3 with only minor revisions. Section 1610.6–3 is based on existing § 1610.5–3. Changes to this section are made only for improved readability or improved understanding of existing practice or policy.

In paragraph (a) of this section, the final rule removes the phrase ''as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department.'' All future authorizations and actions must conform to the approved resource management plan, thus this language is confusing and unnecessary. No change from current practice is intended by this change. The final rule adds the words ''plan components,'' stating ''All future resource management authorizations and actions . . . must conform to the plan components of the approved resource management plan.'' These edits are consistent with the definition of ''plan components'' in § 1601.0–5 and the requirements of § 1610.1–2 and more precisely describe how the BLM will interpret conformance under this final rule.

In paragraph (b) of this section, the final rule specifies that the ''plan'' referenced is a ''resource management plan'' and that the requirements of this section also apply following the approval of a plan amendment. The final rule replaces ''Field Manager'' with the ''BLM.'' As previously described, replacing the ''Field Manager'' with the ''BLM'' acknowledges responsibilities that might be fulfilled by a BLM employee other than a Field Manager.

Changes to paragraph (c) of this section also specify that the ''plan'' referenced is a ''resource management plan'' and that conformance applies to ''plan components'' for consistency with changes made elsewhere in these regulations. The final rule further specifies that the ''deciding official'' is responsible for the determination that an action warrants further consideration before a plan revision is scheduled. These changes are intended to provide clarity, but do not represent a change in policy or practice.

There are no substantive changes made to paragraph (d) of this section, only grammatical edits made throughout this part.

Section 1610.6–4 Monitoring and Evaluation

The final rule adopts proposed § 1610.6–4 with revisions. This section addresses monitoring and evaluation of resource management plans following their approval. It incorporates much of the language from existing § 1610.4–9 with edits for consistency with other changes to the regulations. Revisions to this section split the existing provision into subparagraphs for improved readability.

Under the final rule, the BLM will monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards (see final § 1610.1–2(b)(3)). The final rule does not include the proposed reference to ''monitoring procedures'' because the final rule does not adopt proposed § 1610.1–3 or the concepts described in that section, including implementation strategies (for more information please see the discussion on proposed § 1610.1–3 for this preamble to the final rule).

The final rule is also revised to include language from final § 1610.1–2(b)(3) for improved readability and understanding of these regulations. Final paragraphs (a)(1) and (a)(2) of this section incorporate provisions from § 1610.1–2(b)(3) which specify that, through monitoring and evaluation, the BLM will determine whether the resource management plan objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan. For more information regarding this language, please see the discussion at § 1610.1–2(b)(3) for this preamble. Revisions to this section improve readability and understanding of the relationship between this section and final § 1610.1–2(b)(3).

Final paragraphs (a)(1) and (a)(2) of this section replace existing language that the BLM ''shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan.'' The evaluation of specific mitigation measures generally occurs during the implementation phase of a project or activity, not during an evaluation of a resource management plan. The effect of mitigation on the achievement of plan objectives is evaluated under paragraph (a)(1) of this section. ''Significant

changes in the plans of other Federal agencies, State or local governments, or Indian tribes,'' and ''new data of significance'' are encompassed by the phrase ''relevant new information'' and are evaluated under paragraph (a)(2) of this section. The BLM intends no change in practice or policy by the removal of this existing language.

The last sentence of proposed § 1610.6–4 is redesignated as final § 1610.6–4(b) and adopts the proposal to establish a new requirement that the BLM document the evaluation of the resource management plan in a report made available for public review. The BLM believes that sharing this information with the public will provide transparency during the implementation of a resource management plan. The final rule is revised to specify that this report shall be made available for public review on the BLM's Web site. This change is intended to provide clarity and transparency to the public on where to find the evaluation report.

Section 1610.6–5 Maintenance

The final rule adopts proposed § 1610.6–5 with only minor revisions. This section is based on existing § 1610.5–4. It explains the reasons for updating RMPs through plan maintenance and identifies the parameters for plan maintenance. Under the existing regulations and the final regulations, maintenance includes minor changes and updates to an RMP that do not change any fundamental aspects of the plan. Maintenance does not change a plan component except to correct typographical or mapping errors or to reflect minor changes in mapping or data.

The final rule adopts the proposal to delete ''and supporting components'' from the first sentence of this section in the existing regulations to avoid confusion. The existing regulations are unclear on what is meant by ''supporting components'' in this provision. Supporting information, such as a visual resources inventory or a model predicting wildfire propensity, can be updated at any point in time; such a change is not considered plan maintenance as it does not constitute a change to the resource management plan itself. Further, the BLM does not consider supporting information such as the planning assessment to be a component of the approved resource management plan, because it does not provide planning-level management direction. Rather, the planning assessment provides baseline information to inform the preparation of a resource management plan. That type of support information can be updated at any point in time, and such a change is not considered plan maintenance because it does not constitute a change to the resource management plan itself.

The final rule also adopts the proposal to replace ''shall be maintained'' in the first sentence of the existing regulations with ''may be maintained.'' The BLM intends to maintain its resource management plans to ensure that they are current and reflect existing resource conditions and land and resource uses to the fullest extent permitted by available funds and staffing, but those constraints could affect BLM's ability to fully achieve this goal.

The final rule also adopts the proposal to expand existing language stating that plans are maintained as necessary to ''reflect minor changes in data'' with language stating that the plans will be maintained as necessary ''to correct typographical or mapping errors or to reflect minor changes in mapping or data.'' The new language provides a more precise and accurate description of changes that are made using plan maintenance. This change does not represent a substantive change from existing regulations as ''mapping errors'' or ''changes in mapping'' are currently considered as a type of minor change in data, and typographical errors do not represent a substantive change to a resource management plan. These changes are intended to provide clarification and improved understanding of changes that may be made through plan maintenance.

The final rule adopts the proposal to remove existing language that limited maintenance ''to further refining or documenting a previously approved decision incorporated in the plan'' as well as language that indicated that ''maintenance must not result in the expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan.'' Instead, the final rule states that maintenance must not change a plan component of the approved resource management plan except to correct typographical or mapping errors or to reflect minor changes in data. This change makes the maintenance provisions consistent with other changes to the regulations. The plan components encompass the ''scope of resource uses or restrictions'' and the ''terms, conditions, and decisions'' of the approved resource management plan (see § 1610.1–2). Therefore there is no substantive change from current policy.

The final rule retains existing language which indicates that maintenance is not considered a plan amendment and therefore does not require the same public involvement, interagency coordination, or NEPA analysis as plan amendments. This language is still relevant and applicable because plan components (*i.e.,* the management-level direction of the approved plan) may not be changed through plan maintenance other than to correct typographical or mapping errors or reflect minor changes in mapping or data.

The final rule does not adopt the proposal to replace the words ''shall not'' with ''does not'' where the existing regulations state that maintenance ''shall not'' require the formal public involvement and interagency coordination process described in §§ 1610.2 and 1610.3.

Finally, the final rule removes the existing requirement that maintenance be documented in plans and supporting records. Instead, the final rule adopts a new requirement for the BLM to notify the public when changes are made to an approved resource management plan through plan maintenance and, through notice to the public at least 30 days prior to their implementation, document the proposed changes. We anticipate that changes will be posted on the BLM Web site and made available at BLM offices within the planning area, with direct notice sent to those individuals and groups that have requested such notice. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on how the BLM will make different types of plan maintenance available to the public.

Section 1610.6–6 Amendment

The final rule adopts proposed § 1610.6–6 with minor revisions. This section is based on § 1610.5–5 in the existing regulations and explains how the BLM amends its resource management plans. Changes update existing language to be consistent with other changes in this final rule.

Paragraph (a) of this section revises the undesignated introductory text in existing § 1610.5–5 to explain that a ''plan component'' may be changed through amendment, consistent with the proposed rule. This represents a change from the existing regulations, which provide that a ''resource management plan'' may be changed by amendment. The change is necessary for consistency with changes to § 1610.1, which describes plan components. As explained in the preamble for § 1610.1–2, plan components represent planning-level management direction and may only be changed through amendment or revision.

Paragraph (a) of this section adopts the proposal to specify that an amendment ''may'' be initiated when the BLM determines that monitoring and evaluation findings, new high quality information, including best available scientific information, new or revised policy, a proposed action, ''or other relevant changes in circumstances'' warrant a change to one or more plan components of the approved plan. The final rule replaces ''shall be initiated'' with ''may be initiated'' reflecting the fact that the BLM must ensure that the public is aware that monitoring and evaluation findings, new high quality information, including best available scientific information, new or revised policy, a proposed action, ''or other relevant changes in circumstances'' warrant a change to one or more plan components of the approved plan but may be limited by available budgets and competing workload priorities when making the determination to initiate a plan amendment. The BLM intends no change in practice or policy from this final change as the BLM currently is limited by available budgets and competing workload priorities when making the determination to initiate a plan amendment.

Paragraph (a) of this section adopts the proposal to clarify that an amendment must be made ''in conjunction'' with an EA or EIS. The final rule replaces the word ''through'' with ''in conjunction'' because the EA or EIS informs the amendment, but is not the mechanism through which the amendment is made. The final rule clarifies that the procedures for plan amendments include public involvement (see final § 1610.2), interagency coordination, tribal consultation, and consistency review (see final § 1610.3), and protest procedures (see final § 1610.6–2). The final rule is revised from the proposed rule to include ''tribal consultation'' for consistency with modifications made to final § 1610.3 and to clarify that the initiation of tribal consultation is required during a plan amendment. This does not represent a change in practice or policy, as the BLM currently must initiate tribal consultation during a plan amendment. The final rule is also revised to replace ''consistency'' with ''consistency review.'' This change is made to improve readability only and for consistency with final § 1610.3.

The final rule adopts the proposal to replace the existing requirement to evaluate the effect of the amendment on ''the plan'' with a requirement to evaluate the effect of the amendment on ''other plan components.'' This change is made for consistency with final § 1610.1–2 which describes plan components, and reflects the fact a plan amendment could potentially have an effect on other plan components that are not being considered for amendment and it is important that the BLM understand these potential effects before rendering a decision to ensure that plan amendments do not introduce inconsistencies between plan components in a resource management plan.

The final sentence of paragraph (a) of this section retains the existing provision that if the amendment under consideration is in response to a specific proposal, the requisite analysis for the proposal and the amendment may occur simultaneously. This is consistent with NEPA regulations encouraging Federal agencies to integrate NEPA with other planning processes (see 40 CFR 1500.2(c) and 1500.4(k)).

The final rule adopts proposed paragraph (b) with only minor revisions. Paragraph (b) describes the requirements for a plan amendment when an EA is prepared and does not disclose significant impacts. The final rule replaces existing references to the ''Field Manager'' with the ''responsible official'' or the ''BLM'' and replaces a reference to the ''State Director'' with the ''deciding official.'' These changes are consistent with new terms used throughout this new rule. This section also provides that, upon approval of a plan amendment, the BLM will issue a public notice of the action taken, and that an amendment may be implemented 30 days after such notice. There is no substantive change to this paragraph or the BLM's implementation of it.

The final rule adopts the proposal to remove the existing requirement in existing § 1610.5–5(b) that if a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of a resource management plan. Instead, in the relevant sections, the final rule identifies where EIS-level amendments must follow the same procedures as those required for preparing and approving a resource management plan.

The final rule also adopts the proposal to remove the existing requirement in existing § 1610.5–5(b) that consideration for an EIS-level amendment is limited to ''that portion of the plan being amended.'' This existing language contradicts the requirement in paragraph (a) that the ''effect of the amendment on other plan components must be evaluated.'' For example, if an amendment will preclude the BLM from achieving other goals and objectives of the approved RMP that are not explicitly addressed in the amendment, this is important information of which BLM and the public should be aware.

The final rule adopts proposed paragraph (c) of this section with only minor revisions. Paragraph (c) of this section is adapted from the existing provision of § 1610.5–5(b) that ''if several plans are being amended simultaneously, a single [EIS] may be prepared to cover all amendments.'' For improved readability, this provision is revised to state that ''if the BLM amends several resource management plans simultaneously, a single programmatic [EIS] or [EA] may be prepared to address all amendments.''

Section 1610.6–7 Revision

The final rule adopts proposed § 1610.6–7 with only minor revisions. Section 1610.6–7 is based on existing § 1610.5–6 in the existing regulations. Changes to this section are made to improve readability and explain more clearly when the BLM will prepare a plan revision.

In the first sentence, the clause ''a resource management plan shall be revised'' is replaced with ''the BLM may revise a resource management plan.'' The final rule uses the active voice to indicate that the BLM will be revising the plan. The final rule adopts the proposal to change the mandatory term ''shall'' to the discretionary term ''may.'' In both the existing regulations and this final rule, revisions occur ''as necessary.'' The change from ''shall'' to ''may'' reflects the fact that the BLM must consider many factors including available budgets, competing workload priorities, and development of new policy when making the determination to revise a resource management plan. The BLM currently must take these factors into account when determining when to revise a resource management plan, so there will be no change in practice or policy.

The existing rule states that ''monitoring and evaluation findings . . . new data, new or revised policy and changes in circumstances'' that affect an entire plan or major portions of a plan require a plan revision. The final rule clarifies that ''other relevant changes in circumstances'' may justify a plan revision. This does not represent a change in practice. For example, the need to provide habitat protection for a wide-ranging species that is considered for listing as threatened or endangered in an area could result in a plan revision if the BLM believed that a plan revision

was necessary to address adequately this concern and consider impacts at a regional-scale. This section maintains the existing requirement that revisions must comply with all of the requirements of the planning regulations for preparing and approving a resource management plan, with minor edits to improve readability.

Section 1610.6–8 Situations Where Action Can Be Taken Based on Another Agency's Planning Documents

The final rule adopts proposed § 1610.6–8 with revisions. This section is based on existing § 1610.5–7. The final rule replaces the ''Bureau of Land Management'' with the ''BLM'' and replaces a reference to the ''Field Manager'' with ''the BLM,'' as the action described applies more to the agency than any particular individual. In response to public comment, the final rule revises the existing introductory text in this section stating that the BLM ''may use the plans or land use analysis of other agencies'' to instead read that the BLM may ''rely on'' those plans or analysis. This revised text more accurately describes BLM practice and is consistent with the language of paragraph (a) of this section in the proposed and final rule. The final rule replaces ''there are situations of mixed ownership'' in the existing regulations with ''including mixed ownership'' in the first sentence for improved readability. No changes in practice or policy are intended by these changes.

The final rule revises the existing and proposed language in this section by replacing the reference to other agencies' plans or land use analyses to other agencies' ''planning documents.'' The new term better encompasses the types of documents referred to in the following paragraphs of this section, including the added provision for resource assessments (see paragraph (c) of this section).

The final rule revises paragraph (a) of this section, which lists those other agency plans that may be relied on as the basis for a BLM action to include a reference to tribal plans. The final rule replaces ''public participation'' with ''public involvement,'' consistent with FLPMA and other changes throughout this rule.

Final §§ 1610.6–8(a) and (b) are revised from the proposed rule to clarify that for the BLM to rely on or adopt another agency's plan, that plan must be consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations. For example, the other agency's plan must comply with NEPA. These changes are consistent with current practice and policy. For consistency with other revisions made to the proposed rule (for example, see § 1610.3–3(a)), the final rule clarifies that the ''purposes, policies and programs'' to which paragraphs (a) and (b) refer are those that implement Federal laws and regulations.

Final § 1610.6–8 (b) removes the existing phrase ''to comply with law and policy applicable to public lands'' because that language is no longer necessary with the added text.

Public comments suggested that the BLM should have the discretion to rely on other agencies' resource assessments. In response to public comment, the final rule includes a new paragraph (c) in this section which provides that another agency's resource assessment may be relied on if it is comprehensive, meaning that it is consistent with the nature, scope, and scale of the issues of concern relevant to the planning area, and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment, including the opportunity for public involvement. If the agency's resource assessment process did not provide public involvement, the BLM could choose to provide such opportunities in order to rely on the other agencies resource assessment. For example, the BLM could rely on an assessment developed by the United States Forest Service during the development of a land and resource management plan, which provides opportunities for public involvement.

Paragraph 1610.8–6(c) of the proposed rule is redesignated as paragraph (d) in the final rule. The final rule removes the final sentence of § 1610.5–7 in the existing regulations, which provides that ''[t]he decision to approve the land use analysis and to lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.'' This language is unnecessary in the planning regulations. The final rule is revised to replace ''public participation'' with ''public involvement'' for consistency with changes made throughout this part.

Finally, the reference to § 1610.5–2 is updated to reflect other changes to this rule. No change in meaning is intended by updating this reference.

Section 1610.7 Management Decision Review by Congress

The final rule adopts proposed § 1610.7 with only minor revisions.

This section is based on existing § 1610.6 with minor revisions. The final rule replaces the ''Federal Land Policy and Management Act'' with ''FLPMA,'' and the ''Bureau of Land Management'' with the ''BLM.'' In the second sentence of this section, the final rule replaces ''[t]his report shall not be required'' to ''[t]his report is not required'' for improved readability and ease of understanding. The final rule clarifies that this report is not required prior to approval of a RMP which, if fully or partially implemented, will result in elimination ''of use(s).'' No change in meaning is intended with these changes.

Section 1610.8 Designation of Areas

The final rule adopts proposed § 1610.8 with only minor revisions.

Section 1610.8–1 Designation of Areas Unsuitable for Surface Mining

The final rule adopts proposed § 1610.8–1 without revision. This section is based on existing § 1610.7–1. The final rule replaces references to the ''Field Manager'' and the ''Bureau of Land Management'' with the ''BLM'' in this section. The Field Manager commitments described in this section are those of the BLM, not any one individual.

Section 1610.8–2 Designation and Protection of Areas of Critical Environmental Concern

The final rule adopts proposed § 1610.8–2 with revisions. This section is based on existing § 1610.7–2. In response to public comment, the heading for this section is revised to include designation ''and protection'' of ACECs. This new language is consistent with the statutory requirement to ''give priority to the designation and protection of areas of critical environmental concern'' (see 43 U.S.C. 1712(c)(3)) and provides improved clarity and understanding that the BLM gives priority to the designation and protection of ACECs as required by FLPMA through the procedures outlined in this section.

The final rule adopts proposed paragraphs (a), (a)(1), and (a)(2). Paragraph (a) of this section contains the undesignated introductory language in existing § 1610.7–2. The final rule replaces ''areas of critical environmental concern'' with the abbreviation ''ACEC'' for improved readability. The existing language stating that potential ACECs are identified and considered throughout the resource management planning process is removed. Instead the final rule states that ''Areas having potential for ACEC designation and protection management will be

identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan.'' This change reflects the fact that FLPMA directs the BLM to identify potential ACECs through the inventory of public lands (see section 201(a) of FLPMA) and to prioritize their consideration for designation through land use planning (see section 202(c)(3) of FLPMA). When the BLM prepares a resource management plan or an EIS-level amendment, potential ACECs will be identified during the planning assessment stage (see § 1610.4(b)(1)). Potential ACECs may also be identified when the BLM conducts inventories at times not associated with the preparation or amendment of a resource management plan. The identification of potential ACECs will be given priority consistent with FLPMA and initially identified during the planning assessment, a new step in the planning process.

Final §§ 1610.8–2(a)(1) and (a)(2) include language from existing 1610.7–2(a) that describes the criteria for identifying a potential ACEC.

The final rule maintains the existing descriptions of the ''relevance'' and ''importance'' criteria in paragraphs (a)(1) and (a)(2) of this section, except that ''shall'' is replaced with ''must'' for improved readability and the phrase ''more than local significance'' is removed from the description of importance. This phrase is vague and unnecessary in the regulations. There are many existing examples where an area of local significance has been determined to meet the ''importance'' criteria. This change is consistent with FLPMA (43 U.S.C. 1702(a)) and improves the understanding that the importance criteria is based on the degree of significance (*i.e.,* substantial significance and values); a local value, resource, system, process, or natural hazard could have ''substantial'' significance.

Paragraph (b) of this section addresses the designation of ACECs and provides that the process for considering whether potential ACECs should be designated as ACECs is during the preparation or amendment of a resource management plan. This replaces language in existing § 1610.7–2 stating that ACECs are ''considered throughout the resource management planning process.'' In response to public comment, the final rule is revised to include the phrase ''consistent with the priority established by FLPMA.'' This new language references the statutory requirement to ''give priority to the designation and protection of areas of critical environmental concern'' (see 43 U.S.C. 1712(c)(3)). The language references this statutory requirement for improved clarity and understanding that the BLM gives priority to the designation and protection of ACECs as required by FLPMA through the procedures outlined in this section.

Paragraph (b) of this section also contains the provision that ''[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands,'' which is moved from the definition of ''Areas of Critical Environmental Concern or ACEC'' in existing § 1601.0–5(a) to this section. This provision belongs with the ACEC provisions, and this placement avoids including substantive regulatory provisions in the definitions. Changes between the proposed and final rule replace the phrase ''in of itself'' with ''of itself'' for grammatical clarity and to reflect the phrasing used in FLPMA (43 U.S.C. 1711(a)).

The final rule includes new language at the end of paragraph (b) providing that ''ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.'' That language is consistent with FLPMA (see section 103(a)) and will provide useful information in regard to designating ACECs. The BLM intends no change in practice or policy from adding this language; rather, the planning regulations reflect existing statutory direction.

The proposed rule would have referred to ''potential'' ACECs at the end of paragraph (b), however public comments noted that FLPMA defines ACECs ''as areas within the public lands where special management is required . . .'' but contains no language regarding ''potential'' ACECs or their management. In response to public comments, the final rule is revised to remove the word ''potential'' from this sentence because FLPMA does not require ''special management attention'' for potential ACECs; rather, a potential ACEC which requires special management attention may be formally designated as an ACEC.

The final rule splits existing § 1610.7–2(b) into two paragraphs (final §§ 1610.8–2(b)(1) and (2)) to distinguish more clearly between the BLM's notice of potential ACECs and the formal designation of ACECs in the approved plan.

Paragraph 1610.8–2(b)(1) maintains the existing requirement, with clarifying edits, that upon release of a draft resource management plan or plan amendment involving a potential ACEC, the BLM will notify the public. The proposed rule would have eliminated the requirement from the existing regulations (see existing § 1610.7–2(b)) that the BLM publish notice and provide a 60-day public comment period on potential ACEC designations. Several public comments expressed that notification and public comment on potential ACECs is essential and these existing provisions should be retained in the final rule. In response to comments, the final rule retains the existing requirement that the BLM publish notice in the **Federal Register** and replaces the existing requirement for a 60-day public comment period with a requirement to ''request written comments.''

The final rule further specifies that notice and comment on potential ACECs may be integrated with notice and comment on the draft RMP or plan amendment. The planning process provides an opportunity to consider impacts to potential ACECs through the development of a range of alternatives and to assess effectively whether special management attention is needed. The planning process also provides substantial opportunity for public involvement. We believe that consistency between ACEC requirements and the other steps of the planning process will be less confusing and will more effectively integrate ACEC consideration into the planning process.

The final rule does not specify any particular length for the public comment period in this section, because it is not necessary. The BLM is required to provide a minimum of 30 days when requesting public comments (see § 1610.2–2(a)). The BLM intends that this comment period will generally be integrated with the public comment period on the draft resources management plan or plan amendment. The length of these public comment periods are provided appropriate to the level of BLM action under final § 1610.2–2.

The BLM will notify the public of each potential ACEC by posting a notice on the BLM Web site and at the BLM office where the plan is being prepared (see § 1610.2–1(c)), and through written or email correspondence to those individuals or groups who have requested to receive updates throughout the planning process (see § 1610.2–1(d)). For the preparation of a RMP, the BLM will provide a 100-day comment period;

for EIS-level amendments, the BLM will provide a 60-day comment period; and for EA-level amendments when an ACEC is involved, the BLM will provide a 30-day comment period (see § 1610.2–2).

Paragraph 1610.8–2(b)(1) also maintains the existing requirement that any draft RMP or plan amendment involving potential ACECs include a list of each potential ACEC and any special management attention which will follow a formal designation. For clarity and readability, the final rule replaces ''Upon release of a'' with ''Any.'' This does not change existing practice or policy. The final rule also replaces the term ''proposed ACEC'' in the existing rule with ''potential ACEC'' in order to avoid confusion with the proposed resource management plan. The BLM provides notice of potential ACECs upon release of a draft resource management plan or plan amendment, rather than upon release of a proposed resource management plan or plan amendment. The BLM intends no change in practice or policy from this word change. The final rule also replaces ''resource use limitations'' with ''special management attention.'' That language is based on the definition of an ACEC provided in FLPMA (43 U.S.C. 1702 (a)) and reflects the fact that special management attention is not restricted to resource use limitations. For example, special management attention might include objectives related to plant species composition to maintain habitat for a wildlife resource.

Paragraph (b)(2) of this section maintains the existing provision with edits clarifying that the approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The final rule removes the phrase ''plan revision'' as this is included in the definition of a resource management plan (see § 1601.0–5). This paragraph also replaces the existing requirement for the approved plan to include ''general management practices and uses, including mitigation measures'' with a new requirement to include ''any special management attention'' identified to protect the designated ACEC. We believe that the new requirement for plan objectives to be measurable (see § 1610.1–2(a)(2)) provides a more effective method to apply special management attention because it allows the BLM to track progress toward the achievement of the objective while incorporating new science and information when implementing specific management measures. This change also reflects the definition of an ACEC provided in FLPMA (section 103(a)). Under the final rule, the BLM will provide ''special management attention,'' as required by FLPMA, through the development of plan components. For example, special management attention could include goals, measurable objectives, mitigation standards (as part of a measurable objective), or resource use determinations, among others. In response to public comment, the final rule includes the example ''such as resource use determinations'' (see final § 1610.1–2(b)(2)) for improved clarity.

Section 1610.9 Transition Period

The final rule adopts proposed § 1610.9 with revisions. This section contains the provisions of existing § 1610.8, amended as follows. The existing regulations address the transition from management framework plans, the land use plans the BLM prepared beginning in 1969 under authorities predating FLPMA, to resource management plans, which the BLM has prepared and approved under FLPMA and the planning regulations first adopted in 1979. The final rule revises existing § 1610.8(a) and (b) to refer to ''public involvement'' instead of ''public participation'' and to the ''responsible official'' instead of the ''Field Manager,'' consistent with changes made throughout this rule.

In the proposed rule, we would have revised paragraph (a)(1) by specifying that management framework plans may be the basis for considering a proposed action if the management framework plan is in compliance with the principle of multiple use and sustained yield ''or other applicable law.'' In the final rule, we employ the phrase ''unless otherwise specified by law'' for consistency with changes made to other sections (for example, see § 1610.0–1). We believe this language better fulfills the purpose of recognizing that in some situations the BLM must be in compliance with other legal authorities. For instance, BLM management of national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must comply with the terms in the Proclamation establishing the specific national monument.

The final rule removes existing § 1610.8(a)(2), because it is no longer necessary. The BLM will rely instead on § 1610.9(a)(2) when considering proposed actions under a management framework plan.

Final § 1610.9(b)(1) and (b)(2) are adopted from existing § 1610.8(b)(1) and (b)(2) with only minor revisions for improved readability or to fix grammatical or reference mistakes.

New paragraphs 1610.9(c) and (d) address the transition from resource management plans approved under the existing regulations, which first became effective on September 6, 1979 (44 FR 46386) and which were updated with revisions that became effective on July 5, 1983 (48 FR 20364) and April 22, 2005 (55 FR 14561), to resource management plans that will be prepared, revised, or amended under the final rule.

In considering the transition provisions, it is important to remember that this final rule changes the procedures the BLM uses to prepare, revise, or amend RMPs and provides more detailed guidance in areas where the current regulations are vague, unclear, or silent. This final rule does not change the nature of a RMP itself (*i.e.,* a document developed to guide future management activities on the public lands). Additionally, although the final rule includes new terms for the contents of a plan (*e.g.,* plan components), the contents of a plan promulgated under this final rule will not differ substantially from the contents of existing plans. For instance, plan objectives developed under this final rule will likely be more specific and measurable than many plan objectives developed under the existing regulations. Nonetheless, plan objectives developed under the new rule and the previous regulations will guide the BLM's management of the public lands across varied programs.

Accordingly, § 1610.9(c)(1) discusses how the BLM will evaluate whether a proposed action, such as an oil and gas lease sale, is in conformance with a resource management plan once these regulations become effective. The BLM will use an existing resource management plan (*i.e.,* one approved by the BLM before these regulations become effective) until it is superseded by a resource management plan or amended by a plan amendment prepared under these regulations when they are final. In such circumstances where the plan has not been developed or amended under these regulations, the proposed action must either be specifically provided for in the plan or clearly consistent with the terms, conditions, and decisions of the approved plan. RMPs prepared under the existing regulations do not identify plan components, thus an evaluation for whether a proposed action is in conformance with the plan must use the terminology that was in place when the plan was approved.

Paragraph 1610.9(c)(2) addresses how to evaluate whether an action is in conformance with a resource

management plan issued under existing regulations after the resource management plan has been amended under this final rule. In such circumstances, the amended portions of the plan will use new terminology and identify plan components, whereas the remainder of the plan not amended will not use new terminology. A proposed action must therefore be consistent with the plan components (proposed new terminology) of the provisions of the resource management plan amended under the final rule and the terms, conditions, and decisions of the provisions of the resource management plan not amended under the final rule (existing terminology). In response to public comment, the final rule is revised to specify that the proposed action must be ''clearly'' consistent with the plan components. This revision brings this provision into line with the definition of ''conformity or conformance'' in § 1601.0–5.

The BLM received comments stating that proposed § 1610.9(c)(2) was confusing. In response to these comments, the final rule is revised to clarify that future proposed action must be clearly consistent with the provisions of the resource management plan amended under the final rule, which will have plan components, as well as the provisions of the resource management plan not amended under the final rule, which will still have terms, conditions, and decisions, consistent with the existing regulations.

Paragraph 1610.9(d) addresses resource management plans that are currently being prepared, revised, or amended when this final rule is published. If the preparation, revision, or amendment of a resource management plan was or is formally initiated by publication of a NOI in the **Federal Register** before these regulations become effective (on January 11, 2017), the BLM may complete the RMP or plan amendment under the planning regulations promulgated in 1979 (44 FR 46386) and amended in 1983 (48 FR 20364) and 2005 (55 FR 14561). This approach allows BLM offices that have initiated planning to continue with their efforts without the need to re-start or re-do steps in the planning process. This will avoid duplicative efforts, and it respects the time that the BLM, other agencies, stakeholders, and members of the public have invested in planning that will be in-progress when these regulations become effective. It also provides the BLM flexibility to incorporate provisions of the final rule into a planning process that is underway when the new regulations are final.

III. Response to Public Comments

The BLM received 3,354 comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (*http://www.regulations.gov*). The BLM has reviewed all public comments, and has made changes, as appropriate, to the final rule based on those comments. Those changes are noted in the section-by-section discussion.

The following is a summary of significant issues raised in comments the BLM received on the proposed rule and responses to these comments. The comments highlighted in the following paragraphs fell into several categories: Comments related to sections of the proposed rule; comments related to the goals of the Planning 2.0 initiative; and comments on the rulemaking process.

A comprehensive account of public comments and detailed responses to these comments is available to the public on the BLM Web site (*www.blm.gov/plan2*) and is included as a supporting document in the docket for this rulemaking on *regulations.gov.*

Objective of Resource Management Planning

Several comments raised concern that the proposed removal of the existing phrase ''maximize resource values for the public'' in § 1601.0–2 represents a change in the BLM's management of the public lands and is an effort to bias the planning process against resource extraction. Some comments similarly raised concern that proposed new language in § 1601.0–2 represents a shift in public policy by departing from FLPMA and redefining the concept of multiple use, or is weaker than the statutory language that mandates multiple-use.

The final rule does not retain existing language to ''maximize resource values'' and adopts proposed new language regarding the manner by which the public lands are to be managed (see § 1601.0–2). These changes do not reflect a departure from FLPMA and multiple-use management, nor do they represent a shift in public policy or an effort to bias the planning process.

The final rule adopts the proposal to remove the phrase ''maximize resource values'' to remove vague language and for consistency with FLPMA. FLPMA defines multiple use, in part, as ''the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people'' as well as ''harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output'' (43 U.S.C. 1702(c)). The existing rule does not define the meaning of the phrase ''maximize resource values'' or describe how it is to be achieved in accordance with multiple use and sustained yield, as defined in FLPMA. FLPMA's language provides the best expression of how the BLM should consider resource values in the planning process in order to manage on the basis of multiple use and sustained yield, unless otherwise specified by law. In response to public comment, the final rule is revised to include language directly from FLPMA (43 U.S.C. 1701(a)(7)) to ''manage on the basis of multiple use and sustained yield'' to provide clarity on the BLM's mandate.

The final rule also adopts the proposed new language describing the manner by which the public lands are to be managed (see § 1601.0–2). This language is from FLPMA (43 U.S.C. 1701(a)(8) and (a)(12)). Resource management plans describe how the public lands will be managed within a geographic area; therefore it is appropriate that an objective of resource management planning is to develop management direction that is consistent with statutory direction describing the manner by which public lands are to be managed. Several comments noted that the language added to this section in the proposed rule (43 U.S.C. 1701(a)(12)) omitted the reference to the Mining and Minerals Policy Act. Other comments requested this section identify additional resources or resource uses and raised concern that the proposed language would prioritize some resource values over others. The final rule does not include a reference to the Mining and Minerals Policy Act or identify additional resources or resource uses, as suggested by the comments. The objective section provides the objective for resource management planning on BLM-managed lands. The final rule includes language from FLPMA in § 1601.0–2 to provide context. In revising § 1601.0–2, we endeavored to find a balance between including those statutory provisions that provide useful context, while also maintaining concise regulations that are easy to read and understand. It is not necessary to list the Mining and Minerals Policy Act or other applicable laws in the planning regulations as the BLM must comply with these laws even if they are not

referenced in these regulations. Neither is it necessary to list all resources under BLM management in the objective section. The list of resources provided at § 1601.0–2 is not intended to be exclusive and does not preclude consideration of other resources, nor does it prioritize any single resource over other resources, including those not identified in § 1601.0–2. To the contrary, FLPMA and final § 1601.0–2 require that management be on the basis of multiple use and sustained yield; the concept of multiple use encompasses all resource values and uses applicable to the public lands. In response to public comments, the final rule is revised to include language that public lands are to be managed in a manner that recognizes that Nation's need for ''renewable and non-renewable resources'' to reflect the fact that all relevant resources are considered during resource management planning.

Responsibilities and Determination of Planning Areas

The existing planning regulations establish the BLM field office as the default boundary for resource management plans and delegate the responsibility for preparing resource management plans to BLM Field Managers and approval of plans to BLM State Directors. Under the BLM's interpretation and implementation of the existing regulations, these responsibilities can be carried out by an official at a higher level in the BLM and the BLM may select a different boundary.

The proposed planning rule would have removed the default planning area boundary and replaced references to State Directors with ''deciding official'' and Field Manager with ''responsible official.'' Many public comments supported these changes, but some opposed the changes for various reasons, including the concern that the public would not know who the default deciding official is if it is not addressed in the regulations. In response to these comments, the final rule adopts the proposed changes to ''responsible official'' and ''deciding official,'' but provides that when resource management plans do not cross state lines, the default deciding official is the BLM State Director. If the resource management plan or plan amendment crosses State boundaries, the BLM Director will determine the deciding official (§ 1601.0–4(a)). For reasons explained in the section-by-section analysis of § 1601.0–4, this is not a change from existing BLM practice or policy, and in fact clarifies the BLM's existing process, and provides the BLM flexibility to determine the appropriate deciding officials for planning across State boundaries or for resource management plans or plan amendments of national significance, while maintaining the State Director's role in the process.

The proposed planning rule also would have removed the default planning area boundary and provided that the BLM Director would determine the planning area for all resource management plans. The BLM received public comments in opposition to and in support of this change. Comments expressed concerns that the BLM Director was too far removed from local concerns and management issues, and that ''landscape-scale'' planning areas would not respond to local concerns. Other comments supported this change, stating that the BLM should further emphasize that planning area boundaries should be more responsive to ecological and social conditions, rather than traditional field office and district boundaries.

In response to comments, the final rule is revised to provide that where a resource management plan or plan amendment is wholly within a single State's boundaries, the deciding official, by default the BLM State Director, determines the planning area. Where the resource management plan or plan amendment does cross State boundaries, the BLM believes that it is appropriate for the BLM Director to determine the planning area boundary and this requirement is adopted in the final rule. In some situations the BLM's State, district, or field office boundaries may be the most appropriate planning area boundary. The BLM intends that this determination will be made in consultation with the relevant BLM State Directors, District Managers, and Field Managers.

The final rule does not prescribe ''landscape-scale'' planning area as suggested by public comments. The final rule does not prescribe any specific planning area boundary or geographic scale for such a boundary. Rather, the final rule provides flexibility to determine the appropriate planning area boundary based on relevant landscapes and management concerns. This flexibility does not represent a substantive change from the existing regulations, as the BLM currently may determine any planning area boundary. Under the current planning rule, planning areas have been both smaller and larger than field offices, including for example, the Greater Sage-Grouse Resource Management Plan Amendments (2015), West Eugene Wetlands Resource Management Plan (2015), and Resource Management Plans for Western Oregon (2016). Although not a substantive change in the regulations, the BLM believes that the final rule provides increased transparency to the public that the BLM intends to develop future planning area boundaries based on the relevant management concerns rather than historical administrative boundaries.

Several public comments suggested that the proposed language on the determination of a planning area did not provide adequate opportunity for public involvement or coordination with governmental entities. In response to these comments, the final rule is revised to include considerations for determining a preliminary planning area and an opportunity for public review of the preliminary planning area. A new provision in final § 1610.4(a) requires the identification of a preliminary planning area during the planning assessment. The preliminary planning area will be made available for public review prior to the publication of the NOI in the **Federal Register**. The final rule also retains the existing requirement that the BLM seek the input of Governor(s) on the definition of planning areas (see final § 1610.3–2(c)(1)).

Public comments also suggested that the proposed language on the determination of a planning area did not adequately describe how the BLM would make planning area determinations. In response to public comments, the final rule is revised to describe considerations for determining the preliminary planning area. Under the final rule, the BLM will consider scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values and management concerns identified through monitoring and evaluation, relevant landscapes based on these management concerns, the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, and other relevant information, as appropriate. These provisions support the goal of applying landscape-scale management approaches by ensuring that the BLM considers relevant landscapes when developing a preliminary planning area. For more information on the preliminary planning area, please see the discussion for § 1610.4(a) in this preamble.

High Quality Information

The final rule adopts proposed requirements for the BLM to ''use high quality information to inform the preparation, amendment, and

maintenance of resource management plans'' (§ 1610.1–1(c)) and requires the responsible official to ''evaluate the data and information gathered . . . to ensure the use of high quality information in the planning assessment'' (§ 1610.4(c)). The rule also defines the term ''high quality information'' (§ 1601.0–5).

While several comments supported the proposed definition of high quality information, many comments asserted that the proposed definition is vague or suggested specific edits to the definition. Some comments objected to specific elements of the definition, such as the phrase ''useful to its intended users.'' Other comments suggested that this new standard may allow biased, subjective, unsubstantiated, or questionable scientific data or information to inform planning. The final rule is not revised in response to these comments. The final rule adopts the definition of ''high quality information'' without revisions in § 1601.0–5 of the final rule. The definition for high quality information is not vague and is consistent with the Information Quality Act (or Data Quality Act) and the related ''OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication,'' (OMB Guidelines) (67 FR 8452). The definition specifies high quality information is ''accurate, reliable, and unbiased'' and includes the ''best available scientific information'' and therefore does not allow biased, subjective, unsubstantiated, or questionable scientific data or information to inform planning. The final rule includes ''useful to its intended users'' in the definition of high quality information for consistency with the OMB Guidelines. In the guidelines, OMB defines ''quality'' as the ''encompassing term, of which 'utility,' 'objectivity,' and 'integrity' are the constituents.'' The guidelines further define ''utility'' as referring to the ''usefulness of the information to its intended users, including the public.'' This standard allows the BLM to focus on relevant information during resource management planning.

Several comments expressed concern that the high quality information standard is a relaxing of current data evaluation standards. The final rule is not revised in response to these comments. Although this standard is new to the planning rule, the requirement to use ''high quality information'' is consistent with the BLM's current standards for NEPA analyses as set forth by Federal law and regulations.

The BLM will continue to comply with data standards set forth by Federal law and regulations and other relevant policy, such as the CEQ's NEPA regulations regarding ''high quality'' information and ''[a]ccurate scientific analysis'' (40 CFR 1500.1(b)). Where more specific Federal standards apply to certain types of information, the BLM will conform with those Federal standards as well. For more information on the use of high quality information and consistency with other Federal information standards, see the discussion for § 1610.1–1(c) in this preamble.

Several comments asserted that there is no reason for the BLM to create a new standard for data quality because the BLM already must adhere to existing data standards and the addition of another standard is confusing. The final rule is not revised in response to these comments. The BLM believes that a requirement to use ''high quality information'' in the planning regulations, as well as a definition for this term, provides clarity on the relationship of existing standards for information quality to resource management planning. Further, this standard affirms the BLM's commitment to science-based decision-making.

Several comments expressed concern about the BLM making the determination as to whether or not data or information meets the high quality standard, and suggested that third-party experts, governmental entities, or the public should be involved in this determination. Some comments suggested that the public should have an opportunity to appeal the evaluation of the data they submit. The final rule is not revised in response to these comments. It is appropriate for the BLM to make the final determination regarding information quality because the BLM is responsible for preparing resource management plans and for the management of the public lands, and the supporting environmental review under NEPA. The BLM recognizes the importance of being transparent and providing the public an opportunity for input on the information used during the planning process. The final rule provides such transparency and opportunity for input. The final rule does not provide opportunities for the public to appeal the evaluation of the data they submit. The public may, however, provide comments regarding information quality on the draft resource management plan and draft EIS, and may also submit a protest on the proposed resource management plan should they believe a plan component is in violation of Federal laws or regulations, or the purposes, policies, and programs implementing such laws and regulations, due to information quality. The final rule also does not establish a requirement for a third party review of information quality. Such an approach would not be practical given the magnitude of information used during the preparation of a resource management plan. The BLM will evaluate the data and information it receives to ensure the use of high quality information. Statutory and regulatory requirements, policies, and strategies relating to information will guide responsible officials as they evaluate whether information is high quality information. This process may vary depending on the discipline, and therefore it is more appropriate to address through guidance.

Many comments concerned the statement in the preamble to the proposed rule that ''Traditional Ecological Knowledge'' (TEK) may be a type of ''high quality information.'' A few comments suggested that the intent and definition of the term TEK is not clear. Several comments opposed the use of TEK, some comments supported the use of TEK, and others asked for specific clarifications to the definition of TEK. The final rule is not revised in response to these comments. The proposed and final regulations do not include the term TEK. The preamble discussion of TEK was provided as an example to help illustrate the concept of high quality information; this discussion does not represent a regulatory provision regarding TEK. Under the final rule, TEK may be considered a type of high quality information so long as it is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods. Through the disciplines of anthropology, as well as other social science disciplines, accepted scientific methodologies have been established for documenting ethnographic information and other types of social information. Such methodologies, and the information collected through these methodologies, are widely accepted by the scientific community and appropriate for consideration during resource management planning. The BLM will apply the same standards to TEK as it applies to other types of information.

Several comments expressed concern over the use of citizen science during resource management planning. Some comments asserted that citizen science falls short of a ''best available science''

threshold. The final rule is not revised in response to these comments. The final rule defines high quality information as ''any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users'' (see § 1610.0–5). This standard applies to all information used in resource management planning, including citizen science. It does not preclude the use of citizen science, so long as the information meets this standard. On September 30, 2015, the Director of the Office of Science and Technology Policy issued a memorandum titled ''Addressing Societal and Scientific Challenges through Citizen Science and Crowdsourcing.'' This memo outlined principles for effective use of citizen science by Federal agencies. In addition to standards for high quality information, the BLM will apply the principles described in this memorandum, including the concept of ''fitness for use'' when using citizen science to inform the preparation or amendment of a resource management plan.

Plan Components

Several comments stated that the proposed rule fails to identify why the existing planning framework is inadequate and why a change is warranted. Comments specifically identified that the removal of existing land use plan elements in the existing regulations and their replacement with plan components and implementation strategies has the potential to dramatically increase agency discretion while disenfranchising the public, State and local governments, and stakeholders from involvement in important aspects of planning (*i.e.,* the development of implementation strategies). Other comments supported the proposed framework for plan components and implementation strategies. In response to public comments, the final rule adopts the concept of plan components (§ 1610.1–2), but does not adopt the concept of implementation strategies (proposed § 1610.1–3). This preamble provides a rationale for the need to revise the planning rule in the ''Background'' discussion. The preamble discussion of § 1610.1–2 also provides a detailed rationale for the removal of existing planning elements and the addition of each plan component. The final rule does not disenfranchise the public and stakeholders from involvement, nor does it dramatically increase or decrease the BLM's discretion, as suggested by public comments. Rather, the final rule provides for extensive public involvement in the development of plan components, as these represent planning level management direction; the BLM will also provide for public involvement related to future implementation decisions, consistent with NEPA requirements.

A few comments asserted that the definition of ''goal'' provided at § 1610.1–2(a)(1), which includes ''resource, environmental, ecological, social, or economic characteristics,'' exceeds the BLM's management authority under FLPMA because the BLM's authority is limited to goals related to renewable resources on BLM lands. The final rule is not revised in response to these comments. The definition of ''goal'' is consistent with FLPMA. FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA (43 U.S.C. 1702(c)), means, in part, the management of the public lands so they are utilized in the combination that best meet the needs of the American people; multiple use takes into account the long term needs of future generations for renewable and non-renewable resources. The ''needs of the American people,'' including future generations, are reflected in the goals of a resource management plan. These needs may address a broad range of desired outcomes related to resource, environmental, ecological, social, or economic characteristics.

A comment requested the BLM add ''cultural'' to the list ''resource, environmental, ecological, social, or economic characteristics'' at §§ 1610.1–2(a)(1) and 1610.1–2(a)(2)(ii). The final rule is not revised in response to this comment. This change is not necessary because cultural characteristics are encompassed by the term ''resource characteristics,'' and thus must be considered.

A few comments raised concerns regarding how the BLM plans to meet objectives as defined in the proposed rule at § 1610.1–2(a)(2). Comments also asserted that including a requirement for objectives to have ''established time-frames'' (§ 1610.1–2(a)(2)) would expose the BLM to litigation challenging its failure to meet these self-imposed timelines. The final rule is not revised in response to these comments. Objectives are intended to guide progress towards the achievement of one or more goals. The inclusion of time-frames in a resource management plan is discretionary. In some situations the inclusion of time-frames may be appropriate. In other situations, time-frames may not be relevant or appropriate. The forthcoming revision of the Land Use Planning Handbook will include additional guidance on setting objectives. The BLM cannot guarantee achievement of the objectives, particularly with regard to factors that are outside of the agency's control, such as future available budgets and environmental factors such as drought or wildfires, but the BLM must make resource management decisions that are consistent with the achievement of the objectives (see the definition for ''conformance'' at § 1601.0–5). The resource management plan objectives describe the desired resource conditions that the agency will aim to achieve through future implementation decisions.

Several comments stated support for the identification of attributes and indicators as an important way to relate current conditions with habitat standards and adaptive management. Comments recommend revising the final rule to require and define these attributes and indicators. In response to public comment, the final rule establishes an additional requirement (final § 1610.1–2(a)(2)(iii)) that, as appropriate, objectives should identify indicators for evaluating progress towards achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives should be the same as the indicators described in the monitoring and evaluation standards. This approach will ensure that the BLM is able to determine if the plan objective is being met through monitoring and evaluation. The final rule does not include specific language regarding ''attributes.'' The BLM believes that this concept is more appropriately described through guidance, such as the forthcoming revision of the Land Use Planning Handbook.

The final rule adopts proposed language that objectives should identify standards to mitigate undesirable impacts to resource conditions (§ 1610.1–2(a)(2)(i)). Several comments raised concerns regarding these mitigation standards and questioned the BLM's authority to require mitigation. Some comments supported the proposed mitigation standards and suggested they should always be required and not ''to the extent practical.'' Other comments recommended the BLM incorporate language in the final rule to state that

resource management plans would be required to contain applicable mitigation strategies or identify mitigation sites.

The final rule is not revised in response to these comments. The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not develop comprehensive policy related to mitigation, nor does it explicitly require mitigation. Rather, it provides a method to establish standards for resource conditions that will help guide future mitigation consistent with the plan objectives. Mitigation standards will be developed as appropriate. Mitigation standards do not prescribe specific mitigation practices. Although the final rule does not explicitly require mitigation, it is important to note that the BLM has the authority under FLPMA to require mitigation for land use authorizations or permits. Specific mitigation measures are applied when a land use authorization is granted, based on the environmental review of that authorization and the statutes and regulations under which that authorization is granted.

Several comments stated support for the inclusion of planning designations as plan components. Some comments requested the final rule identify specific types of planning designations. Some comments raised concerns about the lack of a requirement to explicitly connect priorities identified through designations with resource use determinations or other steps to ensure that values prioritized through designations are in fact protected. Some comments opposed the inclusion of planning designations. One comment stated that planning designations demonstrate that the proposed planning rule attempts a fundamental policy shift away from traditional public land uses identified in FLPMA.

The final rule adopts ''designations'' as a plan component (§ 1610.1–2(b)(1)). The final rule identifies ACECs as an example of a planning designation; however, this is not intended to be an exhaustive list, rather it provides an example to illustrate the concept. The final rule is not revised to list other examples of planning designations as it is not necessary or practical to list all planning designations. In response to public comments, the final rule adds language to § 1610.1–2(b)(1)(i) stating that ''resource use determinations shall be consistent with or support the management priorities identified through designations.'' This language is intended to connect priorities identified through designations with resource use determinations. The concept of planning designations is consistent with FLPMA, as they are a tool to identify management for areas with specific resources or values, and does not represent a policy shift away from traditional public land uses identified in FLPMA. In response to public comments, § 1610.1–2(b)(1) is revised to clarify that designations may identify priority ''resource uses'' in addition to resource values.

Several comments raised concerns that plan components, such as resource use determinations, would remove lands from operation of the Mining Law of 1872, noting that such an action can only be accomplished through withdrawals taken under section 204 of the FLPMA. Several comments expressed concern that the proposed rule would allow for the development of plan components that would conflict with or restrain the exercise of valid existing rights.

The BLM must comply with all applicable Federal laws in developing plan components. The BLM agrees that FLPMA prohibits it from removing lands from the operation of the Mining Law of 1872 in the land use planning process (43 U.S.C. 1712(e)(3)) and the rule does not and could not provide otherwise. The BLM does, however, have the authority through land use planning to identify lands as recommended for withdrawal from operation of the Mining Law of 1872 where such recommendation is determined appropriate to meet plan goals and objectives to protect resource values. In response to public comments, final § 1610.1–2(b)(2) is revised to clarify that resource use determinations are subject to valid existing rights. FLPMA requires that all plan components and other types of management decisions be subject to valid existing rights. Although the final rule cannot change this requirement, the BLM decided to include this language specifically in § 1610.1–2(b)(2) because resource use determinations describe exclusions and restrictions to use, which are directly related to valid existing rights.

Several comments suggested that the BLM should integrate ''designations'' (§ 1610.1–2(b)(1)) and ''resource use determinations'' (§ 1610.1–2(b)(2)). Comments stated that this would result in a more clearly defined set of criteria for determining whether future actions are in conformance with plan components. The final rule is not revised to combine designations and resource use determinations. After consideration of public comments, the BLM believes that the distinction between designations and resource use determinations is appropriate. Designations are intended to establish priorities, when appropriate. Resource use determinations are intended to identify exclusions, restrictions, or allowance of use. Resource use determinations must be consistent with the priority established through designations, and the final rule is revised to include language clarifying this relationship (§ 1610.1–2(b)(2)).

Several comments expressed support for monitoring and evaluation but were concerned over the BLM's staffing resources, stating that the BLM may not have the capacity to implement monitoring and evaluation. Some comments requested the final rule require the BLM to provide adequate personnel for monitoring and evaluation. Other comments suggested the BLM revise the final rule to revise monitoring and evaluation standards as tools available to the BLM, but not enforceable requirements of resource management plans or plan amendments. The final rule is not revised to re-define monitoring and evaluation standards as these plan components are necessary to understand whether the plan objectives are being met. The final rule is also not revised to address staffing concerns or establish personnel requirements; this would not be appropriate in regulations as the BLM cannot reasonably predict future budgets and staffing availability.

Several comments noted that the proposed rule suggests that the achievement of goals and objectives and implementation of monitoring and evaluation could be enforceable commitments under the Administrative Procedure Act and recommended the BLM revise the final rule to expressly state that goals, objectives, and monitoring measures in resource management plans do not commit the BLM to future courses of action, and that BLM actions are dependent upon appropriation of necessary funds and agency priorities, and are not intended to be enforced by third parties through legal remedies. Comments also recommend including language to state that these plan components cannot be enforced by the general public under 5 U.S.C. 706(1). The comments cited several court rulings supporting this statement. The final rule does not include the language suggested by these comments. Resource management plans provide planning level management direction intended to help the BLM prioritize available funds and to guide future management decisions, including future proposed actions. Although the BLM does not intend that plan components be discrete agency actions

that BLM is required to take and therefore enforceable under § 706(1) of the APA, they do bind the BLM to the extent that all future actions taken by the BLM must conform to them. Should, through the process of monitoring and evaluation, the BLM determine that the goals and objectives are not being met, the BLM has the discretion to identify appropriate remedies, including the option to revise or amend the resource management plan.

Notice Requirements

The proposed planning rule would have replaced several requirements to publish a notice in the **Federal Register** with a requirement to notify the public through other means, including direct email or posting a notice to the BLM Web site and at local BLM offices. Many comments requested that the BLM retain all existing **Federal Register** notice requirements. In response to these comments, the final rule will retain most existing **Federal Register** notice requirements that were proposed to be removed, including the notice of intent for plan amendments when an environmental assessment is prepared (final § 1610.2–1(f)) and notice when a draft plan or plan amendment involves possible designation of areas of critical environmental concern (final § 1610.8–2(b)(1).

The BLM does not, however, consider a **Federal Register** notice to be appropriate or necessary for all announcements for public involvement, as some comments suggested. Although the **Federal Register** provides a record of notices and a tool for reaching a national audience, it is not necessary for every public involvement opportunity nor is it the only tool available to reach a national audience. For instance, a public meeting in a local community in the planning area to discuss a particular, individual planning issue does not need a **Federal Register** notice. Including one would cause unnecessary delays to the planning process and costs to the BLM. Additionally, when the BLM announces the start of a planning process, through a NOI, this provides the public an opportunity to request notification of future public involvement opportunities and to be added to the mailing list, as well as learning of public involvement opportunities through BLM's Web site, which also reaches a national audience. This is consistent with current BLM policy and practice.

Several comments requested that the BLM retain the existing requirement for the BLM Director to publish in the **Federal Register** the reasons for his or her determination regarding a Governor's appeal on a State Director's decision for the Governor's consistency review (existing § 1610.3–2(e)). The final rule does not retain this existing requirement and will instead adopt the commitment that the BLM shall notify the public of this decision and make the written decision available to the public (final § 1610.3–3(b)(4)(ii)). Removing the requirement to publish a **Federal Register** notice at this step will provide for a more efficient planning process and better reflects the ready availability of Internet communications. In locations where internet is not readily available, the responsible official will identify additional forms of notification to reach local communities within the planning area (§ 1610.2–1(c)). Moreover, interested parties already will have had the opportunity to be added to the mailing list to receive notifications (§ 1610.2–1(d)).

Public Comment Periods

The proposed rule would have reduced the minimum length of formal public comment periods on draft resource management plans from 90 days to 60 days. Many comments opposed that proposed change, stating various reasons, including that resource management plans were complex documents and shortening the comment period would reduce opportunities for meaningful public input. Some comments stated that additional, early opportunities for public involvement, such as the planning assessment and review of preliminary alternatives, were adequate substitutions for formal comment periods on the draft resource management plan. In response to these comments, the final rule will expand the comment period for draft resource management plans to a minimum of 100 days, which is 10 days longer than the existing minimum comment period of 90 days (§ 1610.2–2(c)). The proposed rule also would have reduced the minimum public comment period for plan amendments when an environmental impact statement (EIS) is prepared from 90 days to 45 days. Many comments opposed that change as well, for similar reasons. In response to these comments, the final rule will change the comment period for draft EIS-level plan amendments to a minimum of 60 days (§ 1610.2–2(b)), which is longer than the length of the proposed comment period, but shorter than the length of the existing comment period. The scope and complexity of EIS-level plan amendments varies considerably, and the 60-day period will be appropriate as a minimum for EIS-level plan amendments. The BLM retains the discretion to extend the length of public comment periods or to initially offer a longer public comment period, as appropriate.

A number of comments requested a provision in the rule providing an opportunity to request a comment period extension, or a requirement of an automatic extension when a plan was particularly long or complex. The BLM has the discretion to extend the length of the minimum public comment periods; however, due to the variation in issues, geographic scope, and complexity, it is not appropriate to adopt a single standard for comment period extensions in the final rule.

The BLM received several comments requesting that all opportunities for public involvement, including the planning assessment, review of preliminary alternatives, and the basis for analysis, be subject to a formal comment period, and require the BLM to provide a formal comment response. Some comments expressed concern that without formal comment responses, it would not be clear to the public that the BLM considered public comment during these steps. The final rule does not adopt these recommendations. Although public involvement must meet the requirements of § 1610.2, the BLM recognizes that resource management plans and plan amendments will vary based on factors such as complexity, geographic scale, and budgets. Public notification and review will provide additional transparency and an opportunity for the public to provide feedback, but it is not appropriate to require a formal comment period for each public involvement opportunity. The BLM generally provides a formal comment period at steps when there is a complete document available for review, such as a draft resource management plan. The final rule adds opportunities for public involvement in the development of these documents, which may take several forms, such as public workshops or posting information on the web and inviting the public to provide additional information. This will inform the development of the draft resource management plan, and it will be made available for a formal comment period. Section 1610.2(b) requires the BLM to document public involvement activities by either a record or summary of principle issues discussed and comments made, and make that record or summary available to the public.

Consultation With Indian Tribes

The BLM received comments noting that the proposed rule did not recognize the sovereign status of Indian tribes or address government-to-government consultation with Indian tribes during

planning. Other comments raised concerns that a larger planning area under the new rule could mean less meaningful tribal consultation and potentially less influence by Indian tribes over BLM planning decisions. Some comments raised concern that the BLM would no longer consult with tribes in person and electronic means would replace the current process.

In response to comments, the final rule is revised to include a new section on tribal consultation (final § 1610.3–1). This section provides that the BLM will initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This section is added to the final rule to reflect the fact that the BLM is required to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM's request for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. This government-to-government consultation shall be initiated regardless of an Indian tribe's status as a cooperating agency or any on-going coordination with the Indian tribe. Should an Indian tribe choose to participate as a cooperating agency or to coordinate with the BLM, the BLM is still required to initiate government-to-government consultation.

The final rule does not explicitly prescribe larger planning areas; should future planning areas increase in size, however, the BLM will continue to conduct meaningful consultation with Indian tribes, including in person meetings. The BLM does not intend for electronic means to replace current processes for consultation. The BLM recognizes, however, that some Indian tribes may prefer electronic communication such as email correspondence, and the BLM will employ such communication techniques where they are helpful and appropriate.

Coordination With State, Tribal and Local Governments

The BLM received many comments regarding coordination with other Federal agencies, State and local governments, and Indian tribes, as provided in section 202(c)(9) of FLPMA, as well as cooperating agency status under NEPA.

Several comments expressed that the definition of and provisions for cooperating agencies inappropriately restrict eligibility by saying that cooperating agencies will participate ''as feasible and appropriate given the scope of their expertise and constraints of their resources'' (proposed §§ 1601.0–5 and 1610.3–1(b)(2)). In response to these comments, this language is removed from the definition of cooperating agencies, and proposed § 1610.3–1(b)(2) is revised to state that ''[t]he responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.'' These changes are consistent with the DOI NEPA regulations which provide ''the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise'' (43 CFR 46.230). Cooperating agencies must meet the requirements defined in DOI's NEPA implementation regulations, 43 CFR 46.225(a), which includes special expertise or jurisdiction by law. That section references the Council on Environmental Quality's NEPA implementation regulations' definition of special expertise (40 CFR 1508.26) and jurisdiction by law (40 CFR 1508.15). These requirements apply to both Federal and non-Federal governments, such as State, local, and tribal governments. The BLM will continue to use these definitions to determine eligibility for cooperating agencies. Eligible governmental entities are not required to be cooperating agencies if they do not have sufficient resources; therefore, the reference to ''constraints of their resources'' is not appropriate.

Comments raised the concern that including the term ''eligible governmental entity'' in the definition of ''cooperating agency'' in § 1601.0–5 will lead to confusion and potentially exclude some government entities. The final rule is not revised in response to these comments. The use of this term does not represent a change from existing regulations. The term ''eligible governmental entity'' is used in the existing definition of cooperating agencies and is defined in the DOI NEPA regulations (§ 46.225(a)). The final rule adds a reference to this definition in the DOI NEPA regulations to improve clarity and understanding of this term. The BLM believes it is appropriate for the planning regulations to use similar terminology as the DOI NEPA regulations when defining cooperating agencies. Hence the term ''eligible governmental entity'' is used in the final definition of ''cooperating agency'' in § 1601.0–5 and when describing what entities can participate as cooperating agencies in final § 1610.3–2(b) of the final rule.

Several comments objected to the removal of the existing requirement that field managers must inform the State Director of any denials of a request to be a cooperating agency and requested that the final rule retain the State Director's review. In response to these public comments, the final rule includes a new paragraph requiring the responsible official to consider a request by an eligible governmental entity to participate as a cooperating agency and to inform the deciding official of any denials. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the environmental impact statement (see § 1610.3–2(b)(1)).

Several comments requested that the planning rule clarify requirements for consultation with Indian tribes. Some comments requested the BLM identify specific offices eligible for consultation, such as Tribal Historic Preservation Officers. In response to these comments, the final rule includes a new section titled ''[c]onsultation with Indian tribes'' (§ 1610.3–1). This section states that the BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. The final rule does not define consultation because that term is defined in other regulations and guidance. These other sources also outline the types of processes, how consultation may inform decision making, and what information should be exchanged in consultation. The methods of consultation and its content may vary by particular circumstances. The rule also does not list all the types of offices that are included under the consultation provisions because this level of detail is not necessary in regulations. The BLM will continue to consult with Tribal Historic Preservation Officers as required under the National Historic Preservation Act.

Further, tribes are considered an ''eligible governmental entity'' under 43 CFR 46.225(a), and will be invited to participate as cooperating agencies in the planning process in accordance with final § 1610.3–2(b). While a tribe may elect not to participate as a cooperating agency, the BLM is still required to appropriately consult and coordinate with tribes during the planning process in accordance with §§ 1610.3–1 and 1610.3–2, respectively.

The final rule does not affect implementation of the ''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations'' (2012). The BLM will continue to consult with ANCSA corporations during the preparation and amendment of resource

management plans, consistent with DOI policy.

Many comments included support for the proposed requirement of a memorandum of understanding (MOU), including its commitment to confidentiality. These comments noted that confidential review affords agencies the opportunity to identify and resolve conflicts without creating public worry or confusion. The final rule adopts these provisions with minor modifications (see proposed § 1610.3–1(b)(1) and final § 1610.3–2(b)(2)). Some comments recommended a requirement to establish a separate MOU for the planning assessment. The final rule does not adopt this recommendation because it is not necessary. Final § 1610.3–2(b)(3) does not specify the length or scope of the MOU for a cooperating agency relationship and includes sufficient flexibility for the BLM and cooperating agencies to establish multiple MOUs, if necessary, or to enter into an MOU that includes only the planning assessment. The final rule does not address the status of information provided to the BLM by cooperating agencies, because this will be a case-by-case determination based on the MOU agreement and any applicable State and Federal requirements, such as the Freedom of Information Act.

Some comments suggested the BLM publish a **Federal Register** notice inviting cooperating agencies to participate in the preparation of a resource management plan. In response to public comments, the BLM will publish a NOI in the **Federal Register** for all resource management plans and plan amendments as described in final § 1610.2–1(f), but does not adopt the recommendation to publish a **Federal Register** notice inviting cooperating agencies. The NOI will include the kind and extent of public involvement activities to be provided, as known at the time, as well as contact information for a BLM employee for further information, including a request to participate as a cooperating agency. The responsible official will invite cooperating agencies as provided for in § 1610.3–2(b) of the final rule. The BLM considers these two provisions to be complimentary. The BLM will collaborate with cooperating agencies as early as possible in the planning process. Section 1610.3–2(b)(3) will include the steps of the planning process for collaborating with cooperating agencies. The earliest step in this section will be the planning assessment which occurs before publication of the NOI.

Some comments recommended a requirement that a cooperating agency MOU must be in place before the commencement of the planning assessment. The final rule does not adopt this recommendation. Eligible governmental entities have the option of entering into a MOU as cooperating agencies under NEPA, but are not required to do so at any specific point in the planning process. Creating a requirement for all MOUs to be in place prior to the planning assessment would limit eligible government entities from joining as cooperating agencies later in the planning process when the scope of the planning effort is more clearly defined. The BLM does not foresee any problems working with eligible governmental entities without a MOU during the planning assessment step since this step primarily involves information gathering by the BLM. The BLM will not share confidential information with other government entities without an MOU in place to maintain confidentiality.

Many comments raised concerns that the proposed rule would limit local governments to ''cooperator status'' by failing to provide for ''coordination status,'' which the comments state is required by FLPMA, which would place an unfair burden on such governmental entities. The final rule is not revised in response to these comments because coordination requirements are already addressed in this rule. While the BLM believes that cooperating agency status is a tool to achieve coordination, the BLM recognizes that local governments may choose not to participate as cooperating agencies for a variety of reasons such as limited resources or confidentiality concerns. An eligible government entity is not required to participate as a cooperating agency and under the final rule the BLM must still coordinate with these governmental entities, whether or not they choose to participate as a cooperating agency under NEPA. The final rule includes a number of ways for governmental entities, including local governments, to meaningfully participate in the planning process outside of cooperating agency status. Local governments are able to participate in the public involvement opportunities described in § 1610.2 of the final rule. Additionally, final § 1610.3–2(c) addresses the requirements for coordination with other Federal agencies, State and local governments, and Indian tribes, and these requirements apply independently of cooperating agency status. The final rule adopts proposed changes to more clearly distinguish the cooperating agency role from ''coordination'' and ''consistency'' requirements under FLPMA. Each of these is covered by different paragraphs in final §§ 1610.3–2 and 1610.3–3. In final § 1610.3–2, paragraph (b) covers cooperating agencies and paragraph (c) covers coordination requirements. Final § 1610.3–3 covers consistency requirements. By separating these provisions, the BLM believes that the final rule sufficiently identifies the distinction between these roles under FLPMA and NEPA.

Some comments recommended the final rule make formal coordination mandatory during the planning assessment. It is important to note that coordination is already mandatory during the planning assessment. Final § 1610.4(b)(3) requires the BLM to ''[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans.'' In response to public comments, the final rule includes additional language regarding coordination during the planning assessment, stating that ''[t]o the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located'' (§ 1610.4(b)(1)). This language is consistent with FLPMA (43 U.S.C. 1712(c)(9)).

Several comments raised concerns that individual notification requirements for State and local governments are insufficient as they only require the BLM to provide affirmative individual notification to those that have requested to be notified or that the BLM has reason to believe would be interested in the planning effort. Comments requested the final rule require notification of all affected State and local governments. The final rule is not revised in response to these comments. This provision does not represent a substantive change from existing regulations, which require the BLM to provide notice to governmental entities ''that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment'' (existing § 1610.3–1(e)). The final rule clarifies this requirement slightly by replacing ''concerned with'' with ''interested in.'' Interest in the

resource management plan includes ''concern,'' but also includes a broader range of interest. The wording of the final rule is necessary to avoid providing an unreasonable ''guarantee'' that the BLM will be able to identify, find contact information for, and contact all affected governmental entities. However, the BLM will continue its current practices and commitment to notifying State and local governments and will endeavor to contact all affected governmental entities to the best of our ability. Additionally, the BLM believes that public notification requirements will provide an additional opportunity for government entities to become aware of resource management plans and plan amendments.

In addition, the BLM will post a list on its Web site of the status of each resource management plan in process or scheduled to be started by the end of each fiscal year under § 1610.2(c). Interested members of the public, including governmental entities, may review that list for information on upcoming plans in advance of the BLM beginning notification for public involvement, and may request to be notified of public involvement opportunities. Additionally, in response to public comment, final § 1610.2–1(c) is revised such that the ''responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.'' This provision addresses concerns about local governments that may not be reached by notices in the **Federal Register** or through online notifications.

Consistency With State, Tribal, and Local Government Plans

The BLM received many comments regarding requirements under FLPMA for BLM resource management plans to be consistent with State and local government plans (43 U.S.C. 1712(c)(9)). Several comments raised concerns that the proposed rule departs from FLPMA's coordination and consistency requirements. In response to public comments, final § 1610.3–3 is revised in several ways, as described in the following paragraphs.

Several comments raised concerns that the proposed rule would provide the BLM more discretion regarding consistency with State and local plans than is afforded by FLPMA. In response to comments, final § 1610.3–3(a) is revised to state that ''resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.'' Because of its obligations under FLPMA and other Federal law, the BLM cannot always ensure consistency. The BLM will achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands and the purposes, policies and programs implementing such laws and regulations. Based on public comment, the final rule removes ''practical'' from the phrase ''practical and consistent'' in this paragraph. It is important to note that statements in the final rule that the BLM will coordinate to the extent consistent with the laws governing the administration of the public lands (*e.g.,* final § 1610.4(b)(1)) do not preclude the BLM from satisfying its requirements for coordination and consistency under final §§ 1610.3–2 and 1610.3–3. Similarly, the final rule's additional opportunities for public involvement in the planning process do not eliminate or alter the BLM's obligations for coordination and consistency.

A few comments stated that proposed changes to § 1610.3–2 would omit FLPMA consistency requirements pertaining to compliance with pollution control laws, ''including State and Federal air, water, noise, or other pollution standards or implementation plans. . . .'' The final rule is not revised in response to these comments because this language is not necessary. Resource management plans must comply with Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. It is unnecessary to identify all relevant laws the BLM must abide by in the regulations, as the BLM is required to comply with all applicable laws and regulations. The final rule removes existing § 1610.3–2(b), which references Federal and State pollution control laws, because the BLM believes that final § 1610.3–3(a)'s requirement that resource management plans be consistent with ''officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes'' includes pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards and implementation plans. Although FLPMA specifically references pollution control laws (43 U.S.C. 1712(c)(8)), the BLM believes that such laws are appropriately encompassed by the requirements of final § 1610.3–3(a). The BLM does not intend a change to current policy or practice as a result of this change, and will continue to comply with applicable pollution control laws.

Several comments objected to language providing that consistency requirements would only apply to the ''officially approved and adopted land use plans'' of other Federal agencies, State and local governments, and Indian tribes (see proposed §§ 1610.0–5 and 1610.3–2). Comments stated that this language exceeds the statutory requirements of FLPMA, which refers only to ''plans.'' In response to public comments, the final rule does not adopt the words ''land use'' in this phrase. The BLM acknowledges that other types of resource-related plans, such as a State wildlife plans, are relevant to resource management planning conducted by the BLM and should be included during consistency review. The final rule also revises the definition of an ''officially approved and adopted plan'' to specify that these are ''resource-related'' plans instead of ''land use'' plans (§ 1610.0–5).

The term ''officially approved and adopted,'' however, is contained in existing regulation and is retained in the final rule. The definition of this term in the final rule describes it as a plan that is prepared and approved pursuant to and in accordance with authorization provided by Federal, State, and tribal, or local constitutions, legislation, or charters which have the force and effect of law (§ 1601.0–5). Final § 1610.3–2 provides a mechanism to address potential inconsistencies with plans and policies that are not officially approved or adopted, or plans that are under development, but not yet approved or adopted.

Similarly, several comments expressed concern that the proposed rule would inappropriately limit the BLM's consistency requirements by removing the requirement for BLM resource management plans to be consistent with the ''policies, programs, and processes'' of State and local governments. In response to these comments, the final rule will instead adopt a new objective of coordination for the BLM to ''keep apprised of the plans, policies and management programs of other Federal agencies, State and local governments, and Indian tribes'' (see final § 1610.3–3(a)(1)). The BLM will continue to coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process, which will include consideration of plans, policies, and management programs.

However, the consistency requirements in final § 1610.3–3 only apply to officially approved and adopted plans. This is consistent with FLPMA, which requires that resource management plans be consistent with State and local plans to the maximum extent the Secretary finds consistent with Federal law and the purposes of the FLPMA (see 43 U.S.C. 1712(c)(9)). It would be inappropriate to establish consistency requirements for ''policies and programs'' because they do not constitute a formal decision regarding resource management.

Many comments expressed concern that the proposed rule would place the burden on State and local governments to notify BLM of inconsistencies. Comments expressed that it is the BLM's responsibility to identify inconsistencies, not that of State and local governments. The final rule is not revised in response to these comments. Final § 1610.3–3(a)(2) will carry forward the existing provision that the BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by Federal agencies, State and local governments, or Indian tribes of an apparent inconsistency. This is an existing requirement, and therefore does not represent a change in policy. Although the BLM believes that the coordination and cooperation provisions of the final rule will help the BLM to identify apparent inconsistencies early in the process, and the BLM will do so to the best of its ability, we cannot guarantee that all apparent inconsistencies are identified and responded to if the BLM is not notified of inconsistencies.

The requirements for consistency contained in final § 1610.3–3, however, do not represent the only opportunity to identify and remedy inconsistencies during the planning process. The BLM believes that the opportunities for coordination will address the majority of inconsistencies prior to the publication of a proposed resource management plan. Coordination, as described in § 1610.3–2 of the final rule, provides the BLM with a way to identify and address potential inconsistencies with other Federal agencies, State and local governments, and tribes throughout the duration of the planning process. Final § 1610.3–2(a) states that the objectives of coordination include the BLM keeping apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes and assisting in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. In addition, as part of information gathering during the planning assessment, final § 1610.4(b)(2) requires the BLM to identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.

The Governor's consistency review in § 1610.3–3(b) provides an additional opportunity to meet consistency requirements by affording the Governor an opportunity to identify any remaining inconsistencies with the proposed resource management plan and work with the BLM to address these inconsistencies. Several comments raised concerns that the burden of identifying inconsistencies for all State and local plans would be placed solely on the Governor. Some comments requested a similar consistency review for other governmental entities, such as local governments. The final rule is not revised in response to these comments. The burden of identifying inconsistencies is not placed solely on Governors. Through coordination, the BLM will make a good faith effort to identify and address inconsistencies throughout the planning process; this is addressed under the objectives of coordination (§ 1610.3–2(a)). Coordination and the work of identifying inconsistencies is a shared responsibility, and the final rule reflects this. For example, § 1610.3–3(b) of the final rule states that the deciding official shall submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments. In turn, the Governor may submit a written document within the 60-day consistency review period that identifies inconsistencies. Additionally, final § 1610.3–3(b)(3) states that the responsible official will collaborate, to the fullest extent possible, with all cooperating agencies throughout the planning process. Early coordination as outlined in the final rule will help to identify potential inconsistencies early in the planning process in compliance with FLPMA.

Several comments expressed that the proposed rule inappropriately limits the Governor's consistency review to inconsistencies between BLM resource management plans and State and local plans. The final rule is not revised in response to these comments. The Governor may raise other concerns and the BLM will consider these concerns and, as appropriate, work with the Governor to seek resolution; however, consistency requirements under FLPMA (43 U.S.C. 1712(c)(9) and this final rule (see § 1610.3–3(a)) only apply to consistency between BLM resource management plans and State and local plans.

Many comments objected to the proposed removal of the requirement that, if the Governor appeals the BLM State Director's decision, the BLM Director must accept the Governor's recommendations if doing so provides for an appropriate balance between State and Federal interests (see existing § 1610.3–2(e)). The final rule adopts the proposal to remove the existing language requiring the BLM Director to accept recommendations if it is determined that such recommendations ''provide for a reasonable balance between the national interest and the State's interest.'' Instead, the final rule will state that the BLM Director ''shall consider the Governor(s)' comments and the consistency requirements of this section in rendering a final decision'' (§ 1610.3–3(b)(4)(ii)). In response to public comments, the final rule is revised to include a requirement that the BLM Director consider ''the consistency requirements of this section,'' which includes the requirement that resource management plans must be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes ''to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations'' (§ 1610.3–3(a)).

The BLM believes the existing language is misleading in regards to BLM's obligations and does not reflect the broader range of considerations that must apply. When considering the Governor's recommendations, the Director must consider whether the recommendations are consistent with the purposes of FLPMA and other Federal laws and regulations. The BLM Director must also consider whether the BLM has achieved consistency ''to the maximum extent,'' subject to the qualifications of § 1610.3–3.

Several comments asserted that proposed § 1610.3–2(b) (final § 1610.3–3(b)) improperly bypasses local governments by attempting to satisfy consistency requirements through Governors. Final § 1610.3–3(b) does not bypass local governments, but rather provides the Governor, as the highest elected representative of the State, a final opportunity to identify, discuss, and remedy any relevant

inconsistencies between State and local plans prior to the approval of a resource management plan. Further, the Governor's consistency review does not replace the BLM's requirements for coordination and consistency under final §§ 1610.3–2 and 1610.3–3. The BLM recognizes that counties may have officially approved and adopted plans that are relevant to the planning process. Such plans would not be excluded from consistency review.

Several comments stated that the proposed rule limits opportunities to coordinate with local governments early in the planning process and recommended that the BLM provide preliminary consistency review periods at the planning assessment and draft environmental impact statement stages. The final rule does not incorporate formal consistency reviews at earlier stages of the planning process, as a formal review prior to availability of a proposed resource management plan or plan amendment would be premature. Requirements for consistency will be achieved primarily through coordination with Federal, State, local, and tribal governments throughout the planning process, as outlined in final § 1610.3–2, and detailed in the preamble discussion of that section. Finally, the final rule increases transparency and opportunities for public involvement, which will provide local governments an opportunity to participate and raise concerns related to consistency, in addition to the opportunities in final § 1610.3–2.

Planning Assessment

Many comments expressed broad support for the planning assessment. Some comments stated that the addition of the planning assessment step, if based on the best available scientific information and other high-quality information, would be a valuable tool for understanding a planning area's current baseline resource, environmental, ecological, social, and economic conditions. Several comments expressed support for new opportunities for public involvement, including early opportunities for stakeholders to provide important, relevant baseline information before the BLM identifies planning issues and formulates resource management alternatives. Other comments expressed concern or were unsupportive of the planning assessment, stating that it would represent a major policy shift from the current planning process. Some of these comments asserted that the planning assessment creates more steps and analysis for an already long and confusing process. Other comments asserted that the planning assessment and the many factors the BLM must consider when conducting it, shift focus from resources, multiple use, and sustained yield to ''value-based'' decision-making.

After consideration of public comments, the final rule adopts the proposed planning assessment (§ 1610.4), with some minor modifications. Although the planning assessment does represent a new step prior to initiating the preparation of a resource management plan, this does not represent a major policy shift from the current planning process, as the planning assessment replaces the existing ''analysis of the management situation'' (see existing § 1610.4–4) and the BLM is required to describe the ''affected environment'' for a resource management plan under CEQ NEPA regulations (40 CFR 1502.15). The BLM believes that new requirements under the planning assessment, such as opportunities for public involvement, will provide valuable information for the preparation of a resource management plan, and therefore are appropriate for inclusion in the final rule. Further, the planning assessment provides baseline information on resource, environmental, ecological, social, and economic conditions, all of which are needed to support management on the basis of multiple use and sustained yield. The planning assessment does not represent a shift to ''value-based decision-making'' as no decisions are contemplated or made during the planning assessment.

Many comments asserted that the planning assessment phase does not allow for meaningful coordination opportunities which could lead to a lack of consistency with State and local plans. Other comments stated that the planning rule does not adequately address the FLPMA requirement for the BLM to ''coordinate the land use inventory . . . with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located'' (43 U.S.C. 1712(c)(9)). Some comments asserted that the planning assessment treats State and local governments as members of the public rather than as agencies with which the BLM must coordinate under FLPMA. In response to these comments, the final rule includes a new requirement that ''[t]o the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located'' (§ 1610.4(b)(1)). This new language highlights the existing requirement under FLPMA to coordinate inventory, and promotes a more efficient planning process by ensuring that the BLM does not duplicate data collection efforts with other governmental entities.

The final rule also adopts the proposed requirement that the BLM ''[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans'' (§ 1610.4(b)(3)). This provides an important step for the BLM to coordinate with State and local governments on data and information, as well as any State and local laws, regulations, policies, guidance, strategies, or plans that are germane to the resource management plan. This coordination also provides an important early step to avoid inconsistencies between the resource management plan and State and local ''plans, policies, and management programs'' (see §§ 1610.3–2(a)(1) and (a)(2)).

Final § 1610.4(b)(3) also includes a requirement for the BLM to provide opportunities for the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans. This provision does not diminish the coordination requirements with State and local governments; it simply adds an opportunity for the public to identify these items. Rather, the inclusion of this requirement reflects the fact that, under NEPA, the BLM must consider substantive comments related to data and information submitted during the comment period on a draft EIS. Rather than waiting until the draft resource management plan is developed, the identification of this information upfront, whether from a government entity or the public, during the planning assessment will provide for a more efficient planning process. Further, the BLM recognizes that a member of the public may be aware of best available scientific information, such as a peer-reviewed research publication, and this information should be brought to the BLM's attention as early as possible.

A few comments noted that the planning rule does not mention economic or ''commodity'' resources, such as minerals, forest products, grazing, or other resource uses. One comment noted that valid existing rights are not addressed in the planning

assessment. Many comments opposed the absence of ''uses'' in ''the various goods and services that people obtain from the planning area'' (proposed § 1610.4(c)(7)). Comments asserted that the exclusion of ''uses'' eliminates the multiple use and ''major uses'' principles of FLPMA and implies an effort to avoid or minimize these uses in future resource management plans.

The final rule does not eliminate the multiple use and ''major uses'' principles of FLPMA and does not represent an effort to avoid or minimize these uses in future resource management plans. In response to public comments, the following revisions are made to the final rule. Final § 1610.4(d)(5) is revised to include ''areas with known mineral potential'' and ''areas with known potential for producing forest products, including timber.'' Final § 1610.4(d)(7) is revised to clarify that the responsible official will consider and document ''[t]he various goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.'' And finally, final § 1610.4(d)(2) is revised to include ''known valid existing rights.''

Many public comments objected to the provision allowing the deciding official to waive the planning assessment for minor amendments or if an existing planning assessment is determined to be adequate, for a variety of reasons. Some comments stated that the term ''minor amendments'' is vague. Other comments supported the waiver in some situations. In response to public comments, the final rule does not adopt the proposed language allowing for a ''waiver'' if an existing planning assessment is determined to be adequate. In the case when an existing assessment provides the needed information to inform the planning process, the responsible official will identify those parts of the existing assessment that are pertinent to the geographic area being identified and the issues to be addressed. This information, along with any new information, will be incorporated into the planning assessment for the plan amendment and made available for public review. The final rule retains the deciding official's discretion to waive the requirements of this paragraph for minor amendments, however, because the BLM believes there are situations for minor amendments where a planning assessment would not add value to the planning process and these situations need to be considered on a case-by-case basis.

In response to comments, this language is revised to provide that the responsible official may waive this requirement for ''project-specific or other minor amendments.'' Minor amendments are intended to mean those that are small in scope or scale. The most common type of minor amendments for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In these situations, a planning assessment may not add value to the amendment process and could unnecessarily delay the amendment process; the responsible official will have the discretion to assess whether the preparation of a planning assessment is necessary in these situations. Other types of ''minor amendments'' will be assessed on a case-by-case basis, and this rule provides the BLM the flexibility and discretion to make such assessments.

Preparation of a Resource Management Plan

Many of the comments on the preparation of a resource management plan (§§ 1610.5 to 1610.5–5) raised concerns or expressed support for the provisions regarding public involvement and cooperation and coordination. The concerns raised in these comments are summarized in previous paragraphs.

Several comments suggested that the BLM make the preliminary statement of purpose and need available for public comment. The final rule is not revised in response to these comments. The final rule adopts the proposed requirement to make the preliminary statement of purpose and need available for public review (§ 1610.5–1(a)). The public may provide input on the statement and the BLM will consider this input when developing a draft statement of purpose and need.

Several comments stated that the BLM should accept citizen-proposed alternatives. One comment raised concerns that the BLM would develop the preliminary alternatives before the public had an opportunity to suggest alternatives. The final rule does not adopt a specific provision to solicit citizen-proposed alternatives. The final rule does not change the BLM's requirement under the CEQ NEPA regulations to analyze a range of alternatives (40 CFR 1502.14). If a citizen-submitted alternative meets the criteria in § 1610.5–2(a)(1), then it could be considered as an alternative or a sub-alternative, or incorporated into an existing alternative. Although the final rule does not have a specific step to solicit citizen-proposed alternatives, the public involvement opportunities early in the planning process, including as part of the planning assessment, the preliminary statement of purpose and need, identification of the planning issues, and development of preliminary alternatives, will provide the public opportunities to provide input on the range of alternatives they believe should be considered. The public will also have an opportunity to review the preliminary range of alternatives and inform the BLM if they believe a reasonable alternative is not being considered.

Several comments expressed support for the preliminary alternatives, as this step creates greater transparency. Some public comments requested that the BLM provide notices and disclose changes made to the preliminary alternatives, the preliminary rationale for alternatives, and the basis for analysis. In response to public comment, the final rule includes a requirement that a description of changes made to the preliminary alternatives, preliminary rationale for alternatives, and the basis for analysis shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to these preliminary documents; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan.

Several comments expressed concern with the BLM's ability to identify multiple preferred alternatives, stating that this is a departure from longstanding practice, and that it would create confusion or uncertainty, and would make public review more cumbersome. The final rule is not revised in response to these comments. The final rule language to acknowledge ''one or more'' preferred alternatives is adopted to make the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)). The BLM anticipates that selecting more than one preferred alternatives will not be the norm for resource management planning, and the BLM will have the discretion to extend public comment periods on a case-by-case basis if it is determined that the extension will benefit the resource management planning process.

Resource Management Plan Approval, Implementation and Modification

The BLM received comments in support of, and opposed to the proposed revision to allow the BLM to accept protests electronically. A few comments supported the proposal to make protests and responses available to the public and suggested that the BLM promptly post all protests and related responses, whether requested or not, on its Web site for public access. While the BLM expects to post protests to its Web site, the final rule is not revised to require the BLM to post all protests. Such a requirement would not be practical to implement if the BLM were to receive a substantial number of hard-copy protest submissions. The final rule instead provides the BLM flexibility to determine the best timing and methods to share protest information.

A few comments requested revisions to proposed § 1610.6–2(a)(4) to allow the BLM to withhold certain private and confidential information submitted in a protest that is, or could be, exempt from disclosure under other laws or regulations. In response to these comments, the final rule is revised to include language stating that the BLM Director will withhold any protected information that is exempt from disclosure under applicable laws or regulations.

A few comments requested that the BLM expand the eligibility requirements for protest submissions by accepting protests from members of the public who may not have participated previously in the planning process due to the fact that several years may pass between the release of a draft resource management plan and the proposed resource management plan. Several other comments expressed concern that the requirement that a protest identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment would preclude protests on issues that were not disclosed to the public until the publication of the proposed resource management plan. The BLM recognizes that changes may occur between the release of the draft resource management plan and the proposed resource management plan. However, the final rule is not revised to accept this recommendation, as the current standing requirement is written to ensure that individuals do not use the protest process to raise issues that could have been raised during previous public involvement opportunities, and to recognize that the protest period is not a public comment period. However, in recognition of the potential for changes between the draft and proposed resource management plan, final § 1610.6–2(a) is revised to include new language stating that a protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment ''unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.'' This change in the final rule is made throughout the subparagraphs of § 1610.6–2(a) and clarifies that if an issue arises after the close of the formal public comment period on a draft resource management plan, the public may submit a protest regarding that issue. This exclusion only applies to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue.

Many comments asserted that the proposed rule limited the ability to protest by imposing tedious formatting requirements and narrowing protest criteria to ''component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations.'' The final rule is not revised in response to these comments. Protest criteria identified in final § 1610.6–2(a)(3)(iii) are consistent with other adopted changes in the final rule, such as the adoption of planning components in § 1610.1–2, and focus protests on potential inconsistencies with Federal laws or regulations or the purposes, policies, and programs implementing such laws and regulations. The protest period is not intended as a second public comment period; rather, it is intended to remedy inconsistencies with Federal laws and regulations prior to the approval of the resource management plan or plan amendment. The BLM does not believe that the required information represents a barrier to protest, rather, it ensures that the BLM has adequate information to make a decision on protests.

One comment stated that the explicit authority of the Director to approve portions of a resource management plan not subject to a protest during protest resolution should be made more clear in the final planning rule. In response to this comment, the final rule adopts a statement at § 1610.6–2(b), stating ''[a]pproval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest.'' Many comments stated that the final rule should require the Director to briefly explain why a protest does not meet the requirements of § 1610.6–2. In response to this comment, final § 1610.6–2(c) has been modified to state that the Director shall notify the protesting parties of a dismissal and provide reasons for the dismissal.

A few comments requested that the protest period be extended from 30 days to 60 days. The final rule is not revised based on this request. The 30-day protest period is an existing requirement, and does not represent a change in practice or policy.

Several comments included requests that the BLM adopt language in § 1610.6–4 requiring the BLM to adopt an adaptive management structure. The final rule is not revised in response to these comments. As explained in the preamble discussion of § 1610.1–3, the measurable objectives and use of monitoring and evaluation will guide adaptive management strategies to help manage for uncertainty. However, the specific application of adaptive management principles depends on the unique circumstances of each planning effort, and it is not appropriate to prescribe how those principles will be applied in the final rule.

Several comments suggested that § 1610.6–4 include a review of the objectives as part of monitoring and evaluation. The final rule is revised to state that monitoring and evaluation is used to determine whether the resource management plan objectives are being met; and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

Several public comments suggested that the BLM should have the discretion to rely on other agencies' resource assessments. In response to public comment, the final rule includes a new § 1610.6–8(c), which provides that another agency's resource assessment may be relied on if it is consistent with the nature, scope, and scale of the issues of concern relevant to the planning area and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment, including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. For example, the BLM could rely on an assessment developed by the United States Forest Service during the development of a land management plan, should it meet these requirements.

Designation of Areas of Critical Environmental Concern (ACECs)

Several comments objected to the proposed removal of the requirement to publish a **Federal Register** notice and 60-day public comment period for proposed ACECs. In response to public comment, the final rule is revised to require that when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the **Federal Register** and request written comments on the designations under consideration. The final rule further provides that this step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see §§ 1610.2–2(d) and 1610.8–2(b)(1)). This comment period will be at least 30 days long, in accordance with § 1610.2–2(a) of the final rule, and will be longer when it is integrated with the comment period for draft EIS-level amendments (at least 60 days) and draft resource management plans (at least 100 days). Either resource management plans or plan amendments can consider potential ACECs for designation consistent with the priority established by FLPMA (43 U.S.C. 1712–(c)(3)). After careful consideration, BLM believes that a 30-day comment period will generally be adequate for EA-level plan amendments that include ACECs, such as revising the boundary of an existing ACEC after the acquisition of an adjoining parcel; however, BLM may extend the comment period if warranted.

Some comments expressed concern that language in the proposed rule would not allow identification of potential ACECs later in the process as new resources are identified, or in between planning process. Other comments objected to identifying potential ACECs during the planning assessment, or outside of the preparation of a resource management plan. The final rule is not revised in response to these comments. The final rule retains the requirement to identify potential ACECs through inventory of public lands and during the planning process (see § 1610.8–2(a)). The identification of potential ACECs is an inventory process required under FLPMA which states that an inventory of all public lands and their resources and other values, shall be prepared and maintained on a continuing basis, giving priority to ACECs (43 U.S.C. 1711(a)). The final rule establishes procedures for inventory of the public lands during the planning assessment at §§ 1610.4(b)(1) and 1610.4(d)(5)(vii), therefore it is appropriate that an inventory of potential ACECs occur during the planning assessment. Inventory and assessment can be conducted at any point in time, however, and not just at times associated with a plan amendment or resource management plan. Potential ACECs may be identified after the planning assessment is completed, such as during public scoping, and the BLM will consider these potential ACECs for designation in the draft resource management plan. It is important to note that the identification of a potential ACEC does not constitute formal designation of an ACEC. Designation of an ACEC occurs through the approval of a resource management plan, consistent with existing regulation (see final § 1610.8–2(b)(1)). Under the final rule, an ACEC is not designated during the planning assessment.

Some commenters expressed that ACECs are inappropriately given special treatment in the rule. The final rule is not revised in response to these comments. FLPMA provides that the BLM shall give priority to the inventory, designation, and protection of ACECs (43 U.S.C. 1711(a) and 1712(c)(3)). The procedures described in final § 1610.8–2 are similar to the existing rule, but are modified slightly for clarification, to promote efficiency, and to better align with FLPMA. The final rule at § 1610.8–2 provides the process for the identification, designation and protection of ACECs through the planning process, consistent with the priority established in FLPMA.

Several comments objected to the proposed removal of language stating that an ACEC generally contains values that are of ''more than local significance'' (existing § 1610.7–2(a)(2)). Other comments expressed support for this proposed change. In response to public comments, the final rule removes this existing language. The BLM believes that this existing language is not appropriate in the regulations because it does not accurately describe the existing criteria for importance that an area ''must have substantial significance and values.'' There are many examples where an area of local significance would meet the importance criteria for substantial significance and values, including a cultural site of substantial significance to local tribes; a wetland that provides critical water filtration services to a local community; or key habitat for an endemic wildlife species. The removal of this language does not represent a substantive change in these regulations, as this language does not represent a requirement under the existing regulations; rather it provided an example of what generally meets the ''importance'' criteria.

A few comments suggested that the last sentence in proposed § 1610.8–2(b) should be deleted, or the word potential removed, as this sentences suggests that the existence of a potential ACEC requires the BLM to provide special management to the area. Comments noted that FLPMA defines ACECs ''as areas within the public lands where special management is required . . .'' but contains no language regarding ''potential'' ACECs or their management. In response to these comments, the word ''potential'' is removed from the last sentence of § 1610.8–2(b) to clarify that only designated ACECs (not ''potential'' ACECs) require special management attention.

Several comments stated that the final rule should include language to give priority to ACECs in the final rule. Comments noted that FLPMA directs BLM to give priority to ACECs, and this priority is a unique directive in multiple use land management law which requires the BLM to do more than simply ''consider'' potential ACECs. In response to public comment, the final rule is revised at § 1610.8–2(b) to state that potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan ''consistent with the priority established by FLPMA.'' The BLM must comply with FLPMA, regardless of these regulations; therefore, a restatement of FLPMA is not necessary in the regulations. The BLM, however, recognizes the value in restating statutory direction in the planning regulations to provide context on the relationship between the regulations and overarching statutory direction. This does not represent a substantive change in BLM policy; rather, it provides context that the BLM must consider ACECs for designation consistent with the statutory direction provided in FLPMA.

Some comments asserted that revisions to the ACEC provisions attempt to change the process and intent of FLPMA under the guise of trying to make it more readable. Comments stated that the final rule needs to ensure the use of the ACEC designation is in accordance with FLPMA and the intent of Congress. The final rule is not revised in response to these comments. The final rule does not significantly change the process for designating ACECs or the intent of ACECs from the existing regulations. Where changes are made to the existing regulations, the changes are disclosed and a rationale provided in the discussion of § 1610.8–2 in this

preamble. The definition of an ACEC and the process for designating ACECs, as described in the final rule, are consistent with FLPMA.

Several comments requested that the BLM ensure that ACECs are not managed as a substitute for wilderness, or used as a substitute for wilderness suitability recommendations. Comments noted that BLM Manual 1613 (1988) states that ''an ACEC designation will not be used as a substitute for wilderness suitability recommendations.'' The final rule is not revised in response to these comments. ACECs will be identified, designated, and managed in accordance with FLPMA and applicable policy, including this final rule. Such areas may not be used as a substitute for wilderness areas or wilderness suitability recommendations.

Climate Change

Several comments suggested that the planning rule should require each resource management plan and plan amendment to analyze climate change and provide for climate adaptation. The final rule is not revised in response to these comments to prescribe specific requirements related to climate change. The BLM's planning rule addresses the impacts of BLM decisions on climate change through the NEPA process. Section 1610.5–3(b) of the final rule provides that the estimation of effects for resource management plans shall be ''guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act.'' This analysis includes implementation of current policy on climate change analysis under NEPA, as appropriate. It is not necessary to provide duplicative regulatory guidance in the planning rule.

It is also important to note that the planning regulations establish the procedural framework for preparing and amending resource management plans, but they do not prescribe specific management outcomes. The BLM, through the land use planning process, will develop plan components to address desired management outcomes within the planning area. The BLM will consider relevant resource management concerns, such as climate change and the need for climate change adaptation, when assessing the baseline condition, trend, and potential future condition and when identifying the planning issues for any given resource management plan (see § 1610.5–1). The planning issues will be informed by, among other things, the planning assessment, and will in turn inform the development of the plan components. Final § 1610.4(b)(2) requires that, as part of the planning assessment, the BLM ''identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.'' We believe that this is the appropriate place to consider relevant policies such as Federal or Departmental climate change policies.

Goals of Planning 2.0

The BLM received comments both in support of, and opposed to, the goals of Planning 2.0. The BLM also received comments stating both that the revisions to the existing rule did not support the Planning 2.0 goals, and comments stating that the revisions did support those goals.

The BLM has retained the goals of Planning 2.0 in the final rule, with minor edits. The BLM believes these goals respond to the increasing challenges that the BLM faces in managing for multiple-use and sustained yield on public lands, and to recent Executive and Secretarial direction. For more information, please see the Background discussion to this preamble.

Length of Public Comment Period for the Proposed Planning Rule

The BLM initially provided a 60-day public comment period on the proposed planning rule and made the rule available to the public two-weeks prior to the formal start of the comment period. Many comments requested that the BLM extend the comment period for up to 240 days. In response, the BLM granted a 30-day extension of the public comment period. Additional comments requested that the BLM further extend the comment period for up to 270 days. The BLM did not further extend the comment period. ''Executive Order 13563—Improving Regulation and Regulatory Review,'' published on January 21, 2011, directs Federal agencies to ''afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days'' and the BLM has provided such opportunity. Several comments also requested that the BLM hold public hearings across the western United States. The BLM held webinars on March 21, 2016, and April 13, 2016, as well as a public meeting broadcast live over the Internet on March 25, 2016. Recordings of all webinars and meetings were posted to the BLM Web site and the public was provided an email address to submit any additional questions. The BLM did not hold public hearings on the proposed rule across the western United States because the BLM provided opportunities for remote public participation in webinars and meetings over the Internet and through email.

Level of NEPA Analysis for the Planning Rule

The BLM made a preliminary categorical exclusion available concurrent with publication of the proposed rule. The BLM received multiple comments stating that it is violating NEPA by relying on a categorical exclusion for NEPA compliance. Specifically, comments argued that the revisions to the planning rule had potentially significant impacts, and should have been analyzed through an Environmental Assessment or Environmental Impact Statement. Comments stated that the following extraordinary circumstances were present, making a categorical exclusion inappropriate:

- Significant impacts to public health and safety;
- Significant impacts on natural resources and unique geographic characteristics;
- Highly controversial environmental effects or unresolved conflicts concerning alternative uses of available resources;
- Highly uncertain and potentially significant environmental effects or involving unique or unknown environmental risks;
- Establishes a precedent for future action or represents a decision in principle for future actions; and
- Cumulatively significant impacts.

The BLM believes that the categorical exclusion is the proper form of NEPA compliance for this action under 43 CFR 46.210(i). The existing and final rules are entirely procedural in character. The actual planning decisions reached through the planning process are themselves subject to compliance with NEPA's analytical requirements as well as the statute's public involvement elements. Any decisions that might be reached through the planning process, as proposed for revision through this rulemaking, would be subject to compliance with NEPA. For this reason, the BLM's reliance upon this categorical exclusion is appropriate.

The BLM has revised the categorical exclusion documentation based on public comments. However, none of the comments raised information indicating the presence of one or more of the extraordinary circumstances listed in 43 CFR 46.215.

Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this final rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This final rule does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, which can be found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at ''arm's length'' from the control of any parent company, which meet certain size standards. The size standards are expressed either in number of employees or annual receipts. The final rule could affect any entity that elects to participate in the BLM's planning process. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. Other industries, such as transportation or manufacturing, may be indirectly affected and are not listed below.

Industry	Size standards in millions of dollars	Size standards in number of employees
Beef Cattle Ranching and Farming	0.75	
Forest Nurseries and Gathering of Forest Products	11.0	
Logging		500
Oil and Gas Extraction		500
Mining (except Oil and Gas)		500
Drilling Oil and Gas Wells		500
Support Activities for Oil and Gas Operations	38.5	
Support Activities for Coal Mining	20.5	
Support Activities for Metal Mining	20.5	
Support Activities for Nonmetallic Minerals (except Fuels)	7.5	
Hydroelectric Power Generation		500
Fossil Fuel Electric Power Generation		750
Solar, Wind, Geothermal Power Generation		250
Electric Bulk Power Transmission and Control		500
Electric Power Distribution		1,000
Natural Gas Distribution		500
Environmental Consulting Services	15.0	
Other Amusement and Recreation Industries	7.5	
Environment, Conservation and Wildlife Organizations	15.0	

These industries may include a large, though unquantifiable, number of small entities. In addition to determining whether a substantial number of small entities are likely to be affected by this rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. The final rule is largely administrative in nature and only affects internal BLM procedures. The direct impacts on the public are increased opportunities for voluntary public involvement. The magnitude of the impact on any individual or group, including small entities, is expected to be negligible. The actual impacts cannot reasonably be predicted at this stage, as they will depend on the specific context of each planning effort. However, there is no reason to expect that these changes, when implemented across all future planning efforts, place undue burden on any specific individual or group, including small entities.

Based on the available information, we conclude that the final rule does not have a significant economic impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required. The BLM prepared an economic and threshold analysis as part of the record, which is available for review.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule is administrative in nature and affects the BLM's resource management planning process and procedures.

This rule does not have an annual effect on the economy of $100 million or more. The final rule revises existing procedures and requirements. Although the final rule allows the public to submit protests electronically, which was not possible under the existing regulations, it would be speculative to estimate how many protests the BLM will receive as a result of this final rule.

This rule does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There are no impacts to any prices as a result of this final rule.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule is

administrative in nature and only impacts the BLM's resource management planning process and procedures. The BLM prepared an economic and threshold analysis as part of the record, which is available for review.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. This rule is administrative in nature and only impacts the BLM's land use planning process and procedures. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. This rule is administrative in nature and only impacts internal BLM procedures. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

A Federalism assessment is not required because the rule does 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.

The only provisions that could possibly have a direct effect on States are the Governor's consistency review and the increased public involvement opportunities, but these provisions will only have minimal impacts, if any. In the Governor's consistency review, the final rule does not significantly impact Governors or change the existing requirements of this section. This section is revised only to clarify an existing process that has caused some confusion. The only change from existing requirements is final § 1610.3–2(b)(1)(ii), which allows the Governor to waive or reduce the 60-day period during which the Governor may identify inconsistencies. This could provide a benefit to the Governor in some situations where the timely approval of a plan or amendment is necessary. Please see the discussion on the Governor's consistency review at the preamble for final § 1610.3–2(b)(1)(ii).

The final rule adds more opportunities for public involvement, including through the planning assessment (see § 1610.4) and the public review of the preliminary alternatives (see § 1610.5–2), which may result in more engagement with State and local governments. Neither of these instances have a significant adverse effect on State governments.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)

This rule complies with the requirements of Executive Order 13175 and Department of the Interior Secretarial Order 3317. Specifically, in conjunction with preparation of this final rule, the BLM initiated government-to-government consultation with federally-recognized Indian tribes with which the Bureau normally consults regarding land use planning. Each BLM State Office sent a letter notifying Indian tribes located within the jurisdictional boundary of the BLM State Office and with which the BLM State Office normally consults on proposed rules requesting government-to-government consultation. Additionally, each BLM State Office sent a follow-up notification and request for consultation; the format for follow-up requests varied across BLM State Offices. Formats included phone calls, letters, or in-person conversations at previously scheduled meetings.

To facilitate understanding of the proposed rule, the BLM held a webinar for interested Indian tribes on May 4, 2016. The webinar provided an overview of the proposed changes, discussion on topics of interest to tribal participants, and an opportunity for questions. In addition, in person meetings were held with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting with the BLM.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This final rule contains information collection activities that require approval by OMB under the PRA.

The BLM included an information collection request in the proposed rule. OMB has approved the information collection for the final rule under control number 1004–0212.

Summary of Information Collection Activities

- *Title:* Resource Management Planning (43 CFR part 1600).
- *Forms:* None.
- *OMB Control Number:* 1004–0212.
- *Description of Respondents:* Participants in the BLM land use planning process (including Governors of States; individuals; households; businesses; associations; and State, local, and tribal governments).
- *Respondents' Obligation:* Required to obtain or retain a benefit.
- *Abstract:* This BLM final rule revises existing regulations on procedures used to prepare, revise, or amend land use plans in accordance with FLPMA. This information collection request includes activities that have been ongoing without a control number.
- *Frequency of Collection:* On occasion.
- *Estimated Number of Responses Annually:* 131.
- *Estimated Annual Burden Hours:* 1,965 hours.
- *Estimated Total Non-Hour Cost:* None.

Discussion of Information Collection Activities

Consistency (43 CFR 1610.3–3(b))

Section 202(c)(9) of FLPMA (43 U.S.C. 1712(c)(9)) requires that the Secretary of the Interior ''assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans.'' This responsibility is delegated to the BLM Director and accomplished, in part, through the ''Governor's Consistency Review''

process described in final § 1610.3–3(b). This information collection activity is necessary for this process and for compliance with section 202(c)(9) of FLPMA.

Final § 1610.3–3(b) provides an opportunity for Governors of affected States to identify possible inconsistencies between officially approved and adopted land use plans of State and local governments and proposed resource management plans (RMPs) or proposed amendments to RMPs and management framework plans (MFPs). Following receipt of a proposed resource management plan or plan amendment from the BLM, Governors will have a period of 60 days to submit to the deciding official a written document that:

- Identifies any inconsistencies with officially approved and adopted land use plans of State and local governments; and
- Recommends remedies for the identified inconsistencies.

The final rule provides that the BLM deciding official will notify the Governor in writing of his or her decision regarding these recommendations and the reasons for this decision. Within 30 days of this decision, the Governor will be authorized to appeal this decision to the BLM Director. The BLM Director will consider the Governor(s)' comments in rendering a final decision.

Protests (43 CFR 1610.6–2)

Section 202(f) of FLPMA requires that the Secretary of the Interior ''allow an opportunity for public involvement and by regulation . . . establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of public lands.'' The protest process described in final § 1610.6–2 authorizes protests of proposed land use plans and plan amendments before such plans or plan amendments are approved. The collection of information assists the BLM in complying with section 202(f) of FLPMA. Final § 1610.6–2 provides an opportunity for any person who participated in the preparation of the resource management plan or plan amendment to protest the approval of proposed RMPs and proposed amendments to RMPs and MFPs to the Director of the BLM. The following information is required for submission of a valid protest:

1. The protestor's name, mailing, address, telephone number, and email address (if available). The BLM needs this information in order to contact the protestor.
2. The protestor's interest that may be adversely affected by the planning process. This information helps the BLM understand whether or not the protestor is eligible to submit a protest.
3. How the protestor participated in the preparation of the resource management plan or plan amendment. This information helps the BLM determine whether or not the protestor is eligible to submit a protest.
4. The plan component or components believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations. This information is necessary because the approval of a resource management plan is the final decision for the Department of the Interior. Plan components represent planning-level management direction with which all future decisions within a planning area must be consistent, thus it is important for the BLM to know if a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations.
5. A concise explanation of why the plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations and of the associated issue or issues that were raised during the preparation of the resource management plan or plan amendment. This information is essential to the BLM's understanding of the protest and decision to grant or dismiss the protest.
6. Copies of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record. This information helps the BLM to understand the protest and to reach a decision.

The BLM Director is required to render a decision on the protest before approval of any portion of the resource management plan or plan amendment being protested. The Director's decision is the final decision of the Department of the Interior.

Estimated Hour Burdens

The BLM estimates 131 responses and 1,965 hours annually. The estimated hour burdens are itemized in the following table. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the information collection requirements.

ESTIMATES OF ANNUAL HOUR BURDENS

Type of response A.	Number of responses B.	Hours per response C.	Total hours (column B × column C) D.
Governor's Consistency Review Requirements 43 CFR 1610.3–3(b)	27	15	405
Protest Procedures/Governments 43 CFR 1610.6–2	16	15	240
Protest Procedures/Individuals and Households 43 CFR 1610.6–2	32	15	480
Protest Procedures/Businesses and Associations 43 CFR 1610.6–)	56	15	840
Totals	131	.....	1,965

In response to the proposed rule (81 FR 9674, February 25, 2016), BLM did not receive any public comments that addressed information collection activities for this rulemaking.

National Environmental Policy Act

The final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and the BLM has prepared documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is categorically excluded from

NEPA review. This rule is excluded from the requirement to prepare a detailed statement because it is entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that requires further analysis under NEPA.

Documentation of the reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this final rule.

National Historic Preservation Act

While the promulgation of the rule is an undertaking under the National Historic Preservation Act, 54 U.S.C. 306108, the BLM has determined that the rulemaking is not the type of activity that has the potential to cause effects on historic properties under 36 CFR 800.3(a)(1). This is because the final rule is entirely procedural. This final rule does not set goals, standards, or methods for how the public land is to be managed. Rather, it describes the process by which the BLM develops these for individual land use planning areas. This final rule does not approve any land use plans or plan amendments and does not authorize any particular projects or other actions that could cause effects on historic properties.

Endangered Species Act

The BLM has determined a no effect determination is appropriate under section 7 of the Endangered Species Act. The final rule is entirely procedural in nature, and it would have no effect on listed species or designated critical habitat because it does not approve any land use plans or plan amendments or authorize any particular projects or other actions that could have such effects.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition of Executive Order 13211. This rule is administrative in nature and affects the BLM's internal procedures. There are no impacts on the development of energy on public lands. A statement of Energy Effects is not required.

Authors

The principal author of this rule is Shasta Ferranto, Division of Decision Support, Planning and NEPA, BLM Washington Office; assisted by Charles Yudson, Jean Sonneman and Ian Senio, Office of Regulatory Affairs, BLM Washington Office; Elizabeth Meyer Shields, Leah Baker, and Rebecca Moore, Division of Decision Support, Planning and NEPA, BLM Washington Office; Kathryn Kovacs, BLM Washington Office; and Nicollee Gaddis, BLM Las Vegas Field Office.

List of Subjects in 43 CFR Part 1600

Administrative practice and procedure, Coal, Environmental impact statements, Environmental protection, Intergovernmental relations, Public lands, State and local governments.

Dated: November 22, 2016.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

43 CFR Chapter II

■ For the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR by revising part 1600 to read as follows:

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.
1601.0–1 Purpose.
1601.0–2 Objective.
1601.0–3 Authority.
1601.0–4 Responsibilities.
1601.0–5 Definitions.
1601.0–6 Environmental impact statement policy.
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Subpart 1610—Resource Management Planning

Sec.
1610.1 Resource management planning framework.
1610.1–1 Guidance and general requirements.
1610.1–2 Plan components.
1610.2 Public involvement.
1610.2–1 Public notice.
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1610.2–3 Availability of the resource management plan.
1610.3 Consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes.
1610.3–1 Consultation with Indian tribes.
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1610.3–3 Consistency requirements.
1610.4 Planning assessment.
1610.5 Preparation of a resource management plan.
1610.5–1 Identification of planning issues.
1610.5–2 Formulation of resource management alternatives.
1610.5–3 Estimation of effects of alternatives.
1610.5–4 Preparation of the draft resource management plan and selection of preferred alternatives.
1610.5–5 Selection of the proposed resource management plan.
1610.6 Resource management plan approval, implementation, and modification.
1610.6–1 Resource management plan approval and implementation.
1610.6–2 Protest procedures.
1610.6–3 Conformity and implementation.
1610.6–4 Monitoring and evaluation.
1610.6–5 Maintenance.
1610.6–6 Amendment.
1610.6–7 Revision.
1610.6–8 Situations where action can be taken based on another agency's planning documents.
1610.7 Management decision review by Congress.
1610.8 Designation of areas.
1610.8–1 Designation of areas unsuitable for surface mining.
1610.8–2 Designation of areas of critical environmental concern.
1610.9 Transition period.

Authority: 43 U.S.C. 1711–1712.

Subpart 1601—Planning

§ 1601.0–1 Purpose.

The purpose of this part is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM), consistent with the principles of multiple use and sustained yield, unless otherwise specified by law.

§ 1601.0–2 Objective.

The objective of resource management planning by the BLM is to manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law, provide for meaningful public involvement by the public, State and local governments, Indian tribes and Federal agencies in the preparation and amendment of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for renewable and non-renewable resources including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands.

§ 1601.0–3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1711–1712) (FLPMA); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 1601.0–4 Responsibilities.

(a) The Secretary and the Director provide national level policy and procedure guidance for planning. The Director determines the deciding official and the planning area for the preparation of resource management plans and plan amendments that cross State boundaries. For other resource management plans or plan amendments, the deciding official shall be the BLM State Director, unless otherwise determined by the Director.

(b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the responsible official for the preparation of each resource management plan or plan amendment. The deciding official also determines the planning area for resource management plans and plan amendments that do not cross State boundaries.

(c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.

§ 1601.0–5 Definitions.

As used in this part, the term:

Areas of Critical Environmental Concern or ACEC means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

Conformity or conformance means that a resource management action shall be clearly consistent with the plan components of the approved resource management plan (see § 1610.6–3).

Consistent with officially approved and adopted plans means that resource management plans are compatible with the terms, conditions, and decisions of officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations, and subject to the qualifications in § 1610.3–3.

Cooperating agency means an eligible governmental entity (see 43 CFR 46.225(a)) that has entered into an agreement with the BLM to participate in the development of an environmental impact statement or environmental assessment as a cooperating agency under the National Environmental Policy Act and in the planning process as described in § 1610.3–2 of this part. The BLM and the cooperating agency will work together under the terms of the agreement.

Deciding official means the BLM official who is delegated the authority to approve a resource management plan or plan amendment (see § 1601.0–4).

High quality information means any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

Landscape means an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context.

Mitigation means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

Multiple use means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

Officially approved and adopted plans means resource-related plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, tribal, or local constitutions, legislation, or charters which have the force and effect of law.

Plan amendment means an amendment to an approved resource management plan or management framework plan to change one or more plan components (see § 1610.6–6).

Plan components means the elements of a resource management plan with which future management actions shall be consistent. Plan components consist of goals; objectives; designations; resource use determinations; monitoring and evaluation standards; and lands identified as available for disposal, including sales under section 203 of FLPMA, as applicable (see § 1610.1–2).

Plan maintenance means change(s) to an approved resource management plan to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6–5).

Plan revision means a revision of an approved resource management plan that affects the entire resource management plan or major portions of the resource management plan (see § 1610.6–7). Preparation or development of a resource management plan includes plan revisions.

Planning area means the geographic area for the preparation or amendment of a resource management plan.

Planning assessment means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area (see § 1610.4). A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan.

Planning issue means disputes, controversies, or opportunities related to resource management.

Public means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups, and officials of Federal, State, local, and Indian tribal governments.

Public involvement means the opportunity for participation by the public in decision making and planning with respect to the public lands.

Public lands means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the BLM. Public lands do not include lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

Resource management plan means a land use plan as described under section 202 of the FLPMA, including plan revisions. Approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

Responsible official means a BLM official who is delegated the authority to prepare a resource management plan or plan amendment.

State and local government means the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.

Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

§ 1601.0–6 Environmental impact statement policy.

The BLM shall prepare an environmental impact statement when preparing a resource management plan. The environmental analysis of alternatives and the proposed resource management plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed resource management plan shall be published in a single document with the related environmental impact statement.

§ 1601.0–7 Scope.

(a) These regulations apply to all public lands.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0–8 Principles.

The development, approval, maintenance, amendment, and revision of resource management plans shall provide for public involvement and shall be consistent with the principles described in section 202 of FLPMA. Additionally, the BLM shall consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales. The BLM also shall consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests.

Subpart 1610—Resource Management Planning

§ 1610.1 Resource management planning framework.

§ 1610.1–1 Guidance and general requirements.

(a) Guidance for preparation and amendment of resource management plans may be provided by the Director and deciding official, as needed, to help the responsible official prepare a specific resource management plan. Such guidance may include the following:

(1) Policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands; and

(2) Analysis requirements, planning procedures, and other written information and instructions required to be considered in the planning process.

(b) The BLM shall use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers shall be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield unless otherwise specified by law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

(c) The BLM shall use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

§ 1610.1–2 Plan components.

(a) Plan components guide future management actions within the planning area. Resource management plans shall include the following plan components:

(1) *Goals.* A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within the planning area, or a portion of the planning area, toward which management of the land and resources should be directed.

(2) *Objectives.* An objective is a concise statement of desired resource conditions within the planning area, or a portion of the planning area, developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. As appropriate, objectives should also:

(i) Identify standards to mitigate undesirable impacts to resource conditions;

(ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors; and

(iii) Identify indicators for evaluating progress toward achievement of the objective.

(b) Resource management plans also shall include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield unless otherwise specified by law:

(1) *Designations.* A designation identifies areas of public land where management is directed toward one or more priority resource values or resource uses.

(i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8–2).

(ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.

(2) *Resource use determinations.* A resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. Resource use

determinations shall be consistent with or support the management priorities identified through designations.

(3) *Monitoring and evaluation standards.* Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.

(4) Lands identified as available for disposal from BLM administration, including sales under section 203 of FLPMA, as applicable.

(c) A plan component may only be changed through a resource management plan amendment or revision, except to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6–5).

§ 1610.2 Public involvement.

(a) The BLM shall provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) Public involvement activities conducted by the BLM shall be documented either by a record or by a summary of the principal issues discussed and comments made. The record or summary of the principal issues discussed and comments made shall be available to the public and open for 30 days to any participant who wishes to review the record or summary.

(c) Before the close of each fiscal year, the BLM shall post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Web site.

§ 1610.2–1 Public notice.

(a) When the BLM prepares a resource management plan or amends a resource management plan and prepares an environmental impact statement to inform the amendment, the BLM shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following points in the planning process:

(1) Preparation of the planning assessment (subject to § 1610.4);

(2) Identification of planning issues and review of the preliminary statement of purpose and need (see § 1610.5–1);

(3) Review of the preliminary resource management alternatives, preliminary rationale for alternatives, and the basis for analysis (subject to §§ 1610.5–2(c) and 1610.5–3(a)(1));

(4) Comment on the draft resource management plan (see § 1610.5–4); and

(5) Protest of the proposed resource management plan (see §§ 1610.5–5 and 1610.6–2).

(b) When the BLM amends a resource management plan and prepares an environmental assessment to inform the amendment, the BLM shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following points in the planning process:

(1) Identification of planning issues (see § 1610.6–6(a));

(2) Comment on the draft resource management plan amendment, as appropriate (see § 1610.6–6(a)); and

(3) Protest of the proposed resource management plan amendment (see §§ 1610.5–5 and 1610.6–2).

(c) The BLM shall announce opportunities for public involvement by posting a notice on the BLM's Web site, at all BLM offices within the planning area, and at other public locations, as appropriate. The responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.

(d) Individuals or groups may request to be notified of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM shall notify those individuals or groups through written or electronic means.

(e) The BLM shall notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting.

(f) When initiating the identification of planning issues for the preparation of a resource management plan or plan amendment, in addition to the public notification requirements of §§ 1610.2–1(c) and 1610.2–1(d), the BLM shall notify the public as follows:

(1) The BLM shall publish a notice in appropriate media, including newspapers of general circulation in the planning area. The BLM shall also publish a notice of intent in the **Federal Register**. This notice may also constitute the scoping notice required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

(2) This notice shall include the following:

(i) Description of the proposed planning action;

(ii) Identification of the planning area for which the resource management plan is to be prepared;

(iii) The general types of issues anticipated;

(iv) The expertise to be represented and used to prepare the resource management plan, in order to achieve an interdisciplinary approach (see § 1610.1–1(b));

(v) The kind and extent of public involvement opportunities to be provided, as known at the time;

(vi) The times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences, or other gatherings, as known at the time;

(vii) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and

(viii) The location and availability of documents relevant to the planning process.

(g) If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved (see § 1610.6–1(b)).

(h) The BLM shall notify the public when a resource management plan or plan amendment has been approved.

(i) When changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make the changes available for public review at least 30 days prior to their implementation.

§ 1610.2–2 Public comment periods.

(a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM shall notify the public and provide for at least 30 calendar days for response, unless a longer period is required by law or regulation.

(b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM shall provide at least 60 calendar days for response. The 60-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental

impact statement in the **Federal Register**.

(c) When requesting written comments on a draft resource management plan and draft environmental impact statement, the BLM shall provide at least 100 calendar days for response. The 100-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.

(d) When a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall request written comments on the designations under consideration (see § 1610.8–2).

§ 1610.2–3 Availability of the resource management plan.

(a) The BLM shall make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available to the public. At a minimum, the BLM shall make copies of these documents available electronically and at all BLM offices within the planning area. The BLM shall also make any scientific or technical reports the responsible official uses in the preparation of a resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law.

(b) Upon request, the BLM shall make single printed copies of the draft or proposed resource management plan or plan amendment available to individual members of the public during the public involvement process. After the BLM approves a resource management plan or plan amendment, the BLM may charge a fee for additional printed copies. Fees for reproducing requested documents beyond those used as part of the public involvement activities and other than single printed copies of the resource management plan or plan amendment may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

§ 1610.3 Consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3–1 Consultation with Indian tribes.

The BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans.

§ 1610.3–2 Coordination of planning efforts.

(a) *Objectives of coordination.* In addition to the public involvement prescribed by § 1610.2, and to the extent consistent with Federal laws and regulations applicable to public lands, coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of this coordination are for the BLM to:

(1) Keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes;

(2) Assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands;

(3) Assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans;

(4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes, in the development of resource management plans, including early notice of final decisions that may have a significant impact on non-Federal lands; and

(5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

(b) *Cooperating agencies.* When preparing a resource management plan, the responsible official shall follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment.

(1) The responsible official shall consider any request by an eligible governmental entity to participate as a cooperating agency. If the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or she shall inform the deciding official of the denial. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the environmental impact statement.

(2) When a cooperating agency is a non-Federal agency, a memorandum of understanding shall be used and shall include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any documents, including drafts (see 43 CFR 46.225(d)).

(3) The responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise, during the following steps in the planning process:

(i) Preparation of the planning assessment (see § 1610.4);

(ii) Identification of planning issues (see § 1610.5–1);

(iii) Formulation of resource management alternatives (see § 1610.5–2);

(iv) Estimation of effects of alternatives (see § 1610.5–3);

(v) Preparation of the draft resource management plan (see § 1610.5–4); and

(vi) Preparation of the proposed resource management plan (see § 1610.5–5).

(c) *Coordination requirements.* The BLM shall provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestions on issues and topics which may affect or influence other agency or other government programs.

(1) To facilitate coordination with State governments, deciding officials should seek the input of the Governor(s) on the timing, scope, and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and multiple use and sustained yield on public lands.

(2) Deciding officials may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the deciding official shall provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the deciding official has reason to believe could affect or influence State government programs.

(3) The responsible official shall notify Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement in the preparation or amendment of a resource management plan. These notices shall be issued simultaneously with the public notices required under § 1610.2–1 of this part.

(4) The responsible official shall notify relevant State agencies consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist.

(5) The responsible official shall provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and comment on resource management plans and plan amendments.

(d) *Resource advisory councils.* When an advisory council has been formed under section 309 of FLPMA for the area addressed in a resource management plan or plan amendment, the responsible official shall inform that council, seek its views, and consider them throughout the planning process.

§ 1610.3–3 Consistency requirements.

(a) Resource management plans shall be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.

(1) The BLM shall, to the extent practical, keep apprised of officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.

(2) The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by Federal agencies, State and local governments, or Indian tribes of an apparent inconsistency.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be specific inconsistencies between the BLM draft resource management plan and their officially approved and adopted plans, the proposed resource management plan shall show how those inconsistencies were addressed and, if possible, resolved.

(4) Where the officially approved and adopted plans of State and local governments differ from each other, those of the higher authority will normally be followed.

(b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official shall submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with officially approved and adopted land use plans of State and local governments and provides recommendations to remedy the identified inconsistencies; or

(ii) Waives or reduces the 60-day period.

(2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.

(3) If the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM shall notify the public and request written comments on these changes.

(4) The deciding official shall notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.

(i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.

(ii) The Director shall consider the Governor(s)' appeal and the consistency requirements of this section in rendering a final decision. The Director shall notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM shall notify the public of this decision and make the written decision available to the public.

§ 1610.4 Planning assessment.

Before initiating the preparation of a resource management plan the BLM shall, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment.

(a) *Planning area.* The BLM shall identify a preliminary planning area for use as the basis for the planning assessment.

(1) In identifying the preliminary planning area, the BLM shall consider the following:

(i) Management concerns identified through monitoring and evaluation (see § 1610.6–4);

(ii) Relevant landscapes based on these management concerns;

(iii) Director and deciding official guidance;

(iv) Officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes; and

(v) Other relevant information, as appropriate.

(2) The responsible official shall make a description of and a rationale for the preliminary planning area available for public review prior to the publication of the notice of intent in the **Federal Register** (see § 1610.2–1(f)).

(b) *Information gathering.* The responsible official shall:

(1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, including the identification of potential ACECs (see § 1610.8–2). To the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located, and in a manner that aids the planning process and avoids unnecessary data-gathering;

(2) Identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment. These may include, but are not limited to, Executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State, multi-state, tribal, or local resource plans;

(3) Provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans described under paragraph (b)(2) of this section, for the BLM's consideration in the planning assessment; and

(4) Identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.

(c) *Information quality.* The responsible official shall evaluate the data and information gathered under paragraph (b) of this section to ensure the use of high quality information in the planning assessment and to identify any data gaps or further information needs.

(d) *Assessment.* The responsible official shall assess the resource,

environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official shall consider and document the following factors in this assessment when they are applicable:

(1) Resource use and management authorized by FLPMA and other relevant authorities;

(2) Land status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights;

(3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;

(4) Known resource constraints, or limitations;

(5) Areas of potential importance within the planning area, including:

(i) Areas of tribal, traditional, or cultural importance;

(ii) Habitat for special status species, including State or federally-listed threatened and endangered species;

(iii) Other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat;

(iv) Areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change;

(v) Lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value;

(vi) Areas of significant historical value, including paleontological sites;

(vii) Existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs;

(viii) Areas with potential for renewable or non-renewable energy development or energy transmission;

(ix) Areas with known mineral potential;

(x) Areas with known potential for producing forest products, including timber;

(xi) Areas of importance for recreation activities or access;

(xii) Areas of importance for public health and safety, such as abandoned mine lands or natural hazards;

(6) Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change; and

(7) The various goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production; and

(i) The degree of local, regional, national, or international importance of these goods, services, and uses;

(ii) Available forecasts and analyses related to the supply and demand for these goods, services, and uses; and

(iii) The estimated levels of these goods, services, and uses that may be produced on a sustained yield basis.

(e) *Planning assessment report.* The responsible official shall document the planning assessment in a report made available for public review prior to the publication of the notice of intent, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM's Web site.

(f) *Plan amendments.* Before initiating the preparation of a plan amendment for which an environmental impact statement will be prepared, the BLM shall complete a planning assessment consistent with the requirements of this section for the geographic area being considered for amendment. The deciding official may waive this requirement for project-specific or other minor amendments.

§ 1610.5 Preparation of a resource management plan.

When preparing a resource management plan, or a plan amendment for which an environmental impact statement will be prepared, the BLM shall follow the process described in §§ 1610.5–1 through 1610.5–5.

§ 1610.5–1 Identification of planning issues.

(a) The responsible official shall prepare a preliminary statement of purpose and need, which briefly indicates the underlying purpose and need to which the BLM is responding (see 43 CFR 46.420). This statement shall be informed by Director and deciding official guidance (see § 1610.1–1(a)), public views (see § 1610.4(a)(4)), the planning assessment (see § 1610.4(c)), the results of any previous monitoring and evaluation within the planning area (see § 1610.6–4), Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The BLM shall initiate the identification of planning issues by notifying the public and making the preliminary statement of purpose and need available for public review.

(b) The public, other Federal agencies, State and local governments, and Indian tribes shall be given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management for consideration in the preparation of the resource management plan, including those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The responsible official shall analyze those suggestions and other available data and information, such as the planning assessment (see § 1610.4–1), and determine the planning issues to be addressed during the planning process. Planning issues may be modified during the planning process to incorporate new information. The identification of planning issues should be integrated with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

§ 1610.5–2 Formulation of resource management alternatives.

(a) *Alternatives development.* The BLM shall consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study. The decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM.

(1) The alternatives developed shall be informed by the Director and deciding official guidance (see § 1610.1(a)), the planning assessment (see § 1610.4), the statement of purpose and need (see § 1610.5–1), and the planning issues (see § 1610.5–1).

(2) In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.

(3) One alternative shall be for no action, which means continuation of present level or systems of resource management.

(4) The resource management plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

(b) *Rationale for alternatives.* The resource management plan shall describe the rationale for the differences between alternatives. The rationale shall include:

(1) A description of how each alternative addresses the planning issues, consistent with the principles of

multiple use and sustained yield, unless otherwise specified by law;

(2) A description of management direction that is common to all alternatives; and

(3) A description of how management direction varies across alternatives to address the planning issues.

(c) *Public review of preliminary alternatives.* The responsible official shall make the preliminary alternatives and the preliminary rationale for alternatives available for public review prior to the publication of the draft resource management plan and draft environmental impact statement, and as appropriate, prior to the publication of draft plan amendments when an environmental impact statement is prepared to inform the amendment.

(d) *Changes to preliminary alternatives.* The BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds if it determines that public suggestions or other new information make such changes necessary. A description of these changes shall be made available to the public in the draft resource management plan (see § 1610.5–4).

§ 1610.5–3 Estimation of effects of alternatives.

(a) *Basis for analysis.* The responsible official shall identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.

(1) The responsible official shall make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft environmental impact statement, and, as appropriate, prior to the publication of draft plan amendments when an environmental impact statement is prepared to inform the amendment.

(2) The BLM may change the procedures, assumptions, and indicators as planning proceeds if it determines that public suggestions or other new information make such changes necessary. A description of these changes shall be made available to the public in the draft resource management plan (see § 1610.5–4).

(b) *Effects analysis.* The responsible official shall estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.5–4 Preparation of the draft resource management plan and selection of preferred alternatives.

(a) The responsible official shall prepare a draft resource management plan based on Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives. The draft resource management plan and draft environmental impact statement shall:

(1) Describe any changes made to the preliminary alternatives and preliminary procedures, assumptions, and indicators;

(2) Evaluate the alternatives; and

(3) Identify one or more preferred alternatives, if one or more exist, and explain the rationale for the preference or absence of a preference. The identification of one or more preferred alternatives remains the exclusive responsibility of the BLM.

(b) The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the deciding official for publication and filing with the Environmental Protection Agency.

(c) This draft resource management plan and draft environmental impact statement shall be provided for comment to the Governor(s) of the State(s) involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that have requested to be notified of opportunities for public involvement or that the deciding official has reason to believe would be interested (see § 1610.3–2(c)). This action constitutes compliance with the requirements of § 3420.1–7 of this title.

§ 1610.5–5 Selection of the proposed resource management plan.

(a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official shall evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement.

(b) The deciding official shall publish these documents and file the final environmental impact statement with the Environmental Protection Agency.

§ 1610.6 Resource management plan approval, implementation, and modification.

§ 1610.6–1 Resource management plan approval and implementation.

(a) The deciding official may approve the resource management plan or plan amendment for which an environmental impact statement was prepared no earlier than 30 days after the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement in the **Federal Register**.

(b) Approval shall be withheld on any portion of a resource management plan or plan amendment being protested (see § 1610.6–2) until final action has been completed on such protest. If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is within the spectrum of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved.

(c) The approval of a resource management plan or a plan amendment for which an environmental impact statement is prepared shall be documented in a concise public record of the decision (see 40 CFR 1505.2).

§ 1610.6–2 Protest procedures.

(a) Any member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see § 1610.5), unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.

(1) *Submission.* The protest must be in writing and must be filed with the Director. The protest may be filed as a hard-copy or electronically. The responsible official shall specify protest filing procedures for each resource management plan or plan amendment, including the method the public may use to submit a protest electronically.

(2) *Timing.* For resource management plans or plan amendments for which an environmental impact statement was prepared, the protest must be filed

within 30 days after the date the Environmental Protection Agency published the notice of availability of the final environmental impact statement in the **Federal Register**. For plan amendments for which an environmental assessment was prepared, the protest must be filed within 30 days after the date that the BLM notifies the public of the availability of the amendment.

(3) *Content requirements.* The protest must:

(i) Include the name, mailing address, telephone number, email address (if available), and interest of the person filing the protest;

(ii) State how the protestor participated in the preparation of the resource management plan or plan amendment;

(iii) Identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs implementing such laws and regulations;

(iv) Concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs implementing such laws and regulations and, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan, identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; and

(v) Include a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.

(4) *Availability.* Upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws or regulations.

(b) The Director shall render a written decision on all protests and notify protesting parties of the decision. The decision on the protest and the reasons for the decision shall be made available to the public. The decision of the Director is the final decision of the Department of the Interior. Approval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest (see § 1610.6–1(b)).

(c) The Director may dismiss any protest that does not meet the requirements of this section. The Director shall notify protesting parties of the dismissal and provide the reasons for the dismissal.

§ 1610.6–3 Conformity and implementation.

(a) All future resource management authorizations and actions, and subsequent more detailed or specific planning, shall conform to the plan components of the approved resource management plan.

(b) After a resource management plan or plan amendment is approved, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement, or other instrument of occupancy and use, the BLM shall take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements, or other instruments for occupancy and use, conform to the plan components of the approved resource management plan or plan amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or plan amendment may appeal such action pursuant to part 4, subpart E of this chapter, at the time the specific action is proposed for implementation.

(c) If a proposed action is not in conformance with a plan component, and the deciding official determines that such action warrants further consideration before a resource management plan revision is scheduled, such consideration shall be through a resource management plan amendment in accordance with § 1610.6–6 of this part.

(d) More detailed and site specific plans for coal, oil shale and tar sand resources shall be prepared in accordance with specific regulations for those resources: Part 3400 of this title for coal; part 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans shall be in conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.6–4 Monitoring and evaluation.

(a) The BLM shall monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards to determine whether:

(1) The resource management plan objectives are being met; and

(2) There is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

(b) The responsible official shall document the evaluation of the resource management plan in a report made available for public review on the BLM's Web site.

§ 1610.6–5 Maintenance.

Resource management plans may be maintained as necessary to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance shall not change a plan component of the approved resource management plan, except to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance is not considered a resource management plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this part or the preparation of an environmental assessment or environmental impact statement. When changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make the changes available for public review at least 30 days prior to their implementation.

§ 1610.6–6 Amendment.

(a) A plan component may be changed through amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. An amendment shall be made in conjunction with an environmental assessment of the proposed change, or an environmental impact statement, if necessary. When amending a resource management plan, the BLM shall provide for public involvement (see § 1610.2), interagency coordination, tribal consultation, consistency review (see § 1610.3), and protest (see § 1610.6–2). In all cases, the effect of the amendment on other plan components shall be evaluated. If the amendment is being considered in response to a specific proposal, the effects analysis required for the proposal and for the amendment may occur simultaneously.

(b) If the environmental assessment does not disclose significant impacts,

the responsible official may make a finding of no significant impact and then make a recommendation on the amendment to the deciding official for approval. Upon approval, the BLM shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(c) If the BLM amends several resource management plans simultaneously, a single programmatic environmental impact statement or environmental assessment may be prepared to address all amendments.

§ 1610.6–7 Revision.

The BLM may revise a resource management plan, as necessary, when monitoring and evaluation findings (§ 1610.6–4), new data, new or revised policy, or other relevant changes in circumstances affect the entire resource management plan or major portions of the resource management plan. Revisions shall comply with all of the requirements of this part for preparing and approving a resource management plan.

§ 1610.6–8 Situations where action can be taken based on another agency's planning documents.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area, including mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the BLM and another Federal agency. The BLM may rely on the planning documents of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, tribal, State, or local) may be relied on as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.

(b) After evaluation and review, the BLM may adopt another agency's plan for continued use as a resource management plan so long as the plan is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations, and an agreement is reached between the BLM and the other agency to provide for maintenance and amendment of the plan, as necessary.

(c) Another agency's resource assessment may be relied on only if it is comprehensive and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment (see § 1610.4), including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations.

(d) A land use analysis may be relied on to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public involvement as required by § 1610.2, the consultation and consistency determinations required by § 1610.3, the protest procedure prescribed by § 1610.6–2, and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of FLPMA.

§ 1610.7 Management decision review by Congress.

FLPMA requires that any BLM management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination of use(s). The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1610.8 Designation of areas.

§ 1610.8–1 Designation of areas unsuitable for surface mining.

(a)(1) The resource management planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the BLM for comment, the resource management plan, or plan amendment if available, shall be the basis for review.

(3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the BLM shall take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

(b)(1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the BLM, the resource management plan, if available, shall be the basis for determinations for designation.

(3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the BLM shall take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

§ 1610.8–2 Designation and protection of areas of critical environmental concern.

(a) Areas having potential for ACEC designation and protection shall be identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan. The inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes, or natural hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria must be met:

(1) *Relevance.* There must be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard; and

(2) *Importance.* The value, resource, system, process, or natural hazard described in paragraph (a)(1) of this section must have substantial significance and values. This generally requires qualities of special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard

can be important if it is a significant threat to human life or property.

(b) Potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan consistent with the priority established by FLPMA (43 U.S.C. 1712(c)(3)). The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands. ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.

(1) When a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the **Federal Register** and request written comments on the designations under consideration. This step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see § 1610.2–2). Any draft resource management plan or plan amendment involving a potential ACEC shall include a list of each potential ACEC and any special management attention which would occur if it were formally designated.

(2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan shall include a list of all designated ACECs, and include any special management attention, such as resource use determinations (§ 1610.1–2(b)(2)), identified to protect the designated ACECs.

§ 1610.9 Transition period.

(a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

(1) The management framework plan must be in compliance with the principle of multiple use and sustained yield unless otherwise specified by law, and must have been developed with public involvement and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this part.

(2) For proposed actions a determination shall be made by the responsible official whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance with the management framework plan, it may be further considered for decision under procedures applicable to that type of action, including the regulatory provisions of the National Environmental Policy Act.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further consideration before a resource management plan is scheduled for preparation, such consideration shall be through an amendment to the management framework plan under the provisions of § 1610.6–6 of this part.

(b)(1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis deemed necessary by the BLM to make an informed decision, shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

(2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.6–6 of this part for amending a plan.

(c)(1) When considering whether a proposed action is in conformance with a resource management plan, the BLM shall use an existing resource management plan approved prior to January 11, 2017 until it is superseded by a resource management plan or plan amendment prepared under the regulations in this part. In such circumstances, the proposed action must either be specifically provided for in the resource management plan or clearly consistent with the terms, conditions, and decisions of the approved plan.

(2) If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must be clearly consistent with the plan components of the provisions of the approved resource management plan amended under the regulations in this part and the terms, conditions, and decisions of the provisions of the approved resource management plan that have not been amended under the regulations in this part.

(d) If the preparation, revision, or amendment of a plan was formally initiated by issuance of a notice of intent in the **Federal Register** prior to January 11, 2017, the BLM may complete and approve the resource management plan or plan amendment pursuant to the requirements of this part or to the provisions of the planning regulations in 43 CFR part 1600 in effect prior to the effective date of this rule.

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Part III

Environmental Protection Agency

40 CFR Part 770

Formaldehyde Emission Standards for Composite Wood Products; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2016–0461; FRL–9949–90]

RIN 2070–AJ44

Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule to implement the Formaldehyde Standards for Composite Wood Products Act, which added Title VI to the Toxic Substances Control Act (TSCA). The purpose of TSCA Title VI is to reduce formaldehyde emissions from composite wood products, which will reduce exposures to formaldehyde and result in benefits from avoided adverse health effects. This final rule includes formaldehyde emission standards applicable to hardwood plywood, medium-density fiberboard, and particleboard, and finished goods containing these products, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States. This final rule includes provisions relating to, among other things, laminated products, products made with no-added formaldehyde resins or ultra low-emitting formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, enforcement, import certification, and product inventory sell-through provisions, including a product stockpiling prohibition. This final rule also establishes a third-party certification program for hardwood plywood, medium-density fiberboard, and particleboard and includes procedures for the accreditation of third-party certifiers and general requirements for accreditation bodies and third-party certifiers.

DATES: This final rule is effective February 10, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2017.

ADDRESSES: The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPPT–2011–0380, EPA–HQ–OPPT–2012–0018, and EPA–HQ–OPPT–2016–0461 are available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6450; email address: *winchester.erik@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. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), sell, supply, or offer for sale hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. 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:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

This final rule is being issued under the authority of section 601 of TSCA, 15 U.S.C. 2697. EPA has also been mindful of environmental, economic, and social impacts consistent with section 2(c) of TSCA, 15 U.S.C. 2601.

C. What action is the agency taking?

EPA is issuing a final rule that implements TSCA Title VI. The final rule includes provisions on labeling; chain of custody requirements; sell-through provisions; ultra low-emitting formaldehyde resins (ULEF); no-added formaldehyde-based resins (NAF); finished goods; third-party testing and certification; auditing and reporting of third-party certifiers (TPCs); recordkeeping; enforcement; laminated products; and exceptions from regulatory requirements for products and components containing *de minimis* amounts of composite wood products. The final rule incorporates the emission standards established by TSCA Title VI for hardwood plywood, medium-density fiberboard (MDF) and particleboard, and products containing these composite wood materials, that are sold, supplied, offered for sale, or manufactured (defined by statute to include import) in the United States.

The emission standards established by TSCA Title VI are not altered in this

final rule. The requirements in this final rule are consistent, to the extent EPA deemed appropriate and practical considering TSCA Title VI, with the requirements currently in effect in California under the California Air Resources Board's (CARB) Air Toxics Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM) (Ref. 1).

Under this final rule, the definition of hardwood plywood exempts laminated products made by attaching a wood or woody grass veneer to a compliant core or platform with a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure. To be eligible for the exemption, laminated product producers must maintain records demonstrating eligibility for the exemption.

This final rule establishes the manufactured-by date for composite wood products at December 12, 2017. After this date, hardwood plywood made with either a combination core or a veneer core, particleboard, and MDF must be manufactured (including imported) in compliance with the provisions of this final rule. This final rule establishes the manufactured-by date for laminated products at December 12, 2023. Before that date, laminated product producers must use compliant composite wood product platforms and comply with the recordkeeping and labeling requirements for fabricators. After that date, laminated products that are exempt from the definition of hardwood plywood must also keep, as a condition of the exemption, records demonstrating eligibility for the exemption. Other laminated products will have to be made in compliance with the testing and TPC certification requirements for hardwood plywood.

Table 1 is a summary of the regulatory requirements by regulated entity. This is not meant to be an exhaustive list of requirements, nor is it intended to replace the provisions of the regulatory text. For specific information on any of these requirements, interested persons should consult the referenced regulatory provisions. Entities who fit into more than one category must comply with the requirements for all applicable categories. For example, an importer of composite wood product panels who also fabricates finished goods must comply with the requirements for importers and the requirements for fabricators.

TABLE 1—SUMMARY OF PROVISIONS

Requirement	Compliance date
Composite Wood Product Producers	
Products must comply with emission standards: Hardwood plywood (made with a veneer core or a composite core) = 0.05 ppm Particleboard = 0.09 ppm MDF = 0.11 ppm Thin MDF = 0.13 ppm (40 CFR 770.10)	December 12, 2017.
Products must be certified by an EPA TSCA Title VI TPC unless they are eligible for a limited exemption for products made with NAF-based or ULEF resins. (40 CFR 770.15, 770. 17, 770.18)	December 12, 2017.
Products must undergo quarterly testing and routine quality control testing using specified methods (40 CFR 770.20)	December 12, 2017.
Panels must be labeled with the producer's name (or other identification), lot number, TPC number, and a statement of compliance with TSCA Title VI. (40 CFR 770.45)	December 12, 2017.
Records, including testing, production, purchaser, transporter, and non-complying lot information, must be kept for 3 years.	December 12, 2017.
Records demonstrating initial eligibility for reduced testing or a limited third-party certification exemption for products made with NAF-based or ULEF resins must be kept for as long as exemption eligibility is claimed. (40 CFR 770.40)	
Producers of Laminated Products That Are Not Exempt From the Definition of Hardwood Plywood	
Bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years (40 CFR 770.30, 770.40)	December 12, 2017.
Finished goods must be labeled with the producer's name, the date the good was produced, and a statement of TSCA Title VI compliance. (40 CFR 770.45)	December 12, 2017.
Laminated products must comply with the hardwood plywood emission standard of 0.05 ppm, and the testing, certification, and recordkeeping requirements for composite wood products. (40 CFR 770.10, 770.15, 770.20, 770.40)	December 12, 2023.
Producers of Laminated Products That Are Exempt From the Definition of Hardwood Plywood	
Records demonstrating purchase/use of compliant platforms and NAF or PF resins and bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years. (40 CFR 770.40)	December 12, 2023.
Bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years (40 CFR 770.30, 770.40)	December 12, 2017.
Finished goods must be labeled with the producer's name, the date the good was produced, and a statement of TSCA Title VI compliance. (40 CFR 770.45)	December 12, 2017.
Fabricators (Other Than Laminated Product Producers)	
Bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years.	December 12, 2017

TABLE 1—SUMMARY OF PROVISIONS—Continued

Requirement	Compliance date
(40 CFR 770.30, 770.40)	
Finished goods must be labeled with the producer's name, the date the good was produced, and a statement of TSCA Title VI compliance. (40 CFR 770.45)	December 12, 2017.
Importers	
Bills of lading, invoices, or comparable documents bearing a statement of TSCA Title VI compliance must be obtained and maintained for 3 years. In addition, must have the ability to make records identifying the panel producer, the date the products were produced, the supplier (if different) and the date the products were purchased available to EPA within 30 calendar days of request. (40 CFR 770.30, 770.40)	December 12, 2017.
Import certification under TSCA section 13 is required ..... (40 CFR 770.30, 770.40)	December 12, 2018.
Distributors and Retailers	
Bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years. ..... (40 CFR 770.30, 770.40)	December 12, 2017

This final rule also establishes an EPA TSCA Title VI Third-Party Certification Program to ensure that composite wood panel producers comply with the statutory formaldehyde emission limits. Under the EPA TSCA Title VI Third-Party Certification Program, TPCs will regularly inspect composite wood panel producers, and conduct, oversee, and verify formaldehyde emissions tests. TPCs who wish to participate in the EPA TSCA Title VI Third-Party Certification Program must apply to EPA for approval and receive recognition from EPA before certifying products under this rule. The requirements for TPCs to receive EPA recognition include being accredited by EPA-recognized accreditation bodies (ABs) to specific voluntary consensus standards and to the regulatory requirements in this rule. In addition, TPCs approved by CARB are eligible for EPA TSCA Title VI recognition through reciprocity, provided that they meet all applicable requirements. Existing CARB TPCs and TPCs approved by CARB during the two-year transition period that are recognized by EPA may certify composite wood products under TSCA Title VI until December 12, 2018. After that time, EPA will only recognize TPCs, including CARB-approved TPCs, who are accredited by EPA-recognized ABs.

Under this final rule, composite wood products must be certified by an EPA TSCA Title VI TPC. To obtain and maintain certification, panel producers must establish quality assurance/quality control programs, conduct regular quality control testing of product emissions, and have an EPA-recognized TPC conduct or oversee quarterly formaldehyde emissions testing. Composite wood products made with NAF-based or ULEF resins may be eligible for reduced testing and/or a limited exemption from TPC oversight after an initial testing period of three months, for NAF, or six months, for ULEF.

This action includes labeling requirements for composite wood products and finished goods as well as ''chain of custody'' and recordkeeping requirements with a three year record retention period. Products that contain *de minimis* amounts of composite wood products, defined as products containing 144 square inches or less of regulated composite wood products, are exempt from the labeling requirements, but not the recordkeeping requirements or other provisions. TSCA section 13 import certification for composite wood products that are articles is also required.

Notable changes from EPA's proposed regulations include the clarification of certain terms under TSCA Title VI to exclude renovation and construction activities, applicability of the hardwood plywood emission standard limited to hardwood plywood made with either a composite or a veneer core, an expanded exemption for laminated products to products laminated with phenol-formaldehyde resins in addition to those laminated with resins formulated with no added formaldehyde as part of the resin cross-linking structure, a manufactured-by date for non-exempt laminated products that is seven years after publication of this final rule, the addition of a petition process through which any person can petition the Agency to expand the exemption for laminated products from the definition of the term ''hardwood plywood'', elimination of the requirement to hold lots selected for testing until test results are received, specific notification requirements for non-complying lots, reduced recordkeeping for non-laminating fabricators, and allowing two years after date of final publication of the rule, instead of one year, for importers to certify that imports are in compliance with TSCA Title VI pursuant to TSCA section 13.

D. Why is the Agency taking this action?

EPA is promulgating this final rule to reduce formaldehyde emissions from composite wood products, and thereby reduce exposures to formaldehyde and avoid adverse health effects. TSCA Title VI directs EPA to promulgate regulations that include provisions on labeling; chain of custody requirements; sell-through provisions; ULEF and NAF resins; finished goods; third-party testing and certification; auditing and reporting of TPCs; recordkeeping; enforcement; laminated products; and exceptions from regulatory requirements for products and components containing *de minimis* amounts of composite wood products.

E. What are the estimated impacts of this action?

EPA's analysis of the potential costs, benefits, and impacts associated with this rulemaking is summarized in Table 2, and additional detail is provided in Unit VI.A. The quantified costs of the rule may exceed the quantified benefits under certain conditions. There are additional unquantified benefits due to other avoided health effects. There is not sufficient information at this time on the relationship between

formaldehyde exposure and myeloid leukemia, respiratory related effects, or reduced fertility to include a valuation estimate in the overall benefits analysis. Although uncertainty remains regarding how best to quantify the effect of formaldehyde exposure on these health endpoints, reducing these effects is an important non-monetized impact that contributes to the overall benefits of the rule.

After assessing both the costs and the benefits of the rule, including the unquantified benefits, EPA has made a reasoned determination that the benefits of the rule justify its costs.

TABLE 2—SUMMARY OF COSTS AND BENEFITS OF RULE

Category	Description
Benefits	This rule will reduce exposures to formaldehyde, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits (due to avoided incidence of eye irritation and nasopharyngeal cancer) are $64 million to $186 million per year using a 3% discount rate, and $26 million to $79 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.
Costs	The annualized costs of this rule are estimated at $38 million to $83 million per year using a 3% discount rate, and $43 million to $78 million per year using a 7% discount rate.
Effects on State, Local, and Tribal Governments.	Government entities are not expected to be subject to the rule's requirements, which apply to entities that accredit TPCs, certify panel producers, or manufacture, fabricate, distribute, or sell composite wood products. The rule does not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism implications.
Small Entity Impacts	This rule would impact approximately 922,000 small businesses: almost 910,000 have costs impacts less than 1% of revenues, over 6,000 have impacts between 1% and 3%, and over 5,000 have impacts greater than 3% of revenues. Approximately 99% of firms with impacts over 1% have annualized costs of less than $250 per year.
Environmental Justice and Protection of Children.	This rule increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children.

F. Children's Environmental Health

Consistent with the Agency's Policy on Evaluating Health Risks to Children (Ref. 2), EPA has evaluated the environmental health effects of formaldehyde emissions from composite wood products on children. The results of this evaluation are described in Chapter 7.7 of the economic analysis (Ref. 3). The economic analysis only monetizes the potential benefits associated with avoided cases of nasopharyngeal cancer and eye irritation, some of which clearly would accrue to children. However, some studies have reported associations between elevated levels of formaldehyde and other health endpoints, such as respiratory symptoms. The World Health Organization (WHO) (Ref. 4) and the Agency for Toxic Substances and Disease Registry (ATSDR) (Ref. 5) have raised questions about the potential role of formaldehyde in increasing risk of asthma or allergic conditions, particularly among children. In addition to a study observing an association with increased chronic respiratory symptoms and decreased pulmonary function among children (Ref. 6), 96% of whom lived in households with formaldehyde levels below 0.075 milligrams per cubic meter (mg/m^3), more recent studies since the WHO and ATSDR reviews observed increased risks of allergic conditions among adults and children, and increased severity of asthma symptoms among children with ''wheeze'' in the previous year (Refs. 7–10). To the extent that the reductions reported in this rule would lead to reduced respiratory symptoms in children, the monetized estimate for cancer and eye irritation alone is likely an underestimate. The analysis shows that children aged zero through one represent three percent of the individuals affected by the rule and are estimated to accrue 2% to 10% of the rule's total quantified benefits. Children aged two through fifteen represent twenty percent of the individuals affected by the rule and are estimated to accrue 15% to 21% of the rule's total quantified benefits. Exposure to formaldehyde may cause disproportionate effects on children compared to adults. The emission standards and other requirements of this rule will reduce emissions of formaldehyde from composite wood products for individuals of all ages that are exposed and children may accrue higher benefits from the exposure reductions compared to adults.

II. Background

A. Formaldehyde Sources and Health Effects

Formaldehyde is a colorless, flammable gas at room temperature and has a strong odor. It is found in certain resins used in the manufacture of composite wood products (*i.e.,* hardwood plywood, particleboard and MDF). It is also found in certain household products such as glues, permanent press fabrics, carpets, antiseptics, medicines, cosmetics, dishwashing liquids, fabric softeners, shoe care agents, lacquers, plastics and paper product coatings. It is a by-product of combustion and certain other natural processes. Examples of sources of formaldehyde gas inside homes include cigarette smoke, unvented, fuel-burning appliances (*e.g.,* gas stoves, kerosene space heaters), and composite wood products made using formaldehyde-based resins (Ref. 5). In addition, formaldehyde is a by-product of human metabolism, and thus endogenous levels are present in the body.

Formaldehyde is an irritant and the National Toxicology Program (NTP) and the International Agency for Research on Cancer (IARC) have classified it as a known human carcinogen based on sufficient evidence in humans that formaldehyde causes nasopharyngeal cancer and leukemia (Refs. 11–12), a classification supported by the National Research Council of the National Academy of Sciences (NRC) in their 2014 review of the NTP assessment (Ref. 13). Depending on concentration, formaldehyde can cause eye, nose, and throat irritation, even when exposure is of relatively short duration. In the indoor environment, sensory reactions and various symptoms as a result of mucous membrane irritation are

potential effects, including respiratory symptoms as previously discussed. Formaldehyde is also listed under section 112(b)(1) of the Clean Air Act as a hazardous air pollutant (Ref. 14).

In 1991, EPA classified formaldehyde as a probable human carcinogen, ''based on limited evidence in humans, and sufficient evidence in animals,'' and derived an inhalation unit risk factor for assessing formaldehyde cancer risk. The risk factor and supporting documentation is included in EPA's Integrated Risk Information System (IRIS) database (*http://www.epa.gov/iris/*) (Ref. 15). The IRIS program in EPA's Office of Research and Development (ORD) completed a draft assessment of the potential cancer and non-cancer health effects that may result from chronic exposure to formaldehyde by inhalation (Ref. 16). This draft IRIS assessment was peer reviewed by the NRC in 2011. The draft formaldehyde IRIS assessment is being revised in response to the NRC peer review and public comments, and the final assessment will be posted on the IRIS database. In the interim, this final rule estimates benefits using the 1991 IRIS inhalation unit risk value of 1.3×10^{-5} per $\mu g/m^3$ (Ref. 15).

In addition, EPA used concentration-response functions to estimate the impact of exposure to formaldehyde on eye irritation for use in the non-cancer benefits assessment to support this rule, as discussed in the proposal. The derivation of these concentration-response functions, uncertainties, and EPA's proposed approach for using the concentration-response functions in the benefits assessment were externally peer reviewed (Ref. 17). While the economic analysis of cancer benefits is based on the unit risk, which is a reasonable upper bound on the central estimate of risk, the non-cancer benefits were evaluated using the estimated concentration-response functions which reflect the central effect estimates rather than upper bounds.

B. History of This Rulemaking

1. *The CARB ATCM.* In 2007, CARB issued an ATCM to reduce formaldehyde emissions from hardwood plywood with a composite or veneer core, MDF, and particleboard, products referred to collectively as composite wood products. The CARB ATCM was approved on April 18, 2008, by the California Office of Administrative Law and the first emission standards took effect on January 1, 2009 (Ref. 1). Additional emission standards followed through 2012. The CARB ATCM requires manufacturers to meet formaldehyde emission standards for the regulated composite wood products that are sold, offered for sale, supplied, imported or manufactured for use in California. The CARB ATCM also requires that compliant composite wood products be used in finished goods sold, offered for sale, supplied, imported or manufactured for sale in California. The CARB ATCM does not apply to hardwood plywood and particleboard materials when installed in manufactured homes subject to regulations promulgated by the United States Department of Housing and Urban Development (HUD).

On March 24, 2008, 25 organizations and approximately 5,000 individuals petitioned EPA under section 21 of TSCA to use its authority under section 6 of TSCA to adopt the CARB ATCM nationally. On June 27, 2008, EPA denied the petitioners' request to immediately pursue a TSCA section 6 rulemaking, stating that the available information at the time was insufficient to support an evaluation of whether formaldehyde emitted from hardwood plywood, particleboard, and medium-density fiberboard presents or will present an unreasonable risk to human health (including cancer and non-cancer endpoints) under TSCA section 6 (Ref. 18). On December 3, 2008, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) that announced EPA's intention to investigate whether and what regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from the products covered by the CARB ATCM as well as other pressed wood products. (Ref. 19)

2. *The Formaldehyde Standards for Composite Wood Products Act.* The Formaldehyde Standards for Composite Wood Products Act, or Title VI of TSCA, 15 U.S.C. 2697, was enacted on July 7, 2010 (Ref. 20). The statute establishes formaldehyde emission standards that are identical to the CARB ATCM Phase 2 standards for hardwood plywood with a composite or veneer core, MDF, and particleboard sold, supplied, offered for sale, or manufactured in the United States. Pursuant to TSCA section 3(7), the definition of the term ''manufacture'' includes import. The statute directs EPA to issue final implementing regulations by January 1, 2013. The Act specifically covers composite wood products used in manufactured housing and directs HUD to update its regulation to ensure that it reflects the emission standards in the Act. TSCA Title VI does not give EPA the authority to raise or lower the established emission standards, and EPA must generally promulgate the implementing regulations in a manner that ensures compliance with the standards. Congress directed EPA to consider a number of elements for inclusion in the implementing regulations, many of which are aspects of the CARB program.

3. *EPA's proposed rules.* On June 10, 2013, EPA issued two Notices of Proposed Rulemaking (NPRMs) containing proposed requirements to implement TSCA Title VI. The first NPRM (the TPC proposal) included a proposed framework for a TSCA Title VI TPC Program (Ref. 21), while the second NPRM included the remainder of the proposed implementing regulations for TSCA Title VI (Ref. 22).

The initial comment period on the TPC proposal was scheduled to end on August 9, 2013, but was extended twice, ultimately closing on September 25, 2013. Information pertaining specifically to the TPC proposal, including the comments received, can be found at *http://www.regulations.gov* under docket number EPA–HQ–OPPT–2011–0380.

The initial comment period on the implementation proposal was scheduled to end on August 9, 2013, but was also extended twice, ultimately closing on October 9, 2013. The comment period was specifically reopened for additional comments on the laminated products issue from April 8, 2014 to May 26, 2014, including one extension. EPA also held a public meeting on laminated products on April 28, 2014. Information pertaining specifically to the implementation proposal, including the comments received during both comment periods, can be found at *http://www.regulations.gov* under docket number EPA–HQ–OPPT–2012–0018.

EPA is finalizing both proposed rules in a single final rule under RIN 2070–AJ44. Although this final rule document and supporting information will appear in docket EPA–HQ–OPPT–2016–0461, both dockets for the proposed rules (EPA–HQ–OPPT–2011–0380 and EPA–HQ–OPPT–2012–0018) contain supporting information with respect to this rule and should be considered merged for the purpose of this final rule.

III. Provisions of This Final Rule

A. Scope and Applicability

1. *Composite wood product.* The final rule defines the term ''composite wood product'' as including only those products subject to a formaldehyde emission standard, *i.e.,* hardwood plywood with a composite or veneer core, MDF, and particleboard. EPA has also clarified throughout the regulatory text whether particular provisions apply

to panels, component parts, or finished goods, or all three.

2. *Finished good.* EPA's proposed rule included a definition of the term ''finished good'' that was virtually identical to the definition in TSCA Title VI. Although EPA did not receive any comments directly addressing the proposed definition, other comments on the scope and applicability of the regulation have caused EPA to clarify what is meant by the term ''finished good.'' Specifically, EPA has determined that Congressional intent with respect to the regulation of finished goods under TSCA Title VI was to regulate *goods* that move freely through commerce and that are produced through a manufacturing process at a manufacturing facility, not objects like buildings or other structures that are constructed on site and become a permanent addition to real property Thus, the production of manufactured housing or prefabricated buildings at a factory is covered by this final rule, while the construction of housing or other real property on site, or the assembly and placement of prefabricated buildings or manufactured housing at a site, is not. The NAICS, used by Federal statistical agencies to classify business establishments for data analysis purposes, recognizes the significant differences between these activities by including the production of manufactured housing or prefabricated buildings in the Manufacturing economic sector rather than the Construction economic sector. More specifically, the production of both manufactured housing and prefabricated buildings is included in the Wood Product Manufacturing subsector, along with the production of composite wood product panels. Therefore, to ensure that this distinction is clear, the definition of ''finished good'' incorporated into this final rule specifically excludes buildings and similar structures that are constructed on-site.

3. *Hardwood plywood. a. General definition.* As proposed, EPA is incorporating the basic statutory definition of hardwood plywood and the statutory exclusions into the regulation with the addition of veneer core to the list of cores in the statutory definition. As TSCA section 601(b)(2)(A) establishes a formaldehyde emission standard for hardwood plywood with a veneer core, EPA is including the phrase ''veneer core'' in the regulatory definition of hardwood plywood to avoid any potential confusion over whether hardwood plywood made with a veneer core is covered by the regulations. In addition, as discussed in the next section, the regulatory definition specifically includes laminated products, except for those laminated products made by attaching a wood or woody grass veneer with a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure to a compliant core or platform. The Agency has also included a petition process through which any person can petition the Agency to expand the exemption for laminated products from the definition of the term ''hardwood plywood.''

The statutory definition of hardwood plywood only includes products that are panels and that are intended for interior use. As part of this rulemaking, EPA convened a Small Business Advocacy Review (SBAR) Panel (Ref. 23). More information on the Panel process can be found in the preamble to the proposed rule (Ref. 22). Among the recommendations made by the SBAR Panel was a recommendation that EPA, to reduce uncertainty in the regulated community as to which products are covered, include definitions of the term ''panel'' and the phrase ''intended for interior use'' (Ref. 23). Accordingly, EPA is defining the term ''panel'' as a thin (usually less than two inches thick), flat, usually rectangular piece of particleboard, medium density fiberboard or hardwood plywood. Embossing or imparting of an irregular surface on the composite wood products by the original panel producer during pressing does not remove the product from this definition. EPA has determined, based on the comments received, this definition is consistent with both the CARB ATCM and common industry usage. EPA has added the parenthetical indicating that panels are usually less than two inches thick to provide some additional guidance on panel thinness (Ref. 24). The definition of panel also includes a sentence added because EPA agrees with those commenters who stated that the purpose of the CARB ATCM and of TSCA Title VI is to regulate composite wood products as they come out of the press. Finally, EPA also added a sentence to clarify the term ''panel'' does not include items made for the purpose of research and development.

EPA is also promulgating a definition of the phrase ''intended for interior use.'' Recognizing that the primary purpose of TSCA Title VI is to reduce formaldehyde emissions from composite wood products inside buildings and similar living areas in recreational vehicles, EPA's definition includes products intended for use or storage inside a building or recreational vehicle, or constructed in such a way that they are not suitable for long term use in a location exposed to the elements. EPA received very few comments on this definition, and is finalizing the definition as proposed. The purpose of this definition is to help explain coverage of miscellaneous finished goods, such as sporting goods, that are made of at least some hardwood plywood and that may be used indoors or outdoors. This definition does not exclude windows and exterior doors, including garage doors, which are clearly intended to be covered by TSCA Title VI. The statute contains specific exemptions for windows that contain less than five percent by volume of composite wood products, exterior doors and garage doors that contain less than three percent by volume of composite wood products, and exterior and garage doors that are made with NAF-based or ULEF resins.

TSCA Title VI also directs EPA to determine whether the definition of hardwood plywood should exempt engineered veneer. Engineered veneer is a type of veneer that is created by dyeing and gluing together veneer leaves in a mold to produce a block. The block is then sliced into leaves of veneer with a designed appearance that is highly repeatable. EPA did not propose to exempt any engineered veneer because EPA did not have any information to support such an exemption. One commenter, the Hardwood Plywood and Veneer Association (HPVA), clarified that it did not consider the production of engineered veneer, or the resulting engineered veneer product, to be hardwood plywood (Ref. 25). HPVA noted that engineered veneer, once manufactured, could be used as a component in the production of hardwood plywood. EPA agrees that engineered veneer, by itself, is not hardwood plywood because it is not an assembly of veneer plies joined by adhesive to a core. EPA interprets TSCA Title VI and its implementing regulations to apply to hardwood plywood that incorporates engineered veneer, but not to the production of engineered veneer itself.

b. Laminated products. As discussed in more detail in this Unit, the definition of ''hardwood plywood'' exempts laminated products made by attaching a wood or woody grass veneer to a compliant core or platform with either a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure. Additionally, the Agency has included a petition process through which any person can petition

the Agency to expand the exemption for laminated products from the definition of the term ''hardwood plywood''. Further, this final rule establishes the manufactured-by date for laminated products as December 12, 2023. After that date, producers of laminated products that are exempt from the definition of ''hardwood plywood'' must maintain records that demonstrate eligibility for the exemption in order to claim the exemption. Also after that date, other laminated products will have to be produced in compliance with the testing and certification requirements applicable to hardwood plywood. EPA is also promulgating a definition of laminated product that limits applicability of the term to products made with composite wood product platforms. As is the case with any component part, composite wood products used to make laminated products must be either certified pursuant to this regulation or compliant with the provisions for composite wood products made with NAF-based or ULEF resins. Also, as discussed in this Unit, the term ''laminated product'' is further limited to those products that are produced by fabricators of the component parts or finished goods in which the laminated products are incorporated. Regardless of whether laminated product producers are producing exempt or non-exempt laminated products, they are fabricators and must also comply with the fabricator recordkeeping requirements as of the manufactured-by date for composite wood products, which is December 12, 2017.

i. Background. TSCA Title VI defines laminated product as a product made by affixing a wood veneer to a particleboard, MDF, or veneer-core platform. The statutory definition further provides that laminated products are component parts used in the construction or assembly of a finished good, and that a laminated product is produced by the manufacturer or fabricator of the finished good in which the product is incorporated. Congress granted EPA the authority to promulgate a modified definition of laminated product through rulemaking. The statute also directs EPA to conduct a rulemaking process pursuant to TSCA section 601(d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term ''hardwood plywood'' should exempt any laminated product. Section 601(d) of TSCA states, among other things, that EPA must promulgate implementing regulations in a manner that ensures compliance with the statutory emission standards.

The CARB ATCM defines laminated product as a finished good or component part of a finished good made by a fabricator in which a laminate or laminates are affixed to a platform. Under this definition, if the platform consists of a composite wood product, the platform must comply with the applicable emission standards. The CARB ATCM defines fabricator as any person who uses composite wood products to make finished goods, including producers of laminated products. Laminate is defined under the CARB ATCM as a veneer or other material affixed as a decorative surface to a platform. Under the CARB ATCM, fabricators or laminated product manufacturers have different requirements compared with requirements for manufacturers of composite wood products. In particular, fabricators do not need to conduct formaldehyde emissions testing or comply with third-party certification requirements; instead, fabricators need to ensure that they are using compliant composite wood products and they have recordkeeping and labeling obligations.

CARB is currently considering changes to its ATCM. At a workshop in March 2014, CARB presented a discussion draft of a proposal to set a formaldehyde emission standard of 0.13 parts per million (ppm) for unfinished laminated products made with wood veneers, but not require testing or certification. If the platform is a composite wood product, the platform would have to be certified (Ref. 26).

Given the importance of the laminated products issue to so many commenters, the potential impacts on the large number of laminated product producers, and the fact that CARB was presenting new ideas regarding laminated products, EPA decided to reopen the comment period on this issue and specifically solicit public comment on the approach in the March 2014 CARB proposal, as well as suggestions in the comments received during EPA's 2013 public comment period on the TSCA Title VI formaldehyde regulations.

ii. *Final rule provisions.* As directed by Congress, EPA has evaluated available and relevant information from State authorities, industry, and other sources to determine whether the definition of the term ''hardwood plywood'' should exempt engineered veneer or any laminated product. For the reasons described in this Unit, EPA has decided to exempt those laminated products made by attaching a wood or woody grass veneer to a core or platform consisting of compliant MDF, compliant particleboard, or compliant veneer, with either a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure. EPA considers these provisions for laminated products made with phenol-formaldehyde resins and laminated products made with resins formulated with no added formaldehyde as part of the resin cross-linking structure to be mutually complementary but independent provisions, such that either one could be implemented even in the absence of the other. Additionally, the Agency has included a petition process through which any person can petition the Agency to expand the exemption for laminated products from the definition of the term ''hardwood plywood''.

1. Information reviewed by EPA. EPA reviewed a wide variety of available information on resins, the chemistry of formaldehyde-based resins, and formaldehyde emissions from composite wood products. Urea-formaldehyde resins have been around since the 1920s and they have been the most common resins used in the manufacture of hardwood plywood, particleboard, and MDF. Urea-formaldehyde resins have several advantages, including low cost, a rapid cure rate, and a light color. These resins are generally used for interior applications because they are not water-resistant. As described by CARB, ''[t]he reactions that occur during UF resin synthesis are reversible. During the forward reaction, water is eliminated. However, if moisture interacts with the UF resin, depolymerization may occur, leading to hydrolysis or the release of formaldehyde'' (Ref. 27). This characteristic of reversibility, in addition to the presence of small amounts of free formaldehyde in the resins, leads to continuing formaldehyde emissions from composite wood products made with urea-formaldehyde resins, sometimes for years, although the emission potential decreases with increasing age (Ref. 28).

The available emissions data from composite wood products made with urea-formaldehyde resins bears this out—composite wood products made with urea-formaldehyde resins can have high formaldehyde emissions. For example, in a study of the formaldehyde emission rates of products likely to be found or used in California homes, the results of 19 samples of unfinished wood products made with urea-formaldehyde resins ranged from 8.6 to

1580 μg/m²/h (Ref. 29). Using the conversion used by CARB (Ref. 30), the highest emissions translate to 1.09 ppm. Although the median was 164 μg/m²/h, which translates to 0.11 ppm, the study results demonstrate that wood products made with urea-formaldehyde resins are as likely to have high formaldehyde emissions as not (Refs. 28–29). Further, the results of a 2003 survey of wood product manufacturers conducted by CARB in support of their rulemaking indicated that the highest formaldehyde-emitting composite wood products were hardwood plywood, particleboard, and medium-density fiberboard for interior applications (Ref. 27). CARB further determined that the majority of these products are made with urea-formaldehyde resins, which emit more formaldehyde than products made with other resins (Ref. 27). Finally, the results of CARB's testing of particleboard and MDF laminated using urea-formaldehyde resins confirms that products laminated with urea-formaldehyde resins can have high formaldehyde emissions (Ref. 31). Although the median of the samples tested in either a finished or an unfinished state was 0.09 ppm (Ref. 30), many samples were well above that, two of them were over 1.25 ppm.

As mentioned by commenters, advancements in resin technology, which have accelerated due to the CARB ATCM, have made it possible to make composite wood products that have very low formaldehyde emissions, even if urea-formaldehyde resins are used (Refs. 32–33). CARB described strategies for reducing formaldehyde emissions from composite wood products made with urea formaldehyde resins (Ref. 27). These include modifications to the resins themselves, such as reductions in the mole ratio of formaldehyde to urea or the addition of scavengers such as hexamine or melamine, and changes in the production process, such as reduced press times or temperatures. Some commenters noted the difficulty in meeting the CARB ATCM emission standard for hardwood plywood, even with advanced urea formaldehyde resin technology (Refs. 34–35).

EPA determined that there are several other formaldehyde-based resins that are used in the production of composite wood products. Phenol-formaldehyde resins, also developed in the early 20th century, have ''outstanding durability and high polymer strength due to good adhesion to wood surfaces.'' (Ref. 27). Composite wood products made with phenol formaldehyde resins are typically used for exterior applications because of their high water resistance (Ref. 27). However, phenol formaldehyde resins are dark in color, making them unsuitable for some decorative applications, and they require longer press times and higher press temperatures (Ref. 27). In contrast to the synthesis of urea-formaldehyde resins, the reactions involved in phenol formaldehyde resin synthesis are more stable, resulting in composite wood products with comparatively low formaldehyde emission potentials (Ref. 28). The data reviewed by EPA support this conclusion. In particular, the California homes study (Ref. 29), the Riedlinger study (Ref. 36), discussed in Unit III.F. of the preamble to the proposed Implementation Rule (Ref. 22), and test data from a hardboard manufacturer (Ref. 37) provide evidence that products made with phenol-formaldehyde resins have lower formaldehyde emissions than products made with urea-formaldehyde resins. In the California homes study, the results from four samples of unfinished wood products made with phenol-formaldehyde resins ranged from 4.1 to 9.2 μg/m²/h or, using CARB's conversion, 0.0028 ppm to 0.0063 ppm. These results are markedly lower than the results from the urea-formaldehyde products in the same study (Ref. 29). As discussed in the proposed rule, the Riedlinger study was designed to evaluate the effects of higher temperatures and humidities on formaldehyde emissions from wood products made with different resin systems (Ref. 36). The study involved testing particleboard panels constructed in the laboratory using resin recipes that, according to the study designers, are a close approximation to recipes used in the particleboard industry. The particleboard panels constructed from urea-formaldehyde resins were the highest-emitting panels, at 0.063 ppm after 7 days of conditioning when tested at standard temperature and humidity for the ASTM D–6007 method. The formaldehyde emission rate for the melamine-urea-formaldehyde panels with the same conditions was a close second at 0.057 ppm. The formaldehyde emission rate for the panels made with phenol-formaldehyde resins was much lower, at 0.011 ppm. Finally, a hardboard manufacturer submitted test data on hardboard produced with a phenol-formaldehyde resin (Ref. 37). As described by the submitter, the test data show results well below ''any emission threshold defined in the legislation.''

Melamine-formaldehyde resins are also available. Being resistant to moist conditions, they are most commonly used for exterior and semi-exterior applications, but they are also used for decorative laminates, paper treating, and paper coating (Ref. 27). The synthesis of melamine-formaldehyde resins is similar to that of urea-formaldehyde resins, except that melamine is a stronger nucleophile than urea, resulting in a faster and more complete reaction between melamine and formaldehyde than between urea and formaldehyde (Ref. 27). Melamine-formaldehyde resins are lighter in color than phenol-formaldehyde resins, but the cost of melamine makes these resins relatively expensive. The cost of melamine contributed to the development of melamine-urea-formaldehyde resins, which are also water resistant at a lower cost. However, these resins may not provide the low formaldehyde emission potential that would be expected from a melamine-formaldehyde resin without urea (Ref. 38), a concern that is supported by the limited results of the Riedlinger study (Ref. 36).

There are limited formaldehyde emissions data available on melamine-formaldehyde resins without added urea. CARB described a study of formaldehyde emissions from MDF made with melamine-formaldehyde resins and a study of particleboard made with two different melamine-formaldehyde resin formulations (Ref. 27). Formaldehyde emissions from these two studies were measured by test methods that are not directly comparable to the TSCA Title VI emission standards, which are presented in terms of the ASTM E–1333–96 (2002) method (Ref. 39). Using comparisons developed by CARB (Ref. 40), it appears that the results from both studies are within the range of the formaldehyde emission standards established by TSCA Title VI. However, in light of the limited amount of data, and the uncertainties involved in comparing results from different test methods, EPA is unable to determine that this is the case.

EPA also reviewed the documents available from CARB's rulemaking process for the ATCM. In developing the CARB ATCM, CARB did a significant amount of research into available resins and their relative formaldehyde emissions potentials. CARB commissioned a study on formaldehyde and toluene diisocyanate emissions from interior residential sources (Ref. 29). In 2003, CARB also surveyed composite wood product manufacturers across the U.S., asking them for a variety of information including formaldehyde emissions data from products. This research led CARB to conclude that formaldehyde emission control

measures for hardwood plywood, medium-density fiberboard, and particleboard were warranted, because these three products were primarily being made with urea-formaldehyde resins that ''have the highest formaldehyde emission rates.'' (Ref. 27). According to CARB, formaldehyde emission rates from other composite wood products, products used primarily in exterior applications, such as oriented strand board, hardboard, and peg board, were about 90% lower and contributed far less to formaldehyde concentrations in California. CARB went on to note that the primary composite wood products using phenol-formaldehyde resins were oriented strand board and softwood, or structural plywood, which were mainly used for exterior sidings. Thus, many of the products excluded from the CARB ATCM, and later from TSCA title VI, such as hardboard, oriented strand board, structural plywood, structural panels, and structural composite lumber, were so excluded because CARB determined that they were already being made with resins with limited formaldehyde emissions potential. Based on the available information that EPA has reviewed as part of this rulemaking, EPA agrees with CARB's determination that composite wood products made with phenol-formaldehyde resins are much less likely to emit formaldehyde than products made with urea-formaldehyde resins.

EPA also observes that, as noted by a commenter (Ref. 25), the Leadership in Energy and Environmental Design (LEED) 2009 green building certification program allowed a low-emitting materials credit for the use of composite wood products made with no added urea-formaldehyde resins. This credit was available without formaldehyde emissions testing. A 2013 interpretation of the requirements allowed composite wood products that met the CARB ATCM standard for a ULEF exemption to obtain the credit, but only with the CARB-required testing to confirm low formaldehyde emissions. This credit has been expanded in LEED v4, the most recent LEED standard, to encompass materials that, with testing, meet the CARB ATCM standard for either a NAF or ULEF exemption.

EPA carefully considered all of the public comments, as well as information that EPA compiled on the wood products industry in order to develop this rule and analyze its economic impacts. Based on the information provided by commenters on the differences between hardwood plywood production and laminated product production, EPA agrees with the numerous commenters who asserted that laminated product producers are truly different from composite wood product mills. It is EPA's understanding that laminated product producers are generally smaller businesses that make fewer individual items per product type than mills do, although EPA recognizes that this is not universally true. There are also many more laminated product producers (an estimated 7,000 to 14,000) than composite wood product mills (an estimated 90, operated by 54 firms) (Ref. 3). Laminated product producers are often small custom shops who laminate on a per order basis. While each laminated product would not have to be tested, as some commenters asserted, the product grouping conventions used by TPCs and mills to reduce the number and frequency of required tests could still result in significantly more tests for a given production volume for a custom shop as compared to a hardwood plywood mill. In addition, because composite wood product mills typically make many more individual items of each product type than most laminated product producers, mills can amortize the fixed costs of testing over a larger volume of production, resulting in only a small cost increase per unit.

EPA considered the costs that laminated product producers would bear under a variety of options to address formaldehyde emissions from laminated products, including options involving an emission standard but no testing and reduced testing without certification, as well as the option chosen for this final rule. As more fully described in Chapter 2 of the economic analysis (Ref. 3), EPA estimated the size of the laminated product producer universe, how many of them used urea-formaldehyde resins, and how much it would cost for testing, certification, and switching from a urea-formaldehyde resin to a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure. EPA assumed that laminated product producers would switch from a urea-formaldehyde resin to a qualified resin, or purchase already-veneered panels from a hardwood plywood panel producer or another laminated product producer, if it made economic sense for them to do so. Taking all of this into account, EPA estimated that the aggregate annualized costs for laminated product producers would be $26 million to $72 million using a three percent discount rate, and $26 million to $62 million using a seven percent discount rate.

Also as described in the economic analysis (Ref. 3), EPA estimated the human health benefits that would result from reductions in formaldehyde exposure attributable to this final rule. Because most domestic composite wood product panel producers are producing only CARB compliant products, exposure reductions due to this rule are expected to come primarily from two sources: Laminated products and imported composite wood products. EPA was able to quantify the benefits attributable to avoided eye irritation and nasopharyngeal cancer, but there are additional unquantified benefits due to other avoided health effects. There is not sufficient information at this time on the relationship between formaldehyde exposure and myeloid leukemia, respiratory related effects, or reduced fertility to include a valuation estimate in the overall benefits analysis. The quantified benefits attributable to reductions in laminated product emissions are $35 million to $104 million using a three percent discount rate, and $13 million to $42 million using a seven percent discount rate. These benefits represent approximately half of all quantified benefits attributable to the final rule.

2. Rationale for exemption. EPA based its proposed exemption for laminated products made with NAF-based resins on a reading of the statute that requires any exemption for laminated products to be promulgated in accordance with TSCA section 601(d)(1), in a manner that ensures compliance with the statutory emission standards. EPA's rationale was that, if the platform complied with the applicable emission standards for the platform, the addition of a veneer with a NAF-based resin was unlikely to cause the resulting laminated product to exceed the applicable emission standard for the platform. Although some commenters supported the proposed exemption, others thought it wasn't broad enough, and still others noted that laminated products were covered by TSCA Title VI as hardwood plywood, and should, therefore, be required to meet the hardwood plywood emission standard. Although EPA referred to the laminated products exemption in the proposed rule as a NAF exemption, this terminology likely causes confusion between the exemption for laminated products and the limited testing and certification exemptions discussed in Unit III.G. that are available to panel producers who use NAF-based or ULEF resins. EPA is therefore avoiding the use of the term ''NAF-based'' in connection with the laminated products exemption in this final rule.

Upon further reflection, and consideration of public comments, EPA

has concluded that the better reading of the statute is that EPA need not make a finding that exempt laminated products will meet the statutory emission standards, whether for hardwood plywood or for the underlying platform. Rather, EPA must make a reasoned determination, based upon a review of all of the available and relevant information, that some or all laminated products should be exempt. This provides EPA with the discretion to consider a wide variety of factors, including formaldehyde emission potential, business demographics, and resin chemistry, as well as costs and benefits. EPA views the formaldehyde emission potential and the benefits of reductions in emissions as the most important considerations. The purpose of TSCA Title VI is to reduce formaldehyde emissions from composite wood products in order to protect human health. The central feature of Title VI is the range of formaldehyde emissions that Congress established considering all of the factors then known. And Congress chose to include laminated products within the definition of hardwood plywood unless EPA exempts them. Consequently, although EPA has concluded that Title VI does not require strict compliance with the standards as the test for EPA's exemption decision, EPA continues to believe that consideration of the formaldehyde emission potential of laminated products and the estimated health benefits from reductions in such emissions are the most important considerations, and the statutory emission standards provide the best baseline for evaluating these considerations.

That having been said, Congress most likely treated laminated products differently from other covered products because of the real differences between laminated product producers and composite wood product mills (see earlier discussion). Notably, laminated product producers are generally of a smaller size and more numerous as compared to mills. Thus, EPA has carefully considered the costs and benefits in deciding whether to exempt laminated products, including the costs and benefits of testing and certification and of allowing time for the demonstration and development of lower-emitting resin substitutions. In this regard, an integral part of this determination is the decision to establish the manufactured-by date for laminated products at December 12, 2023, as discussed later in this Unit. EPA's decision to retain coverage of laminated products other than products made by using, during the lamination step, either a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure hinges in part upon laminated product producers having the ability to fully evaluate options for compliance.

Congress also clearly modeled portions of TSCA Title VI on the CARB ATCM. For laminated products, Congress expressly included information from State authorities among the things that EPA must consider in deciding whether to exempt any laminated products. At that time, CARB's regulations did not regulate laminated products as hardwood plywood. However, Congress clearly did not direct EPA to mimic CARB exactly. EPA therefore has considered not only what CARB's regulations were at that time but also the current concerns and direction of their program.

Some commenters supported an exemption for laminated products that are made without urea-formaldehyde resins. In fact, one observed that CARB, in a presentation at an August 2013 stakeholder meeting on the differences between the ATCM and the EPA proposal, suggested an alternative approach to laminated products that would not require testing or certification unless the producer uses urea-formaldehyde resins (Ref. 41). As previously discussed, EPA knows of two other formaldehyde-based resins that would fit within the suggested category of no-added urea-formaldehyde resins, *i.e.,* phenol-formaldehyde resin and melamine-formaldehyde resin. At the present time, EPA has determined that the available data supports an exemption for laminated products made with phenol-formaldehyde resins, but not an exemption for products made with melamine-formaldehyde resins.

Many more commenters supported other options, such as an exemption for all laminated products or the CARB discussion proposal of March 2014. EPA is not promulgating an exemption for all laminated products because the available information indicates that laminated products made with urea-formaldehyde resins can have high formaldehyde emissions and laminated product producers have several alternatives to choose from in determining how best to comply with this final rule. Many laminated product producers are already using resins formulated with no-added formaldehyde as part of the resin cross-linking structure (Ref. 3) and more are likely to switch to that type of resin or a phenol-formaldehyde resin in order to avoid having to comply with the testing and certification requirements. Laminated product producers can choose to purchase already-veneered panels if that is more cost-effective. Laminated product producers can also choose to consult with an EPA TSC Title VI TPC to design a workable testing and certification program.

With respect to the CARB discussion proposal, it is a significant improvement over a complete exemption. However, EPA is concerned that, without either a requirement to use phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure or a requirement for some testing, there is no assurance that the products will meet CARB's suggested emission standard of 0.13 ppm. The record, especially the CARB/AHFA data set, demonstrates that some laminated products have high formaldehyde emissions, so a requirement that the platform be compliant does not ensure that the laminated product will also be compliant, particularly if urea-formaldehyde resins are used.

This final rule also does not include an exemption for laminated products made with compliant platforms and ULEF resins that contain urea-formaldehyde. The resins eligible for this exemption can be defined by their composition. For the purpose of this exemption, because specific resin formulation information was not available for the formaldehyde emissions data that EPA reviewed on phenol-formaldehyde resins, EPA has defined phenol-formaldehyde resin to be a resin that is primarily composed of phenol and formaldehyde, with no added urea. Similarly, the other resins eligible for the laminated products exemption do not contain added formaldehyde as part of the resin cross-linking structure by definition. However, the available information reviewed by EPA in this rulemaking indicates that the only way to determine whether urea-formaldehyde resins are also ULEF resins is through emissions testing. Indeed, in responding to another commenter's suggestion that EPA approve resin systems that demonstrate consistent compliance with emission limits when properly used, one commenter stated that ULEF is not a resin type (Ref. 42). According to this commenter, the term describes an emission result when measured in a variety of different tests over different time frames and a resin that meets the ULEF limits in one product setting and application may not in another. This commenter noted that application rates, laminate and substrate porosity and

other factors affect emissions from products made with ULEF resins. EPA agrees that there are a number of factors that affect the formaldehyde emission rates of products made with ULEF resins and that, in order to exempt laminated products made with ULEF resins, EPA would have to require upfront testing to demonstrate that product emissions are in the range of the statutory emission limits. There would be no meaningful difference between the testing EPA would require of laminated product producers to demonstrate low emissions and the testing that will be required of mills who are applying for the limited exemption from testing and TPC oversight for products made with ULEF resins. Laminated product producers are free to take advantage of the third-party certification exemption or reduced testing provisions under § 770.18.

In deciding on the scope and structure of the laminated products exemption, EPA was mindful of the scope of the CARB regulations and the consideration being given by CARB to amendment of those regulations, and EPA consulted extensively with CARB. It would not be appropriate for EPA to mirror the current CARB regulations and simply exempt laminated products, for the reasons stated above, and also because CARB is considering amendment to its regulations to cover laminated products. EPA cannot speculate whether or how CARB will amend its regulations, but the approach taken in today's rule is consistent overall with the concept of CARB's March 2014 discussion proposal, in that it uses the upper bound of the Title VI emission standards as the most important guide in determining whether laminated products should be exempted. While CARB's proposal would not have required testing and certification, for the reasons stated above, EPA is concerned that a program without testing or certification would not be effective in achieving the objective to keep emissions below the target level. Thus, EPA has determined today's rule properly accounts both for CARB's regulatory direction and for the numerous additional considerations appropriate under Title VI, as discussed herein.

3. Manufactured-by date for laminated products. EPA has determined that testing and certification is necessary for laminated products unless they are made by attaching a wood or woody grass veneer to a compliant platform with either a phenol-formaldehyde resin or a resin formulated with no-added formaldehyde as part of the resin cross-linking structure. However, EPA agrees with the numerous commenters who argued that EPA could not realistically expect those laminated product producers that are currently regulated under CARB only as fabricators to attain compliance with this rule's testing and certification requirements within a year. As a result of EPA's consideration of the public comments and EPA's review of the available and relevant information on laminated products as directed by the statute, EPA is establishing the manufactured-by date for laminated products at December 12, 2023. After the manufactured-by date for composite wood products, which is December 12, 2017, all laminated product producers must comply with the general requirements for fabricators, *i.e.,* they must use compliant cores or platforms, they must keep fabricator records, and they must follow the labeling requirements for fabricators. After the manufactured-by date for laminated products, laminated product producers making exempt laminated products also must, as a condition of the exemption, maintain records demonstrating that exempt products made after the manufactured-by date for laminated products are eligible for the exemption. Also after the manufactured-by date for laminated products, producers of non-exempt laminated products must comply with the testing, certification, and recordkeeping requirements for hardwood plywood in addition to the requirements for fabricators.

EPA recognizes the significant challenges described by many commenters in switching from urea-formaldehyde resins to other resin technologies and EPA realizes that it will take considerable time in some instances to successfully do so. Not only must fabricators find a way to make their products with new resin technology, they must also have time to observe how these products perform in use. Several commenters mentioned the difficulty of evaluating new resin technologies for products that have 25-year warranties. In addition, because the formaldehyde emission standard for hardwood plywood is lower than the standards for particleboard and MDF, even those laminated product producers that choose not to switch to an exemption-eligible resin technology may have to change resin formulations or purchase lower-emitting platforms in order to meet the hardwood plywood emission standard. These laminated product producers will also need time to evaluate strategies for compliance that may involve different production processes and different supply chains.

Another consideration is TPC capacity. EPA shares the concerns of those commenters who thought that the addition of large numbers of laminated product producers to the pool of businesses needing testing and TPC certification services might overwhelm available TPC capacity, at least at first. Although there is some uncertainty as to exactly how many laminated product producers will be able to switch to either phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure and thereby avoid testing and certification requirements, EPA anticipates that a significant number of them will do so. Currently, there are about 40 CARB-approved TPCs, with 11 of them located in the United States and EPA expects them to participate in the TSCA Title VI program. It would not take many of the estimated 7,000 to 14,000 laminated product producers, currently not regulated by CARB as hardwood plywood producers, to overwhelm this capacity.

Some commenters asked for additional time to conduct studies in order to demonstrate that other laminated products should be exempt from the testing and certification requirements. These commenters cited products with thicker veneers as an example of laminated products that would likely be able to demonstrate consistently low emissions. EPA agrees that this approach has merit, in that it could potentially enable EPA to make a finding that exemptions for other laminated products are also warranted. For example, although the limited data available meant that EPA was unable to determine that an exemption for laminated products made with melamine-formaldehyde resins was warranted, it is entirely possible that additional data would confirm that products made with melamine-formaldehyde resins have consistently low formaldehyde emissions. It is also possible that studies could demonstrate that certain combinations of resin formulation and manufacturing processes consistently result in products with low formaldehyde emissions, as suggested by another commenter. In order for EPA to base findings for additional exemptions on product studies, such studies should be performed in accordance with accepted scientific principles. Studies offered in support of a potential exemption that include, for example, a representative sampling of products belonging to the product category suggested for exemption, especially with

formaldehyde emission results from testing performed in accordance with ASTM E1333–10 or ASTM D6007–02 (Refs. 43–44), are likely to facilitate a preliminary EPA determination on the merits of the suggested exemption. However, other types of studies could also be used to support an exemption. In general, EPA intends to evaluate any data submitted in support of an exemption using the factors outlined in the July 2003 document entitled ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (Ref. 45). Persons interested in demonstrating that additional exemptions are warranted are encouraged to contact the technical person listed under **FOR FURTHER INFORMATON CONTACT.** The process from study initiation to final EPA rulemaking, if warranted, would be a multi-year effort. It is likely that designing and conducting a robust study in support of an exemption for other laminated products would take a couple of years. Upon study completion, it would take EPA some time to review the study and determine whether to undertake rulemaking to exempt additional laminated products. Once a decision to undertake rulemaking had been made, EPA's rulemaking process would take several more years.

There may also be other opportunities to reduce the burdens associated with the testing and certification requirements for laminated product producers. For example, there may be other test methods or testing protocols that, when applied to laminated product production, may ensure that laminated product emissions are consistently within the range of emissions permitted for laminated product platforms. EPA encourages laminated product producers to think creatively about how to approach the problem of demonstrating consistently low formaldehyde emissions, whether by the type of resin used or the manufacturing process, or by using alternatives to existing test methods and testing protocols. Some commenters suggested alternative testing protocols for laminated products, such as testing a worst-case scenario for that producer once a quarter. There may also be alternative methods for testing laminated products that would be less burdensome than either using ASTM E1333–10 or ASTM D6007–02 or a correlated quality control method. In order for EPA to incorporate any such alternatives, EPA would have to have data upon which to determine that the alternative does in fact provide accurate and repeatable results that demonstrate consistently low formaldehyde emissions.

To this end and consistent with 5 U.S.C. 553(e), EPA has established a process at § 770.4 through which any person may petition the Agency to initiate a rulemaking to expand the exemption for laminated products from the definition of the term ''hardwood plywood''. EPA considers establishment of the petition process at § 770.4 to be a rule of Agency procedure, and it is therefore not subject to prior notice and comment. Petitioners should include with their petitions all available and relevant data to support the requested exemption(s) and enable EPA to make a reasoned determination that the petition should be granted. This provides EPA with the discretion to consider a wide variety of factors, including formaldehyde emission potential, business demographics, and resin chemistry, as well as costs and benefits. EPA views the formaldehyde emission potential and the benefits of reductions in emissions as the most important considerations.

EPA's goal will be to promptly review the petition and supporting data. The Agency's review will be hastened to the extent that the petition fully addresses the factors EPA would take into account. EPA will acknowledge receipt of the petition within 15 calendar days by sending a letter to the petitioner and subsequently communicate in another letter to the petitioner the Agency's decision to initiate rulemaking or deny the petition. The petition and any accompanying data, together with the letters acknowledging EPA's receipt of the petition and communicating EPA's subsequent decision in response to the petition will be placed in a public docket.

Following a decision to initiate rulemaking based on a petition, EPA will publish in the **Federal Register** a proposed rule that would expand the laminated products exemption based on the petition, and provide a 30-day public comment period. Based on the petition and any public comments, EPA would take final action on the proposal. If EPA expands the exemption for laminated products to include additional resin formulations, laminated product producers using those additional resin formulations will be subject to the same recordkeeping requirements as those laminated product producers who use NAF and phenol-formaldehyde resins; that is, they must maintain records demonstrating eligibility for the exemption.

EPA agrees with the commenters who suggested that additional time should be given to laminated product producers before they are required to comply with the testing and certification provisions of this final rule. In fact, considering in part all of the comments advocating for a permanent exemption, EPA has determined that the three years suggested by several commenters is not likely to be sufficient for some laminated product producers to fully evaluate different resin technologies to determine whether they can qualify for the exemption and to either successfully implement an alternative resin in their production process or turn to evaluating strategies for achieving compliance with the hardwood plywood emission standard and the testing and certification provisions. Neither would it be sufficient to design and conduct studies and allow EPA to conduct rulemaking to provide additional exemptions if warranted.

In EPA's view, seven years is a more realistic timeframe for acting on any additional warranted exemptions, and should also provide sufficient time for laminated product producers to either switch to a resin that renders them eligible for the exemption or figure out how to implement a testing and certification program for their laminated products. EPA based the seven year timeframe on the Agency's best professional judgment of the estimated time it likely takes to conduct product testing, especially to prove that a particular technology sufficiently reduces emissions in a broad array of applications and for EPA to evaluate and act upon a petition to expand the exemption for laminated products from the definition of the term ''hardwood plywood.'' EPA assumed that it would take at least a year to design a study that would result in the generation of data to support an exemption for a category of products, and another year to acquire the products and actually perform the product testing. The amount of time needed for EPA's review of the data could vary substantially, depending on the amount, robustness, and sufficiency of provided supporting information. Finally, EPA wanted to ensure that there would be enough time for laminated product producers to develop data to support any petitions and submit them to EPA for evaluation before the testing and certification requirements take effect for laminated products without feeling compelled to expend resources for the otherwise-required testing and certification to avoid potential noncompliance.

EPA considered establishing a shorter sell-through period, which would have

required producers of laminated products to incur the cost of complying with the testing and certification requirements while also making financial investments in determining whether they are able to switch to a qualified resin or conducting a robust study to justify a subsequent exemption. However, EPA does not think this approach is justified for several reasons, and as indicated above, EPA's decision not to exempt laminated products other than products made by using, during the lamination step, either a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structures is premised in part of the decision to establish the seven-year sell-through period. Even aside from efforts to develop alternatives to compliance with today's standards, laminated product producers could not realistically be expected to be in full compliance with this regulation in one year in view of the considerations discussed herein (such as TPC capacity and process changes the producers may need to make). In addition, because of the large number of laminated product producers that are subject to this rule, the fact that many of them are very small businesses that laminate on a per-order basis, and the significant upfront costs involved in designing and implementing a testing and certification program, it does not make sense, in EPA's view, to require producers to simultaneously incur compliance costs while investigating whether they are able to switch to a qualified resin or while conducting a robust study to justify a subsequent exemption or the effectiveness of alternative test methods or protocols. EPA wants to encourage these investigations, which may well reveal approaches that are as or more reliable in ensuring low emissions at a lower cost, and EPA is concerned that requiring the investment and process changes needed to comply with the rule certification and testing requirements on a shorter timeframe might reduce the incentive for the development of alternative approaches. EPA also does not think it makes sense to stimulate a large expansion of TPC capacity in the short term that may be unnecessary and/or may result in excess capacity over time.

Overall, EPA has exercised its discretion in making its determination so as to fulfill the primary purpose of TSCA Title VI without impeding unduly or creating unnecessary economic barriers to technological innovation. See 15 U.S.C. 2601(b)(3). In fact, EPA encourages laminated product producers and the wood products industry to explore all avenues for reducing formaldehyde emissions from composite wood products. In addition to established resins, such as soy-based resins or phenol formaldehyde resins, new resin technologies may be developed that provide adequate performance while contributing minimal formaldehyde emissions. Similarly, while there are established alternatives to regulated composite wood products, *e.g.,* lumber or solid wood, it is likely that new alternatives will be developed. For example, in 2014, EPA awarded a grant through EPA's Small Business Innovation Research program competition to Ecovative Design, LLC. Ecovative makes packaging, building materials (furniture and panels) and automotive products by growing them from agricultural byproducts and mycelium, a fungal network of threadlike cells that are like the roots of mushrooms. These materials are not hardwood plywood, particleboard, or MDF, and thus are not subject to this final regulation. EPA encourages laminated product producers to consider all aspects of their production processes when deciding how best to lower formaldehyde emissions from laminated products and achieve compliance with this regulation.

4. Definitions associated with laminated products. EPA is promulgating the definitions associated with laminated products essentially as proposed, except that the term ''laminated product'' is limited to those products that are produced either by the fabricator of the finished good in which the product is incorporated or by a fabricator who uses the laminated product in the further construction or assembly of a component part. EPA's proposed definition did not include any provisions restricting applicability of the term to certain entities because of concerns over potentially inequitable results. EPA did not intend for the term ''laminated product'' to be expanded to the extent that virtually all hardwood plywood panels could be considered laminated products. Rather, EPA's intention was to allow fabricators of component parts, *e.g.,* cabinet door fabricators, to be afforded similar treatment under the TSCA Title VI regulations as fabricators of finished goods, *e.g.,* entire cabinets. The laminated product definition in this final rule addresses EPA's concerns without being overly broad.

EPA's proposed definition of laminated product also expanded upon the statutory definition to include products made by attaching woody-grass veneers to particleboard, MDF, or veneer-core platforms. In addition, EPA proposed related definitions for the terms ''veneer'' and ''woody-grass.'' While some commenters objected to the expansion of the definition of laminated products to include woody-grass veneers, CARB and another commenter supported including woody-grass veneers, and the February 2014 draft amendments to the CARB ATCM include woody grass in the definition of veneer. Therefore, for the reasons stated in the proposal, that woody-grass veneers can be porous and therefore not effective barriers to formaldehyde emissions, that woody grass veneers can be affixed to cores and platforms using urea-formaldehyde resins, and that including woody grass veneers is consistent with the definition of hardwood plywood in the ANSI/HPVA HP–1 standard (Ref. 46), the definition of laminated product in the final rule includes woody grass as well as wood veneers. EPA notes that the term ''laminated product'' does not include those products made by attaching something other than a wood or woody grass veneer (*e.g.,* plastic, vinyl, or film) to a core or platform.

In addition, because the term ''core'' and the term ''platform'' can both be used to describe the wood product to which a wood or woody grass veneer is affixed, the final rule's laminated product definition includes both terms.

EPA is promulgating the definition of the term ''veneer'' as proposed, with the addition of a maximum thickness limit of 6.4 millimeters (¼ inch, the thickest veneer allowed under the ANSI/HPVA HP–1 standard) to distinguish it from lumber or sawn veneer, a specialty product typically used in the restoration of antique furniture.

EPA also proposed to define component part as a part that contains one or more composite wood products and is used in the assembly of finished goods. EPA is promulgating the definition of component part as proposed, except that EPA has added the unintentionally-omitted phrase ''construction or'' to the definition, as well as a clarification regarding parts sold individually to end users. Such items are not component parts but are more properly classified as finished goods because their commercial assembly process is complete. This clarification is consistent with CARB's proposal to modify their definition of the term ''finished good'' so that it means any good or product, other than a panel, containing hardwood plywood, particleboard, or MDF.

4. Particleboard and medium-density fiberboard. As proposed, EPA is

incorporating the statutory definitions of the terms ''particleboard'' and ''medium-density fiberboard'' into the regulations without change. In addition, EPA is finalizing the proposed definition for the term ''thin medium-density fiberboard'' that incorporates a maximum thickness of 8 millimeters or 0.315 inches and is consistent with both CARB and the voluntary consensus standard for medium-density fiberboard (Ref. 47). EPA is aware that some products are marketed as ''high-density fiberboard.'' If these products meet the definition of medium-density fiberboard, they are regulated as medium-density fiberboard. If they meet the definition of ''hardboard'' they are exempt as hardboard.

5. Exemptions. a. Statutory exemptions. TSCA section 601(c) exempts a number of products from the formaldehyde emission standards for composite wood products. These exemptions include, but are not limited to: Hardboard, structural plywood, structural panels, oriented strandboard, glued laminated lumber, prefabricated wood I-joists, finger-jointed lumber, wood packaging, composite wood products used inside new vehicles other than recreational vehicles, windows that contain less than five percent by volume of composite wood products, exterior doors and garage doors that contain less than three percent by volume of composite wood products, and exterior and garage doors that are made with NAF-based or ULEF resins. EPA is incorporating these exemptions into the implementing regulations. Composite wood products, component parts, and finished goods that qualify for these exemptions are exempt from all of the provisions of the implementing regulations. However, component parts and finished goods made of a mixture of exempt products and regulated products are not exempt. For example, a cabinet made up of structural plywood and hardwood plywood would be subject to the labeling and recordkeeping requirements of this final rule. The hardwood plywood in the cabinet would also be subject to the emission standard for hardwood plywood as well as the testing and certification provisions of this rule.

The statute exempts any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale. The statute provides two examples: Antiques and secondhand furniture. Thus, dealers in secondhand furniture do not have any obligations under this regulation solely due to the fact that some of the furniture may contain composite wood products. Similarly, refurbishment of antique furniture and in-house repairs of previously sold finished goods, such as cabinetry and furniture, are not covered by this regulation. However, there is no exemption for panel producers, importers, and fabricators of composite wood products and component parts that are intended to be used in repairs. Unless another exemption is applicable, these entities may only make compliant products available in the market place, including to end users and other parties that intend to use these products in repairs.

With respect to exterior and garage doors made with NAF-based or ULEF resins, these resin types are defined elsewhere in the statute, with reference to both the composition of the resin and the formaldehyde emissions of composite wood products made with the resin. EPA is promulgating these exemptions as proposed and will interpret the statutory language to mean that, in order to be eligible for this exemption, the composite wood products used to make exterior and garage doors must comply with the emission standards contained in the statutory definitions of NAF-based resins and ULEF resins, as measured by the testing described in the statutory definitions of these resin types. However, manufacturers, fabricators, distributors, or retailers of these doors are not required to comply with the third-party certification, recordkeeping, or labeling provisions of this final rule.

b. Hardboard. TSCA Title VI exempts hardboard, but directs EPA to define it. EPA proposed to define hardboard with reference to, and consistent with, three relevant ANSI standards: ANSI A135.4 (Basic Hardboard), ANSI A135.5 (Prefinished Hardboard Paneling), or ANSI A135.6 (Hardboard Siding) (Refs. 48–50). EPA is concerned that, because hardboard and thin MDF share similar appearances and end uses, a broad definition of hardboard could lead to thin MDF being erroneously categorized as hardboard and exempted from the emission standards. Subsequent to EPA's proposal, CARB issued proposed amendments to its ATCM that would limit the hardboard exemption to hardboard that emits less than 0.06 ppm formaldehyde (Ref. 51).

The definition of hardboard in the final rule references the latest ANSI standards, as suggested in comments from the Composite Panel Association, the accredited developer for these standards. As noted in the standard itself, the name of the standard pertaining to siding was changed from ''Hardboard Siding'' to ''Engineered Wood Siding'' in order to more accurately describe the product (Ref. 52). The definition in the final rule also references the standard for engineered wood trim because the Composite Panel Association indicated that products conforming to this standard were also considered hardboard (Ref. 53). Although specific ANSI standards are referenced in the definition, minor unintentional deviations from the cited ANSI standards do not necessarily mean that a product is medium-density fiberboard and not hardboard. EPA has also added a rebuttable presumption that products emitting more than 0.06 ppm formaldehyde are not hardboard. Based on assertions from CARB and the Composite Panel Association, EPA has determined that products made according to the ANSI standards for hardboard are not likely to emit above 0.06 ppm formaldehyde (Ref. 54). This presumption is designed to ensure that MDF is not sold as hardboard. Some commenters suggested that EPA address this concern by excluding ''dry process'' hardboard from the definition of hardboard and treating it as MDF, while others thought this was unnecessary, because ''dry process'' hardboard is typically made with a small amount of phenol formaldehyde resins and has low formaldehyde emissions. The 0.06 ppm presumption is more enforceable than a process-based exclusion, and is in keeping with industry expectations of hardboard.

c. Other requested exemptions. Several commenters suggested that EPA adopt other, non-statutory, exemptions. As a general matter, EPA has determined that it can best ensure compliance with the emission standards by applying the regulatory requirements uniformly to all composite wood products sold, supplied, offered for sale, or manufactured in the United States. If EPA were to promulgate exemptions at the manufacturing level, exempt composite wood products could later be incorporated into finished goods, possibly with non-exempt composite wood products. This could make it difficult for downstream purchasers, EPA, and end consumers to assess whether finished goods are made from compliant composite wood products. It would also complicate the labeling and recordkeeping requirements, because without records passed down through the supply chain, it would be difficult to ascertain whether finished goods were made from compliant panels, exempt panels, regulated panels that were manufactured in violation of the regulations, or some combination thereof. Exemptions tied to the ultimate

end use of the product, if applied at the manufacturing level, would make it difficult to ensure that none of the composite wood products are diverted to other end uses, either intentionally or accidentally. Such exemptions would require labeling, recordkeeping, and chain-of-custody systems specific to the ultimate uses of the products. EPA notes, however, that military-specified plywood is excluded from the definition of the term ''hardwood plywood'' and thus military-specified plywood to be used in new vehicles, rail cars, boats, aerospace craft, and aircraft is not subject to these regulations.

Commenters suggested that EPA promulgate exemptions for products made by educational institutions, for products manufactured for export, and for products intended for exempt uses (*e.g.,* inside new vehicles). Because the statute provides that the emission standards apply to composite wood products sold, supplied, offered for sale, or manufactured in the United States, EPA does not believe it is appropriate to provide such exemptions, except to the extent an entity can demonstrate they meet the criteria for the exemption at TSCA section 12(a)(1). With respect to composite wood products and finished goods produced and labeled solely for export, an entity would bear the burden of demonstrating the applicability of TSCA section 12(a)(1). EPA further notes the regulations allow for the transportation and importation of panels for testing purposes, provided they are appropriately marked. In response to requests for a research and development exemption, EPA notes that the final definition of the term ''panel'' does not include items produced for the purpose of research and development, provided those items are not sold, supplied or offered for sale. Thus, those items are not subject to the panel certification requirements.

6. *Other definitions.* EPA is defining a number of other terms to ensure that the meaning and applicability of the regulatory requirements are clear. EPA is using the term ''panel producer'' to refer to those facilities that actually make composite wood products, including laminated products that are not exempt from the definition of hardwood plywood, but excluding importers that do not also make the products. As discussed in the preamble of the proposed rule, because TSCA section 3 defines the term ''manufacture'' to include import, EPA is using another term to clarify the regulation by referring to facilities that actually make the products regulated under TSCA Title VI for the purposes of the testing, certification, and recordkeeping requirements. The term ''panel producer'' applies separately to each specific facility because facilities under a common entity often operate under separate quality management systems and procedures and therefore have their own quality control program specific to their staff and operational capabilities. Other terms associated with the testing requirements are discussed in Unit III.E., while terms associated with the third-party certification program are discussed in Unit III.B.

Other terms for which EPA proposed definitions include ''importer,'' ''fabricator,'' ''retailer,'' ''distributor,'' and ''purchaser.'' EPA is finalizing the term ''importer'' as proposed because it is consistent with the definition of the term ''manufacturer'' in TSCA section 3 and the definition of the term ''importer'' in 40 CFR 710.3. An importer is an entity that imports composite wood products, component parts, or finished goods into the customs territory of the United States and the term includes the entity primarily liable for the payment of any duties on the products, or an authorized agent acting on the entity's behalf.

EPA proposed to define the term ''fabricator'' as an entity that incorporates composite wood products into component parts or into finished goods and ''retailer'' as an entity that generally sells smaller quantities of composite wood products directly to consumers. In considering comments received from the renovation industry on whether renovators should be considered fabricators or retailers, EPA reviewed the language of TSCA Title VI as well as the guidance available on CARB's Web site. EPA has determined that the activities of renovators are not the kinds of activities that Congress intended to regulate under TSCA Title VI. Renovators are neither fabricating finished goods to be sold in the marketplace nor are they actually retailing finished goods. Renovators perform their work on real property on behalf of, and at the direction of, the building owner or lessee and, as such, are neither selling nor supplying composite wood products to the building owner or lessee. EPA has added an express exception for renovators to both the definition of the term ''fabricator'' and the term ''retailer,'' to ensure that it is clear that they are not intended to be covered by the definitions.

The renovator exception from the term ''retailer'' does not encompass retailers who sell building materials and finished goods such as cabinets, and also offer installation services to consumers. For these retailers, the sale of composite wood products to consumers as part of a contract to perform renovation services would be covered by these regulations and the retailer would be required to maintain records of the transaction. The activities of the subcontractor who installs the composite wood products under contract to the retailer would not be covered.

EPA did not receive any other comments specifically on the language of the proposed definition of ''fabricator.'' EPA is adding the phrase ''or entity'' to the definitions of distributor, fabricator, importer, and retailer to ensure that it is clear that both natural persons and corporate entities have obligations under these regulations. EPA is also adding the term ''component part'' to the definition of retailer to make it clear that persons who sell parts that contain composite wood products directly to consumers are retailers because these parts have completed their commercial assembly and are more appropriately classified as finished goods. Finally, in response to those commenters who thought that the proposed definition was unclear, EPA is promulgating a definition of the term ''purchaser'' that clearly states that panel producers, importers, fabricators, distributors, and retailers are included, while excluding the end user.

EPA proposed to define the term ''panel'' as ''a flat or raised piece of composite wood product.'' In the final regulation EPA is defining the term panel as ''a thin (usually less than two inches thick), flat, usually rectangular piece of particleboard, medium-density fiberboard or hardwood plywood. Embossing or imparting of an irregular surface on the composite wood products by the original panel producer during pressing does not remove the product from this definition. Cutting a panel into smaller pieces, without additional fabrication, does not make the panel into a component part or finished good. This does not include items made for the purpose of research and development, provided such items are not sold, supplied, or offered for sale.'' In this definition, EPA is clarifying that items produced solely for the purpose of research and development are not ''panels'' within the intended meaning of TSCA Title VI and do not require certification unless they are sold, supplied, or offered for sale.

B. EPA TSCA Title VI Third-Party Certification Program

1. *Overview.* The basic framework of EPA's TPC proposal was that ABs interested in participating in the EPA TSCA Title VI Third-Party Certification

Program would apply to EPA, and if deemed qualified, would enter into a recognition agreement with EPA. After being recognized by EPA, ABs would accredit TPCs based on the TPC requirements established in § 770.7 of the proposed rule. The EPA-recognized ABs would then approve or deny TPC applications for acceptance into the EPA TSCA Title VI Third-Party Certification Program. Under the proposal, TSCA Title VI TPCs would certify panel producers' composite wood products as meeting all necessary requirements under TSCA Title VI.

EPA received several comments, discussed in more detail in Unit III.B.2.f., expressing concern over the proposed requirement that EPA-recognized ABs review and approve or deny TPC applications to participate in the EPA TSCA Title VI Third-Party Certification Program. Based on these comments, this final rule requires candidate TPCs to seek approval and recognition directly from EPA after being accredited by EPA-recognized ABs to the necessary standards developed by the International Organization for Standards (ISO) and the International Electrochemical Commission (IEC) and the TSCA Title VI regulatory requirements in 40 CFR part 770. In addition, TPCs approved by CARB under the formaldehyde ATCM will also be eligible for recognition under the EPA TSCA Title VI Third-Party Certification Program through reciprocity with CARB assuming they meet all applicable requirements of this final rule. The requirements for a TPC to obtain EPA recognition through reciprocity are discussed in Unit III.B.5.b.

In this final rule, EPA is retaining the proposed requirement that ABs interested in participating in the EPA TSCA Title VI Third-Party Certification Program must apply to EPA and enter into a recognition agreement with the Agency to become an EPA TSCA Title VI AB. Following the two-year transitional period for CARB TPCs discussed in Unit III.B.5.a., EPA will only recognize TPCs, including CARB-approved TPCs, who are accredited by EPA-recognized ABs. The Agency will, as proposed, require that TPCs under TSCA Title VI certify a composite wood panel producer's products by verifying the accuracy of formaldehyde emissions testing of composite wood products by the panel producer, monitoring panel producer quality assurance programs for composite wood products, and by conducting inspections of panel producers' activities and products, discussed in more detail in Unit III.B.3.c. Illustration 1 shown below provides an overview of the EPA TSCA Title VI Third-Party Certification Program.

EPA aligned, to the extent practicable, the EPA TSCA Title VI TPC requirements with those in the CARB ATCM to avoid placing differing or duplicative regulatory requirements on the regulated community.

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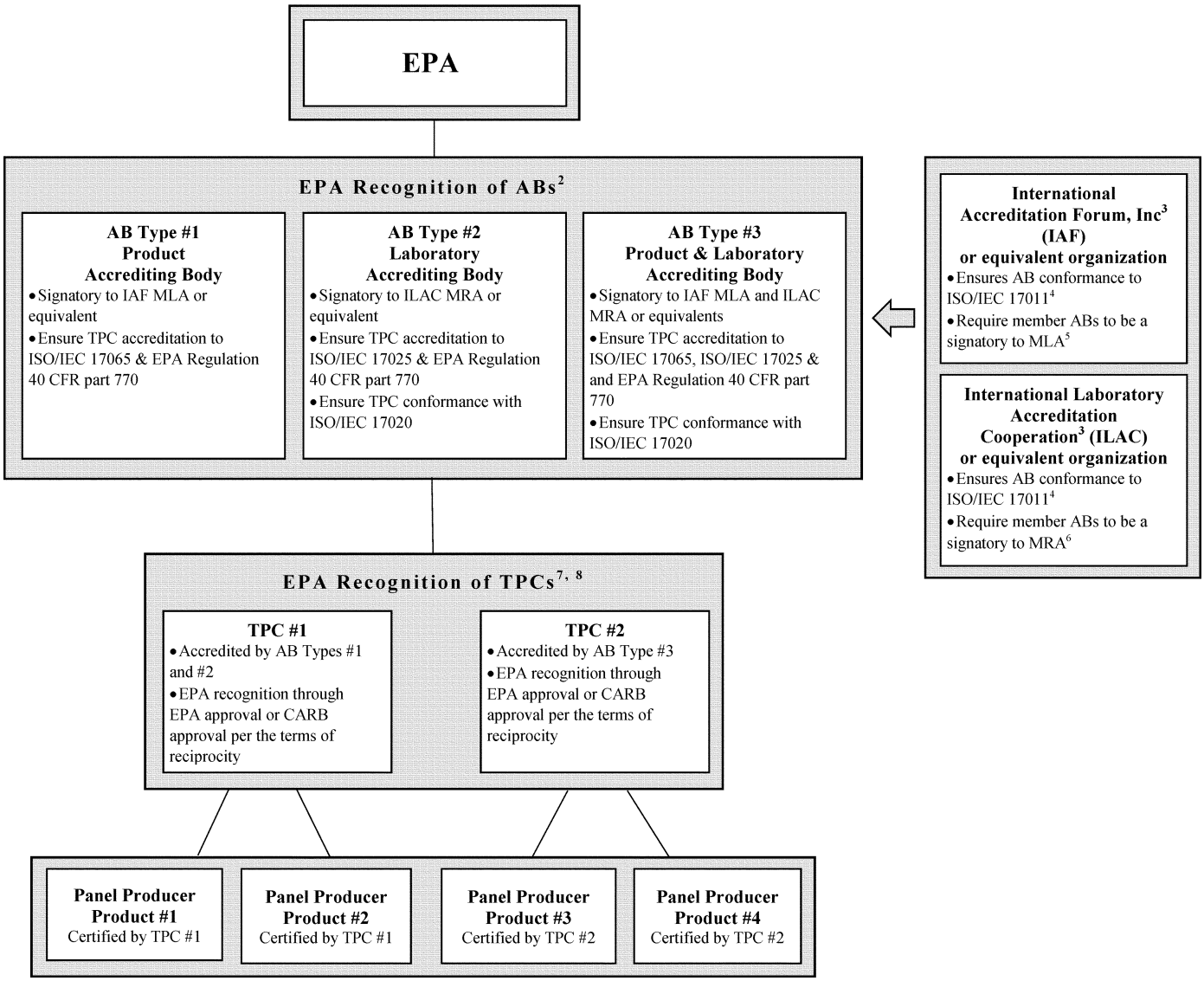
Illustration 1: Overview of the EPA TSCA Title VI Third-Party Certification Program[1]



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a. *Terminology.* EPA is finalizing most of the definitions associated with the TPC program as proposed. However, as a result of public comment, and in some cases to improve clarity or to be consistent with terms used in the referenced international consensus standards, in this final rule EPA has made some minor changes to terminology used in the proposed rule. Based on the comments received on a number of the AB and TPC provisions, EPA realizes that, where the proposal used the term ''accreditation,'' the term ''recognition'' would have been a more accurate description of the activities EPA intends to take with respect to ABs and TPCs. In this final rule, the term ''recognition'' is used instead of the term ''accreditation'' to refer to EPA's recognition of ABs or TPCs, including when discussing EPA's proposal. The term ''accreditation'' is retained in the final rule to refer to an activity that ABs perform as part of evaluating the competency of TPCs. Additionally, in this final rule, ABs recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program are more specifically termed EPA TSCA Title VI Product ABs or EPA TSCA Title VI

[1] TSCA Title VI Third-Party Certification Program formerly called the TSCA Title VI Proposed Third-Party Certification Framework in the proposed rule.

[2] ABs recognized by EPA pursuant to 40 CFR part 770 are termed EPA TSCA Title VI ABs in this final rule.

[3] The International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) develop and publish consensus-based International Standards utilized by accreditation organizations IAF and ILAC.

[4] ISO/IEC 17011—General requirements for accreditation bodies accrediting conformity assessment bodies.

[5] MLA—IAF's Multilateral Recognition Arrangement requires AB signatories to demonstrate they are capable of accrediting product certification bodies to ISO/IEC 17065—Requirements for bodies certifying products, processes or services.

[6] MRA—ILAC's Mutual Recognition Arrangement requires AB signatories to demonstrate they are capable of accrediting testing laboratories to ISO/IEC 17025—General requirements for the competence of testing and calibration laboratories and ISO/IEC 17020—General criteria for the operation of various types of bodies performing inspection.

[7] TPCs recognized by EPA pursuant to 40 CFR part 770 are termed ''EPA TSCA Title VI TPCs'' in this final rule.

[8] TPCs may include contracted independent testing labs and inspection bodies that are accredited by EPA TSCA Title VI ABs.

Laboratory ABs (both are also referred to as EPA-recognized ABs). TPCs approved to certify products under the EPA TSCA Title VI Third-Party Certification Program are termed EPA TSCA Title VI TPCs (also referred to as EPA-recognized TPCs). A TPC laboratory means a laboratory or contract laboratory of an EPA TSCA Title VI TPC that is accredited by an EPA TSCA Title VI Laboratory AB.

EPA proposed that EPA-recognized Product and Laboratory ABs perform in-depth system audits on each candidate TPC as part of the accreditation process. This requirement is still maintained; however, in this final rule the term ''on-site assessment'' is used instead of the term ''in-depth systems audit.'' The standard ISO/IEC 17011:2004(E), entitled ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' uses the terms ''assessment,'' ''reassessment,'' and ''surveillance on-site assessment'' (Ref. 55). EPA uses these terms to describe the activities EPA-recognized ABs are required to perform to evaluate the competency of TPCs to conduct the TSCA Title VI implementing regulations. The terms ''assessment,'' ''reassessment,'' and ''surveillance on-site assessment'' are defined in § 770.3. EPA has also incorporated comments on the proposed regulation related to ISO/IEC 17020:2012(E), entitled ''Conformity assessment—Requirements for the operation of various bodies performing inspection,'' so that the term ''audit'' is replaced with the term ''inspection'' as it relates to a TPC's evaluation of a panel producer in this final rule (Ref. 56).

EPA is finalizing as proposed that EPA-recognized ABs may suspend, modify or revoke a TPC's accreditation, as necessary. However, in this final rule, the terms ''modify'' and ''revoke'' have been replaced by the terms ''reduce'' and ''withdraw'' to make the terminology consistent with the terms used in ISO/IEC 17011:2004(E). The terms ''reduce'' and ''withdraw'' are more familiar to the ABs that will be performing TPC accreditation activities under the rule. However, this final rule continues to use the terms ''suspend,'' ''modify,'' and ''revoke'' to describe potential EPA actions with respect to EPA recognition of ABs and TPCs under TSCA Title VI because they more accurately describe the types of actions that EPA may need to take under this final rule.

b. ISO/IEC Standard Revisions. Since publication of the proposed rule, two of the ISO/IEC standards have been updated and this final rule incorporates the most current versions of those standards. EPA agrees with those commenters that thought that the final rule should incorporate the updated version of the standards because ABs will not be able to accredit to the previous versions once the transition period expires.

EPA proposed that TPCs be accredited to ISO/IEC Guide 65:1996(E) (Ref. 57), which was subsequently revised to be ISO/IEC 17065:2012(E), entitled ''Conformity assessment—Requirements for bodies certifying products, processes or services'' (Ref. 58). In this final rule, EPA is incorporating by reference ISO/IEC 17065:2012(E). This requirement reflects the change required by International Accreditation Forum (IAF) that Multilateral Recognition Arrangement (MLA) signatories transition their accreditation of TPCs to ISO/IEC 17065:2012(E) no later than September 14, 2015. In this final rule, EPA is also incorporating by reference ISO/IEC 17020:2012(E), which is an updated version of ISO/IEC 17020:1998(E) referenced in the proposed rule (Ref. 59).

2. *Requirements for Accreditation Bodies.* There are two primary types of ABs that will be involved in the implementation of the EPA TSCA Title VI Third-Party Certification Program: Product ABs and Laboratory ABs. EPA recognizes it is also possible that a single AB may be qualified to perform the roles of both types of ABs, and accredit a TPC for both its product certification capabilities and formaldehyde emissions laboratory testing capabilities. This scenario is shown as ''AB Type #3'' in Illustration 1 (see Unit III.B.1.). In such a case, only a single AB would need to be involved in implementing the two AB roles under the EPA TSCA Title VI Third-Party Certification Program.

a. *Necessary qualifications of Product ABs.* EPA proposed that to be an EPA-recognized Product AB, among other requirements, Product ABs must be signatories to the IAF MLA, or a member of an equivalent oversight body. As noted by commenters, in the proposal, EPA incorrectly stated that the IAF MLA level three endorsement ensures that the AB has demonstrated basic competence to perform accreditation activities for ISO/IEC17020:1998(E). The endorsement to accredit TPCs to ISO/IEC 17020:1998(E), now ISO/IEC 17020:2012(E), instead falls under the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), which is discussed later in this final rule. The requirements in this final rule pertaining to ISO/IEC 17020:2012(E) are discussed in Unit III.B.3.a.i.

In this final rule, EPA retains the requirement that Product ABs be signatories to the IAF MLA and be endorsed by IAF through level three, the ''main scope'' of the IAF MLA, which ensures that the AB has policies and procedures in place in its operations and management plans to accredit a TPC for product certification to ISO/IEC 17065:2012(E). EPA will also recognize members of IAF regional bodies, as suggested by public comments. The four regional cooperations that are currently recognized by both IAF and ILAC as equivalent are the Asia Pacific Laboratory Accreditation Cooperation (APLAC), the European Accreditation Cooperation (EA), the Inter-American Accreditation Cooperation (IAAC), and the Pacific Accreditation Cooperation (PAC). However, EPA disagrees with a comment to remove the phrase ''or equivalent oversight body'' and, as proposed, EPA will still consider accepting into the program ABs that are members of organizations that EPA has determined to be equivalent. If any other oversight bodies exist in the future, ABs that are members of those oversight bodies should have the opportunity to be recognized under the EPA program, if EPA determines that membership in the new oversight body is equivalent to being an ILAC or IAF signatory.

b. *Required qualifications of Laboratory ABs.* A Laboratory AB is responsible for accrediting the TPC formaldehyde emissions testing laboratory. EPA proposed that Laboratory ABs be signatories to the ILAC MRA or a member of an equivalent organization.

As discussed for Product ABs in Unit III.B.2.a., EPA received similar comments that Laboratory ABs who are members of ILAC-recognized Regional Cooperations provide accreditation services that are equivalent to those provided by ILAC MRA signatories. EPA agrees and, as for Product ABs, in this final rule EPA will consider a Laboratory AB's membership in a regional ILAC cooperation as being equivalent to being a signatory to the ILAC MRA for the purposes of eligibility in the EPA TSCA Title VI Third-Party Certification Program. The four regional cooperations that are currently recognized by both IAF and ILAC as equivalent are the APLAC, the EA, the IAAC, and the PAC. EPA will also consider accepting into the program Laboratory ABs that are members of organizations equivalent to ILAC, as determined by EPA.

c. *Recognition agreement between EPA and ABs.* EPA proposed that Product ABs and Laboratory ABs interested in participating in the EPA TSCA Title VI Third-Party Certification Program would be required to submit an application to EPA to be formally recognized by EPA. Once EPA reviewed the AB's credentials and deemed that the AB was qualified, EPA proposed that it would enter into a recognition agreement with each Product and Laboratory AB to formally recognize each type of AB (or a single AB performing both AB roles) as qualified to implement their respective roles under the EPA TSCA Title VI Third-Party Certification Program. The proposed recognition agreement was proposed to be a signed agreement between EPA and each Product AB or Laboratory AB to abide by the proposed regulatory requirements.

EPA received several comments about the proposed requirement that each AB enter into a recognition agreement with EPA. These commenters opposed or questioned requiring ABs to enter into a recognition agreement with EPA, stating that an AB's status as a signatory to the IAF MLA and/or ILAC MRA should be sufficient without any further review by EPA.

Because many ABs and the TPCs that they accredit are not located in the United States, it is necessary for ABs to enter into a recognition agreement with EPA to establish a closer relationship between EPA and the ABs for the proper EPA oversight of its regulatory program. Furthermore, this requirement is not without precedent, as there are several third-party certification programs where ABs must enter into such agreements with government agencies to provide accreditation services to third-party certifiers, such as the EPA WaterSense Program and the EPA Energy Star Program. EPA also believes that requiring ABs through recognition agreements to meet with EPA in person, via teleconference, or other virtual methods on some regular or as-needed basis to discuss the implementation of the accreditation program strengthens the ongoing relationship between EPA and participating ABs, which in turn improves the overall implementation of the EPA TSCA Title VI Third-Party Certification Program. For these reasons, EPA in this final rule is retaining the requirement for ABs to apply to EPA and enter into a recognition agreement in order to become an EPA TSCA Title VI AB.

EPA also received comment that EPA should lengthen the recognition agreement with ABs from three years as proposed to four years to reflect the length of time between normal AB peer evaluations under the ILAC and IAF programs. Because the timing of the EPA recognition agreement with the ABs is unlikely to match the individual AB peer review cycles, matching up the two periods would not have any impact on the responsibilities of the ABs under the EPA TSCA Title VI Third-Party Certification Program. For these reasons, EPA will retain the provision for three-year recognition agreement cycles in the final rule.

d. *Agent for service requirement for EPA TSCA Title VI ABs.* In the event that legal notices would need to be served to an EPA-recognized AB, or should the need for administrative and judicial proceedings occur with an EPA-recognized AB, EPA proposed requiring ABs to designate an agent for service in the United States in their applications. The agent would need to be capable of accepting service of notices and processes made in administrative and judicial proceedings. Any information provided by EPA to the designated agent for service would be equivalent to providing that information directly to the EPA-recognized AB. Requiring a designated agent for service in the United States will help to facilitate communication between EPA and ABs and ensure compliance with the formaldehyde emission standards by facilitating the ability of EPA to enforce TSCA Title VI and its implementing regulations, which in turn encourages the regulated entities to fulfill their obligations under the statute and regulations.

EPA received several comments regarding the agent for service requirement for ABs. Some commenters misinterpreted this requirement to mean that an AB employee is expected to physically work or have an office in the United States, which it does not. Additionally, commenters expressed concern that ABs who function as part of foreign governments may have difficulty designating an agent for service.

EPA determined that an agent for service is necessary for legal matters, and is available at a relatively low cost from private firms that specialize in this role. Therefore, the Agency is retaining this requirement in this final rule. In response to public comments, EPA clarifies that the requirement permits EPA TSCA Title VI ABs and TPCs to share an agent for service. EPA TSCA Title VI ABs that are part of a foreign government or act on behalf of a foreign government may designate their U.S. embassy or a U.S. consulate as their agent for service.

e. *EPA Recognition Agreement Implementation Officer.* As discussed in the proposal and retained in this final rule, the EPA Recognition Agreement Implementation Officer is the EPA point of contact for ABs to consult with on the implementation of the recognition agreement with EPA and matters pertaining to the EPA-recognized AB's responsibilities under the recognition agreement. The EPA-recognized AB will also have an Implementation Officer that will serve as the point of contact for the EPA TSCA Title VI Third-Party Certification Program. The respective EPA and EPA-recognized AB Implementation Officers are identified in each recognition agreement between EPA and the EPA-recognized Product and/or Laboratory AB.

f. *Requirements for EPA TSCA Title VI ABs.* EPA proposed that once EPA had entered into a recognition agreement with an AB, that AB would become recognized by EPA as an EPA TSCA Title VI Product AB, Laboratory AB, or both. This section discusses the proposed EPA-recognized AB responsibilities and the public comments, as well as the AB responsibilities established in this final rule.

i. *Responsibilities of EPA TSCA Title VI Product ABs in the TPC application process.* EPA proposed that EPA-recognized Product AB responsibilities would include receiving and acting on applications from TPCs seeking to participate in the EPA TSCA Title VI Third-Party Certification Program. EPA also proposed that the EPA-recognized Product ABs send TPC applications and required supporting documentation to EPA and assign the TPC a unique number once the TPC became an EPA TSCA Title VI Accredited TPC.

EPA received several comments expressing concern with these responsibilities. Some commenters felt that the proposed approach would provide an increased burden on EPA-recognized ABs beyond normal industry accreditation practice, leading to increased costs passed on to TPCs. Based on these comments, EPA will not require Product ABs to review and approve or deny TPC applications from candidate TPCs that want to participate in the EPA TSCA Title VI Third-Party Certification Program. Instead, under this final rule, EPA will approve TPC applications directly or will recognize CARB-approved TPCs under the EPA TSCA Title VI Third-party Certification Program through the EPA/CARB memorandum of agreement (see Unit III.B.5.b.).

ii. *Responsibilities of ABs after TPC recognition into the EPA TSCA Title VI*

Third-Party Certification Program. Under the proposal, EPA-recognized Product ABs, when accrediting a TPC, would be responsible for ensuring that the TPC has a process in place to verify the accuracy of the formaldehyde quarterly and quality control tests. EPA TSCA Title VI Product ABs would also ensure the TPC has a process in place to monitor panel producer quality assurance programs, and conduct independent audits and inspections of panel producers, their quality control testing facilities and their laboratories. EPA also proposed that Product ABs keep certain records including checklists and other records documenting TPC compliance with the accreditation requirements and provide them to EPA within 30 calendar days upon request.

Several commenters thought the proposed requirement for ABs to make available to EPA on request, certain accreditation information such as checklists and other records documenting adherence to specific requirements under the ISO standards, such as inspections and on-site assessments, would present issues with the confidentiality agreements between ABs and TPCs and would violate the ISO/IEC17011:2004(E) confidentiality requirements (Ref. 55). EPA also was informed that it could obtain such information through the TPCs rather than the ABs. Based on these comments, in this final rule, EPA is requiring information pertaining to assessment results of a TPC from the TPC instead of the AB.

Under this final rule, as proposed, EPA-recognized Product ABs will retain the responsibility to accredit TPCs (if the TPC is found to be eligible) seeking recognition under the EPA TSCA Title VI Third-Party Certification Program by performing an initial assessment of each TPC. Once EPA recognizes the accredited TPC, EPA-recognized ABs must perform a reassessment or surveillance on-site assessment (as defined in section 770.3) of EPA-recognized TPCs in accordance with ISO/IEC 17011:2004(E) at least every two years.

Commenters also suggested that EPA require that TPCs have this final rule's requirements listed within their scope of accreditation for both ISO/IEC 17065:2012(E) and ISO/IEC 17025:2005(E) (Refs. 58, 60). They indicated that this would help to provide enough specificity in the certification scheme to ensure consistent performance by all the ABs, TPCs and panel producers in this program.

Because of this information, EPA is clarifying in this final rule that EPA-recognized Product ABs (and Laboratory ABs as discussed later in this unit) are required to include, as part of their initial ISO accreditation related assessment, reassessment and surveillance on-site assessment of a TPC, a review of the TPC's competence to perform its responsibilities under this rule pursuant to ISO/IEC 17011:2004(E). Additionally, a TPC's certificate of accreditation issued by the EPA-recognized Product AB must specifically include a written reference that the TPC scope of accreditation includes ''40 CFR part 770—Formaldehyde Standards for Composite Wood Products.''

EPA proposed that EPA-recognized Laboratory ABs would be responsible for verifying initially, and on an ongoing basis, that the TPC laboratory is experienced and capable of conducting formaldehyde emissions tests according to the requirements of TSCA Title VI and its implementing regulations.

In this final rule, the EPA-recognized Laboratory AB responsibilities remain largely unchanged from the proposal. EPA-recognized Laboratory ABs, like Product ABs, are required as part of their initial assessment, reassessment, and surveillance on-site assessment of a TPC, to conduct a review of the TPC's competence to perform its laboratory related responsibilities under this rule pursuant to ISO/IEC 17011:2004(E). The TPC's accreditation certificate issued by the EPA-recognized Laboratory AB must specifically include a written reference that the TPC's scope of accreditation includes ''40 CFR part 770—Formaldehyde Standards for Composite Wood Products'' and the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02, if used.

EPA proposed that, upon request, EPA-recognized Laboratory ABs would allow EPA representatives to accompany their assessors during on-site assessments to observe the audit of a TPC. EPA received comments from ABs opposing this requirement. In response to these comments in this final rule, EPA will instead require that TPCs, upon request by EPA, allow EPA to attend their assessment, reassessment or surveillance on-site assessments conducted by their EPA-recognized AB.

g. *Revocation of EPA's recognition of an AB.* EPA proposed that it may suspend, revoke, or modify the recognition of an EPA-recognized AB, if the AB is not complying with the requirements promulgated for ABs under TSCA Title VI. As proposed, if an EPA-recognized AB is removed or withdraws from the EPA TSCA Title VI Third-Party Certification Program, that AB would be responsible for promptly notifying EPA and all EPA-recognized TPCs that receive its accreditation services. EPA proposed to allow the TPCs that were accredited by that EPA-recognized AB to have 365 calendar days, or 180 calendar days, if less than 365 calendar days were left on their three-year recognition period, to be accredited and recognized again as an EPA-recognized TPC by another EPA-recognized AB. EPA proposed that this grace period would not be afforded to TPCs if their EPA recognized-AB is removed or withdraws from the EPA TSCA Title VI Third-Party Certification Program for fraud or providing false or misleading statements related to a particular EPA-recognized TPC or TPCs, or any reason that implicates a particular TPC or TPCs in a violation of TSCA Title VI or its implementing regulations. While seeking accreditation from an alternate EPA-recognized AB, EPA proposed that an EPA-recognized TPC would need to continue to comply with all other aspects of TSCA Title VI and its implementing regulations, and the TPC could continue to certify composite wood products.

Based on comments received, under this final rule, EPA is retaining the authority to suspend, revoke or modify the recognition of an EPA-recognized AB, if the AB is not complying with the requirements promulgated for ABs under TSCA Title VI. If an EPA-recognized AB is removed or voluntarily withdraws from the EPA TSCA Title VI Third-Party Certification Program, that AB is responsible for promptly notifying all EPA-recognized TPCs that receive its accreditation services and EPA, in the case of a withdrawal. The regulations allow the TPCs that were accredited by that EPA-recognized AB to have 180 calendar days to be accredited by another EPA-recognized AB. This 180 day grace period would not be afforded to TPCs if their EPA-recognized AB is removed or withdraws from the EPA TSCA Title VI Third-Party Certification Program for fraud or providing false or misleading statements related to a particular EPA-recognized TPC or TPCs, or any reason that implicates a particular TPC or TPCs in a violation of TSCA Title VI or its implementing regulations. During the 180-day period TPCs may continue to certify products under TSCA Title VI. EPA agrees with those commenters who thought that portions of the EPA-recognized TPC's previous assessments could be considered by the new EPA-recognized AB in its reaccreditation of the TPC and therefore would not require the

proposed 365 calendar days. In this final rule, as proposed, if an EPA-recognized AB is removed from the EPA TSCA Title VI Third-Party Certification Program due to fraud for providing false or misleading statements with respect to a particular TPC, or for any other reason that implicates a particular TPC in a violation of TSCA Title VI or this final rule, that TPC may not provide any TSCA Title VI certification services until it has been accredited by another EPA-recognized AB. Should this situation occur, EPA will provide notifications to the affected EPA-recognized TPCs at the time it commences formal action (*i.e.* an action to suspend, modify or revoke a recognition under the procedures established in 40 CFR 770.7(e)) against the AB. Also under this final rule, and as proposed, any action EPA takes against an AB would not preclude an enforcement action against a TPC.

3. *Requirements for third-party certifiers of composite wood products.* a. *Requirements to apply for participation in the EPA TSCA Title VI Third-Party Certification Program.* EPA proposed that TPCs meet several qualifications to demonstrate experience and competency in certain areas that EPA believed were important to ensure a TPC's ability to conduct audits, inspections, testing, and certification of composite wood products. The basic requirements for candidate TPCs to qualify to participate in the TSCA Title VI program remain largely the same in this final rule except as noted in the following discussions.

EPA had proposed that the TPC must apply to an EPA-recognized Product AB to certify composite wood products pursuant to TSCA Title VI. As discussed in Unit III.B.2.f.i., EPA will instead require in this final rule that TPCs apply directly to EPA for recognition or for CARB-approved TPCs to provide EPA with documentation from CARB that specifies a TPC's eligibility for reciprocity as discussed in Unit III.B.5.b. TPCs must apply for EPA TSCA Title VI recognition electronically through the EPA CDX via *http://cdx.epa.gov* (discussed in more detail in Unit III.B.6.) or, if notified by EPA that the CDX portal is not available, via an online application on the EPA Web site found at: *http://www.epa.gov/formaldehyde/.*

i. *TPC accreditation requirements.* As discussed in Unit III.B.2.f.ii., candidate TPCs must be accredited to ISO/IEC 17065:2012 (E), and the accreditation must include a scope of accreditation to 40 CFR part 770—Formaldehyde Standards for Composite Wood Products.

EPA proposed that TPCs have experience in conducting inspections of panel producers pursuant to ISO/IEC 17020:1998(E). Some commenters noted that the proposal was unclear on whether TPCs needed to be accredited to ISO/IEC 17020:1998(E) or be in conformance with ISO/IEC 17020:1998(E). Other commenters stated that accreditation to ISO/IEC 17020:2012(E) is duplicative because inspection qualifications and responsibilities for TPCs and their sub-contractors are already incorporated into the required ISO/IEC 17065:2012(E) accreditation. Based on these comments, EPA is requiring in this final rule that EPA TSCA Title VI TPCs be in conformance with (but not necessarily accredited to) ISO/IEC 17020:2012(E), as is required under ISO/IEC 17065:2012(E) section 6.2.1. EPA TSCA Title VI TPCs must also be able to conduct inspections of panel producers and their products and properly train and supervise inspectors to inspect in conformance with ISO/IEC 17020:2012(E).

EPA also proposed that TPCs have experience operating or using laboratories that are accredited to ISO/IEC 17025:2005(E). EPA did not receive comments on this point and is therefore finalizing this requirement as proposed. Also, as previously noted, the TPCs' scope of accreditation to ISO/IEC 17025:2005(E) must include 40 CFR part 770—Formaldehyde Standards for Composite Wood Products and the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02, if used.

ii. *TPC recognition periods.* EPA proposed that TPCs would be required to renew their application to EPA-recognized ABs every three years. EPA requested and received comments on the costs and benefits of a three-year renewal period for recognition under the TSCA Title VI Program as compared to a two-year renewal period (as under the CARB ATCM). EPA also requested and received comments on whether the proposed requirement for EPA TSCA Title VI ABs to audit TPCs and their laboratories every two years should be extended to every three years to align with the proposed three-year TPC recognition period.

Many commenters supported the proposed renewal periods of three years for TPCs. Other commenters also stated that the renewal periods should be in line with intervals of assessments as required by the ISO standards. The two-year renewal period is consistent with the maximum amount of time allowed between on-site assessments under ISO/IEC 17011:2004(E) and is also is consistent with ISO/IEC 17065:2012(E). In an effort to harmonize this final rule with the existing CARB regulations and better align with the on-site assessment requirements of the ISO standards highlighted above, EPA is requiring that all EPA TSCA Title VI TPCs submit a renewal application to EPA, or documentation to renew their eligibility for reciprocity every two years for EPA recognition and to have a reassessment or surveillance on-site assessment conducted by their EPA TSCA Title VI AB every two years to maintain their accreditation.

iii. *Experience in composite wood products.* EPA proposed that TPCs must have experience in the composite wood products industry because understanding the processes used by panel producers to produce composite wood products is crucial for the EPA TSCA Title VI TPC to adequately inspect panel producers. EPA requested comment on whether EPA should require that a TPC have experience with the specific type of composite wood product that it would certify or if experience with one type of product is sufficient to certify all types of composite wood product.

Several commenters stated that experience with one product type is sufficient to certify all composite wood products because the TPC's objectives to certify compliance with emission standards and correlation to quality control test methods are independent of product type. EPA agrees with the commenters, and will require in this final rule that TPCs have experience with at least one type of composite wood product. EPA is also requiring each TPC applicant to state its experience in the composite wood products industry and include the specific type of composite wood product(s) that it intends to certify.

iv. *Agent for service requirement for EPA TSCA Title VI TPCs.* In order to facilitate communication between EPA and TPCs, EPA proposed to require TPCs to designate an agent for service in the United States in their applications. EPA received several comments regarding the agent for service requirement for TPCs. As discussed in Unit III.B.2.d., for EPA-recognized ABs, an agent for service is necessary for legal matters and is available at a relatively low cost from private firms that specialize in this role. Therefore, the Agency is retaining this requirement in this final rule. However, in response to public comments, EPA clarifies that the requirement permits EPA TSCA Title VI ABs and TPCs to share an agent for service.

v. *Experience in formaldehyde testing.* The proposed TPC qualification

requiring TPC laboratories to have experience in performing or verifying formaldehyde emissions testing on composite wood products has been retained in this final rule. The proposed requirement for TPC laboratories to have experience with test method ASTM E1333–10 and experience evaluating correlation between test methods has been modified in the final rule. Based on public comment, candidate TPCs may provide a description of experience with test method ASTM E1333–10 and/or ASTM D6007–02, if used, and experience evaluating correlation between test methods when applying for EPA recognition into the TSCA Title VI program. Note, in a situation where a TPC is only providing a description of experience with ASTM D6007–02, the TPC must be contracting testing with a lab that has a large chamber and experience with ASTM E1333–10.

b. *Denied TPC applicants.* Under this final rule, if EPA denies a TPC's application for recognition in the EPA TSCA Title VI Third-Party Certification Program for failure to submit a complete application or for being unqualified, EPA will notify the TPC of the legal and factual basis for the denial, and actions, if any, which the affected TPC may take to receive recognition in the future.

EPA maintains the authority to deny recognition of CARB-approved TPCs who apply to be recognized through reciprocity (as discussed in more detail in Unit III.B.5.b.) in the EPA TSCA Title VI Third-Party Certification Program if the Agency believes the TPC is not qualified according to this rule.

c. *Responsibilities once a TPC is recognized into the EPA TSCA Title VI Third-Party Certification Program.* EPA proposed that once an applicant is recognized as a TPC under the TSCA Title VI Third-Party Certification Program, the EPA-recognized TPC would then certify panel producers' composite wood products under the requirements of TSCA Title VI and its implementing regulations.

In the proposed rule, EPA also required that EPA-recognized TPCs review and approve, when appropriate, applications from panel producers for reduced testing or exemption from third-party certification requirements for products made with ULEF or NAF-based resins. Under the CARB ATCM, CARB, not the TPCs, reviews and approves these applications. Several commenters opposed TPCs reviewing and approving applications for NAF and ULEF approvals. Their concerns include potential conflicts of interest, potential for inconsistency among TPC reviews, and the potential for inadvertent misuse of confidential business information. One commenter suggested that EPA conduct reviews and issue approvals, accept all current CARB approvals, and work with CARB as an alternate approval authority going forward. CARB requested reciprocity in its comments. Another commenter said that EPA may want to grandfather existing resin approvals made by CARB and continue to coordinate decisions with CARB.

To address these concerns, in this final rule, under the terms of reciprocity with CARB, EPA will accept CARB's NAF and ULEF approvals, as long as CARB's requirements for products made with NAF-based and ULEF resins are at least as stringent as EPA's requirements, which EPA affirms is currently true. Should EPA determine that CARB's requirements are no longer at least as stringent was EPA's requirements, then EPA will publish a notice in the **Federal Register** announcing EPA's determination.

Alternatively, panel producers can apply to an EPA TSCA Title VI TPC for NAF and ULEF approvals. EPA also notes that the provisions requiring TPC impartiality are applicable to TPCs reviewing and approving NAF/ULEF applications (see Unit III.B.7.). EPA believes the ability to apply to CARB for NAF and ULEF approvals, the dynamic market amongst TPCs, and the impartiality requirements for TPCs, mitigate any concerns about potential TPC conflicts of interest. As proposed, EPA is also separately requiring EPA TSCA Title VI TPCs to review and approve or deny applications from panel producers for reduced quality control testing for particleboard and medium-density fiberboard under the provisions discussed in Unit G.

EPA proposed to require that EPA-recognized TPCs inspect and provide an on-site audit of panel producers and their records at least quarterly and conform to ISO/IEC 17020:1998(E) (subsequently updated to ISO/IEC 17020:2012(E)) when conducting their inspections. EPA requested comment on whether enhanced testing or inspection requirements should be required where a TPC finds that a panel producer has failed quality control or quarterly tests at a certain frequency, or upon other circumstances. Considering comments received on this issue, in this final rule, EPA will not require additional enhanced testing. Instead, it would be most appropriate for each EPA TSCA Title VI TPC to establish its own process for determining the conditions that warrant enhanced testing and/or inspections as needed for panel producers with failed quality control or quarterly tests. However, this final rule requires that EPA TSCA Title VI TPCs notify panel producers and EPA within 72 hours of a failed quarterly test result. An EPA TSCA Title VI TPC must also notify EPA within 72 hours of becoming aware that a panel producer has exceeded its established quality control limit (QCL) for two or more consecutive quality control tests. EPA is not requiring TPCs to notify EPA each time a QCL is exceeded because isolated QCL exceedances, where potentially non-complying products have not left the panel producer, can be addressed by the EPA TSCA Title VI TPC and the panel producer without EPA intervention. Additionally, the panel producer will have to comply with the non-complying lot provisions of 40 CFR 770.22 with respect to any lot represented by a sample result that exceeds the applicable formaldehyde emission standard or indicates that the lot may exceed the applicable standard. Where multiple products are grouped in a single product type for testing, this includes all products in the group represented by the sample.

In the proposed rule, an EPA-recognized Product AB would supply the TPC with a unique TPC identification number once it has been accredited for TSCA Title VI purposes. Under this final rule, EPA TSCA Title VI TPCs will be supplied with a TPC identification number by EPA unless the TPC is CARB-approved and received EPA TSCA Title VI recognition through reciprocity. In this case, CARB-approved TPCs will use their CARB-issued TPC identification numbers. EPA TSCA Title VI TPCs must provide their identification numbers to panel producers so that the panel producers can include the TPC number on the label of their certified products and in their records.

EPA proposed to require EPA-recognized TPCs to maintain various records in electronic form for three years. EPA received several comments pertaining to the proposed three-year recordkeeping requirement. Two commenters contended that EPA should maintain CARB's two-year recordkeeping period for TPCs, one commenter supported recordkeeping beyond three years, and another commenter was supportive of EPA's proposed three-year record retention period for TPCs.

Under this final rule, EPA is maintaining its requirement that records be held in electronic form for three years. EPA has determined that certain records will assist EPA in monitoring compliance with the emission standards and other provisions. The records required are largely the same as proposed, but have been modified to

better align with the CARB ATCM and are listed in § 770.7(c)(4)(vii) of this rule.

EPA proposed to require EPA-recognized TPCs to submit an annual report to EPA and the EPA-recognized AB that accredits the TPC. Under this final rule, EPA will not require that this report be provided to the TPC's AB but will still require the EPA-recognized TPCs to submit these reports to EPA through the EPA CDX database. (Ref. 61). If the CDX database becomes unavailable for any reason, EPA will provide an alternate electronic reporting method and notify the EPA-recognized TPCs of how to access the alternate method. In addition, the requirements of this report have been, for the most part, modified to align with CARB's annual report requirements for consistency between the two programs and to respond to public comments. Aligning with CARB's annual report requirements expands the number of data elements beyond what EPA specifically proposed. However, adding these data elements will streamline annual reporting requirements for EPA-recognized and CARB-approved TPCs by allowing the acceptance of a single annual report by both regulatory programs. Under this final rule, EPA TSCA Title VI TPCs must electronically submit an annual report on or before March 1st of each year for TPC services performed during the previous calendar year. The required reporting elements of the annual report are listed at § 770.7(c)(4)(viii) of this rule.

d. TPC Interlaboratory Comparison. EPA proposed to require EPA-recognized TPCs to participate annually in an EPA-recognized interlaboratory comparison program or, if developed, a proficiency testing program. EPA requested comment on: Ways it might integrate with CARB's interlaboratory comparison program; the frequency of interlaboratory comparisons; what criteria should be used to determine the adequacy of performance; how and whether participating Laboratory ABs could administer an interlaboratory comparison or proficiency testing program for the TPCs that it accredits; and the cost of such a program.

Commenters supported either CARB or EPA conducting an interlaboratory comparison program for TPCs in both the state and federal programs. One commenter also provided suggestions on how to strengthen the existing CARB interlaboratory comparison program. In addition, EPA received several comments regarding the frequency of interlaboratory comparisons and/or proficiency testing. Most commenters felt that an annual interlaboratory comparison was sufficient to meet EPA and CARB's goal that laboratories regularly demonstrate their proficiency at testing formaldehyde emissions of composite wood products. Three commenters also supported the use of a standard reference material as a possible alternative material for using in interlaboratory comparison or similar testing.

Based on comments received, in this final rule, EPA is requiring all EPA TSCA Title VI TPC laboratories, of both CARB TPCs and non-CARB TPCs, to participate in the CARB interlaboratory comparison for formaldehyde emissions from composite wood products when offered. CARB intends to conduct the interlaboratory comparisons no less frequently than every two years. EPA has determined that requiring participation in the CARB interlaboratory comparison on a regular basis is necessary to verify that TPC laboratories under TSCA Title VI are able to properly measure formaldehyde emissions from composite wood products. EPA's decision to utilize the pre-existing CARB interlaboratory comparison program under the EPA TSCA Title VI Third-Party Certification Program is supported by public comments and will allow for one consolidated interlaboratory comparison program and further establish consistency between the CARB and federal regulatory programs. EPA will consult on a regular basis with CARB regarding the EPA TSCA Title VI TPCs' interlaboratory results, any other testing-related information, and the ongoing operation of the CARB interlaboratory comparison testing program. EPA will also require TPCs to submit to EPA the results compared with the mean of any interlaboratory comparison for formaldehyde emissions in which the TPC laboratory participates other than the CARB interlaboratory comparison or, if available, the TPC laboratory results from an EPA-recognized proficiency testing program. EPA retains the authority to make its own independent decision on the performance of an EPA TSCA Title VI TPC under the CARB interlaboratory comparison or any other future EPA-recognized interlaboratory comparison or proficiency testing program. EPA also retains the authority to derecognize the CARB interlaboratory comparison or any other future EPA-recognized interlaboratory comparison or proficiency testing program if it no longer meets the needs of the EPA TSCA Title VI Program.

Currently no reference material for formaldehyde emission is available. If a reference material for formaldehyde is developed and then approved by EPA, EPA will consider incorporating the use of that reference material into an EPA-recognized interlaboratory or proficiency testing program. As supported by public comment, if such an EPA-recognized interlaboratory or proficiency testing program by means of a reference material becomes available, EPA would also consider initiating a rulemaking to require any EPA-recognized third-party proficiency testing provider to be accredited to ISO/IEC 17043:2010(E).

e. *Removal, reaccreditation and reapplication process for third-party certifiers.* As proposed, if an EPA-recognized TPC loses its accreditation or discontinues participation in the EPA TSCA Title VI Third-Party Certification Program for any reason, it would be responsible for promptly notifying EPA and all panel producers to which it provides TSCA Title VI certification services. EPA proposed that panel producers that used the TPC to certify their products would need to enlist another EPA-recognized TPC to certify their products within 90 calendar days. This 90 day grace period would not be afforded if their EPA-recognized TPC loses its accreditation or discontinues participation in the program for fraud or providing false or misleading statements, or any reason that implicates a particular panel producer in a violation of TSCA Title VI or its implementing regulations.

EPA requested comment on whether it provided adequate time in the proposal for a panel producer to seek an alternate certification should their TPC lose its EPA recognition under TSCA Title VI. Based on the public comments, this final rule allows panel producers 90 calendar days to obtain a new EPA TSCA Title VI TPC in the event that their previous TPC loses its accreditation or recognition in the TSCA Title VI Program as long as they remain in compliance with all other relevant aspects of the rule. Panel producers who are not able to obtain a new EPA TSCA Title VI TPC within 90 calendar days may request from EPA a 90 calendar day extension, for good cause. If the panel producer does not obtain a new TPC within 90 calendar days, or if granted an extension by EPA, 180 calendar days, composite wood products produced thereafter are not certified and may not be sold, supplied or offered for sale.

4. Enforcement, suspension and revocation. a. *Enforcement under TSCA sections 15–17.* EPA proposed to conduct inspections of participating TPCs and ABs and issue subpoenas according to the requirements for recognition and/or pursuant to the

provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with TSCA Title VI and the regulations promulgated thereunder. EPA proposed to exercise the authority to withdraw from a recognition agreement with an EPA-recognized AB and pursue penalties under TSCA section 15 (15 U.S.C. 2614) for any violation of TSCA Title VI or the regulations promulgated thereunder. In addition to an administrative or judicial finding of violation, EPA proposed the grounds for withdrawing from a recognition agreement and/or pursuing an enforcement action against an EPA-recognized AB would include submitting false information to EPA, falsifying records, or failing to comply with program requirements. EPA is finalizing these enforcement provisions as proposed.

b. *Suspension, revocation and modification of TPC and AB recognition.* EPA proposed to exercise the authority to suspend, revoke, or modify a TPC's TSCA Title VI recognition, with or without the participation of the EPA-recognized AB that provided the accreditation, if the EPA-recognized TPC fails to comply with TSCA Title VI or the regulations promulgated thereunder. EPA proposed that any violation of TSCA Title VI or the regulations promulgated thereunder would also be a prohibited act under TSCA section 15. Proposed grounds for suspending, modifying, or revoking an EPA TSCA Title VI TPC's recognition included submitting false information to EPA or an AB, falsifying records, or failing to comply with program requirements.

EPA proposed that should an EPA-recognized AB identify a non-conformity or discrepancy with the EPA-recognized TPC's implementation of one of the ISO standards via an internal audit or other means, that TPC must take remedial action within the timeframe specified by the AB or the time specified in the TPC's quality management plan. Timely remedial action would not preclude enforcement actions by EPA for non-conformities or discrepancies that constitute violations of TSCA Title VI or these implementing regulations. Prior to withdrawal from a recognition agreement with an EPA-recognized AB, or the suspension, revocation, or modification of an EPA TSCA Title VI TPC's recognition, EPA proposed to provide notification to the affected AB or TPC of the action.

EPA proposed that an individual or organization may request a hearing prior to the final action. EPA would appoint an impartial official of EPA as Presiding Officer to conduct a hearing within 90 calendar days of the request. The Presiding Officer would consider all relevant evidence, explanations, comments, and arguments submitted and notify the affected entity in writing within 90 calendar days of completion of the hearing of his or her decision and order. EPA clarifies that, depending on the circumstances, a hearing need not involve real-time exchanges and may be conducted through written correspondence, for example.

EPA proposed that if it determines that the public health, interest, or welfare warrants immediate action to suspend the recognition of an AB or a TPC prior to the opportunity for a hearing, it would notify the affected AB or TPC of its right to request a hearing on the immediate suspension within 15 calendar days of the suspension taking place and the procedures for the conduct of such a hearing.

EPA proposed that any notice, decision, or order issued by EPA in response to a hearing, any transcript or other verbatim record of oral testimony, and any documents filed in response to a hearing will be available to the public, except as otherwise provided by TSCA section 14. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under TSCA section 14.

Commenters pointed out that EPA cannot revoke a TPC's accreditation but rather its recognition in the EPA TSCA Title VI Third-Party Certification Program. As discussed in Unit III.B.1.a, EPA agrees that recognition is the correct term. In this final rule EPA may revoke a TPC's recognition in the EPA TSCA Title VI Third-party Certification Program for the conditions mentioned previously. EPA is otherwise finalizing these provisions for suspension, modification and revocation as proposed.

5. CARB-approved TPC transitional period and reciprocity. EPA proposed that CARB-approved TPCs have one year after the promulgation of the TSCA Title VI implementing regulations to become accredited by an AB that has entered into a recognition agreement with EPA. The Agency also proposed that for one year after promulgation of the final rule CARB-approved TPCs would be allowed to carry out certification activities under TSCA Title VI provided that they were compliant with all other aspects of TSCA Title VI and the regulations promulgated thereunder. EPA requested comment on ways to better synchronize the timing for the TSCA Title VI recognition period for existing CARB-approved TPCs. EPA also asked whether the TPCs should be required to obtain accreditation from an EPA-recognized AB no later than one-year after the first EPA-recognized AB enters into a recognition agreement with the EPA under the TSCA Title VI.

EPA agrees with comments received that it could take longer than one year for CARB TPCs to align with the EPA requirements including being accredited by an AB that has entered into a recognition agreement with EPA. EPA will therefore allow for a two-year transition period in this final rule.

a. *Transitional Period for CARB-Approved TPCs.* Under this final rule, a TPC approved by CARB may certify composite wood products under TSCA Title VI for a two-year transitional period that begins February 10, 2017 so long as the TPC remains approved by CARB and complies with all aspects of the final rule other than the accreditation requirements under this rule.

Existing CARB TPCs and CARB TPCs approved during the transition period must provide panel producers with their TPC number issued by CARB. The annual report must be provided to CARB and EPA during the two-year transitional period. Notifications to EPA must also be provided during the two-year transition period.

After the two-year transition period, CARB-approved TPCs may continue to certify composite wood products under TSCA Title VI provided the TPC maintains its CARB approval, follows all the requirements under this part (including the accreditation requirements), submits to EPA documentation from CARB supporting their eligibility for reciprocity and has received EPA recognition as an EPA-recognized TPC.

b. *Reciprocity for CARB TPCs.* EPA received several comments that asked EPA to align with the CARB program and accept CARB-approved TPCs into the EPA program. CARB suggested that EPA enter into a mutual recognition agreement with them to accept CARB TPC approvals through reciprocity such that CARB TPC approvals would be accepted by the EPA without need for further review.

EPA has worked closely with CARB to establish a means for reciprocity and will enter into a memorandum of agreement that recites the requirements in this rule for CARB-approved TPCs to receive EPA recognition through reciprocity and the process that EPA and CARB will use to implement reciprocity. To be eligible to obtain EPA recognition through reciprocity, CARB-

approved TPCs must meet all of the TPC qualifications discussed in Unit III.B.3.a. and provide EPA with documentation from CARB that specifies their eligibility for reciprocity via the EPA CDX at *http://cdx.epa.gov*. In the event that CDX becomes unavailable, EPA will provide an alternate electronic submission method and inform TPCs how to access the alternate method *at http://www.epa.gov/formaldehyde*. EPA maintains the authority to deny recognition of CARB-approved TPCs who apply to be recognized through reciprocity in the EPA TSCA Title VI Third-Party Certification Program if the Agency believes the TPC is not qualified under this rule. An overview of the EPA TSCA Title VI Third-Party Certification Program and CARB TPC reciprocity is shown in Illustration 2.

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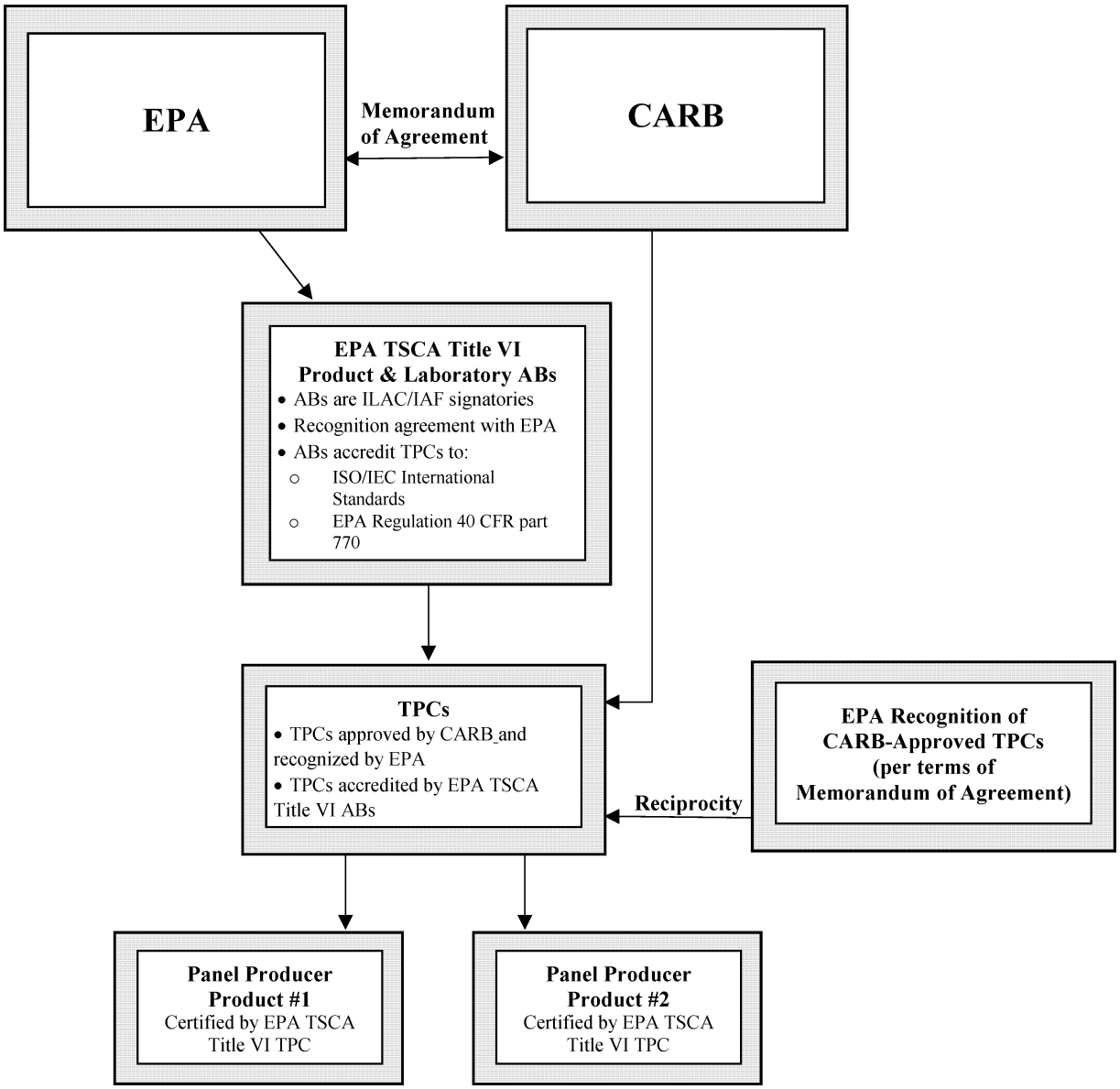
Illustration 2: Overview of the EPA TSCA Title VI Third-Party Certification Program and CARB TPC Reciprocity



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6. *Electronic reporting.* The Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504 *note,* provides that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public. EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3) (Ref. 62), provides that any requirement in title 40 of the Code of Federal Regulations (CFR) to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions once the Agency publishes a regulation that an electronic document submission process is available for that requirement. In addition, the Paperwork Reduction Act (PRA) requires Federal agencies to manage information resources to reduce information collection burdens on the public;

increase program efficiency and effectiveness; and improve the integrity, quality, and utility of information to all users within and outside an agency, including capabilities for ensuring dissemination of public information, public access to Federal Government information, and protections for privacy and security (44 U.S.C. 3506). Section 2 of TSCA expresses the intent of Congress that EPA carry out TSCA in a reasonable and prudent manner, and in consideration of the impacts that any action taken under TSCA may have on the environment, the economy, and society (15 U.S.C. 2601). Electronic reporting was not available when TSCA was enacted nor when several underlying reporting requirements were subsequently promulgated by EPA. EPA believes that it is now reasonable and prudent to manage and leverage its information resources, including information technology (IT), to require the use of electronic reporting in the implementation of certain TSCA provisions. Electronic reporting can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing this information to EPA, while at the same time improving EPA's efficiency in reviewing submitted information and making decisions.

EPA proposed requiring that information reported to EPA from TPCs and ABs be reported electronically through EPA's CDX. EPA requested comment on whether it should require mandatory electronic reporting. Most commenters were not opposed to electronic reporting and some commenters were amenable to electronic reporting but did not want it required. One commenter also contended that, no matter what form of reporting is eventually utilized, all proprietary business information should be kept confidential by the EPA.

In this final rule, EPA will require TPCs and ABs to report electronically because such a requirement streamlines the reporting process and reduces the administrative costs associated with information submission and recordkeeping. In light of the limited number of reporting entities (TPCs and ABs) participating in the TSCA Title VI program, the most cost-effective and efficient solution for all concerned is a single database developed by EPA.

Most of the information requested in the reporting requirements of these collections is not of a confidential nature. Nonetheless, the application is designed to support acceptance of TSCA confidential business information (CBI) by providing a secure environment that meets Federal standards.

While information collected under TSCA may be entitled to confidential treatment if it meets the standard for Exemption 4 in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), TSCA section 14 provides that health and safety studies and data derived from health and safety studies, are not entitled to confidential treatment, irrespective of the Exemption 4 standard, unless the release of data derived from such studies would disclose processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, would disclose the portion of the mixture comprised by any of its chemical substances. EPA has determined that certain information that is submitted by TPCs in their annual reports and notifications is not eligible for treatment as CBI, irrespective of the Exemption 4 standard, because that information is health and safety studies and data derived from health and safety studies. This includes information pertaining to the compliance status of a particular lot, batch, or shipment of composite wood. Quarterly test results, the test date, the panel producer and product tested, test method and test results cannot be claimed CBI. The ''product tested'' can be a general product description such as particle board of a certain thickness.

TPCs and ABs will be able to submit CBI claims on behalf of themselves or their clients for the other information reported to EPA. CBI claims for information that is generally already publicly available (status of a TPC or AB's participation in the EPA TSCA Title VI Third-Party Certification program, and the basic credentials and contact information for those entities) may be substantiated contemporaneously. This type of information is expected to typically be publicly available (*e.g.,* on an entity's own Web site or marketing material), but in case there are exceptions EPA is allowing the opportunity to claim this information as CBI with contemporaneous substantiation. EPA notes that ABs and TPCs may use a business email and phone number, and write the descriptions of their credentials broadly so that it excludes information the entity considers to be confidential.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182) was signed into law on June 22, 2016, and became immediately effective. Section 14(c) now requires a supporting statement and certification for confidentiality claims asserted after June 22, 2016. The final rule contains one minor change to reflect the new statutory requirements for asserting confidentiality claims. EPA is requiring a statement and certification consistent with the section 14(c)(1)(B) statement (and with a related certification requirement in section 14(c)(5) of the revised statute) to meet the new statutory requirements. While this change was not discussed in the proposed rule, EPA finds there is good cause to make this change without notice and comment. Notice and comment are unnecessary because the new statement is required by statute, and EPA anticipates no significant effect of the change on companies reporting under the rule or on the public in general.

To submit information via the CDX, each AB and TPC must designate an individual representative (registrant) who will then register with the CDX system at *http://cdx.epa.gov.* The registration process includes completing an electronic signature agreement, preparing a data file for submission, agreeing to the Terms and Conditions of CDX, providing information about the submitter and organization, selecting a user name and password, and following the procedures outlined in the guidance document for CDX available at: *https://cdx.epa.gov/Content/Documents/CDX_Quick_User_Guide.pdf.* (Ref. 63). The registrant must select a role and complete an electronic signature agreement either through electronic validation or through wet ink signature.

To streamline reporting, CARB may, at a future date, offer their approved TPCs the choice of submitting the CARB annual report and other ongoing reporting obligations through the CDX electronic reporting database.

7. *Impartiality provisions for TPCs and ABs.* EPA received comments from CARB that EPA should specifically state that a panel producer cannot be a TPC under the EPA program. EPA has determined that such a prohibition would be a useful clarification of the impartiality provisions of the ISO/IEC standards that EPA proposed to incorporate and is incorporating into this rule. Therefore, this final rule expressly prohibits a panel producer from also being a TPC. Additionally, as a result of a review of the impartiality provisions of the ISO/IEC standards in response to CARB's comment, EPA is specifying other impartiality requirements to highlight key portions of the ISO/IEC standards that are incorporated by reference in the proposed and final regulations. In addition to requiring that a TPC not be a panel producer, a TPC is not allowed to be a laminated product producer, designer, distributor or retailer of

composite wood products, or have a financial interest in any of these entities. EPA is also requiring that employees and management personnel of a TPC involved in the panel producer review and product certification decision-making process cannot be involved in advocacy or consulting activities on behalf of the composite wood industry. To further document impartiality, EPA-recognized TPC and EPA-recognized AB management personnel and personnel involved in certifying products are required to commit in writing that they will receive no financial benefit from the outcome of certification testing. Finally, EPA is requiring that an EPA-recognized AB ensure that an accreditation decision regarding a TPC is made by persons different from those who conducted the assessment of the TPC. All of these points reflect provisions in the ISO/IEC standards that EPA believes are worth underscoring.

C. Formaldehyde Emission Standards

TSCA Title VI establishes formaldehyde emission standards for composite wood products (hardwood plywood, particleboard, and medium-density fiberboard) so that when they take effect on December 12, 2017, as discussed in Unit III.C., the standards are identical to the CARB ATCM Phase 2 emission levels. The emission standards will be 0.05 ppm formaldehyde for hardwood plywood, 0.09 ppm formaldehyde for particleboard, 0.11 ppm formaldehyde for medium-density fiberboard, and 0.13 ppm formaldehyde for thin medium-density fiberboard. The statute does not give EPA authority to modify these emission standards.

TSCA Title VI describes two emission standards for hardwood plywood, one for that made with a veneer core and the other for that made with a composite core. In the preamble to the proposed regulations, EPA argued that, because the two standards are the same, 0.05 ppm formaldehyde, for implementing regulations taking effect after July 1, 2012, the 0.05 ppm limit should be applied to all composite wood products that meet the definition of hardwood plywood, regardless of the core type. Many commenters opposed this interpretation and urged EPA to be consistent with the CARB ATCM in this area. The CARB ATCM has a similar definition of hardwood plywood. It includes a variety of core types, but the CARB ATCM emission standards apply only to hardwood plywood made with a veneer core or a composite core. Thus, for example, hardwood plywood made with a lumber core or a hardboard core is not required to comply with the emission standards or the testing and certification requirements of the ATCM. EPA agrees with those commenters that recommended consistency with the CARB ATCM. In EPA's view, the better reading of TSCA Title VI is that it only imposes the hardwood plywood formaldehyde emission standard on hardwood plywood made with a veneer or a composite core. Therefore, EPA is promulgating a hardwood plywood emission standard that specifically applies only to hardwood plywood with either a veneer core or a composite core.

D. Product Certification in General

Under this final rule, composite wood products that are sold, supplied, offered for sale, or manufactured (including imported) within the United States must be certified, unless they are specifically exempted by TSCA or excluded by this final rule. In general, this means that the formaldehyde emission levels from the composite wood products would have been demonstrated to be below the emission standards in TSCA Title VI. This demonstration would be through a combination of testing performed by an accredited TPC laboratory, and repeated on a quarterly basis, and more frequent quality control testing performed by the Panel Producer of the composite wood product, an accredited TPC laboratory, or a contract laboratory. Specific requirements for this testing are discussed in Unit III.E.

EPA is requiring panel producers of composite wood products to apply to an EPA TSCA Title VI TPC for product certification, and to design and establish a quality control program, including testing, that is both approved by the TPC and specific to the panel producer. EPA has slightly different requirements for certification, depending on whether the panel producer has other product types that are already certified under the CARB ATCM or TSCA Title VI. For a panel producer that does not have any certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, or that is switching to a new TPC, the panel producer must provide to the TPC the panel producer's contact information, a copy of its quality control manual, contact information for its quality control manager, an identification of the specific products for which certification is requested and the resin system used, results from at least five quarterly and five quality control tests, a linear regression equation and correlation data, and results of an initial, on-site inspection by a TPC. For panel producers applying for certification of a new product type but that have previous product certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, the application must contain the panel producer's contact information, an identification of the specific products for which certification is requested and the resin system used, at least five quarterly and five quality control tests, a linear regression equation and correlation data, and a description of any changes in the panel producer's quality control manual and a copy of those changes. Regardless of whether panel producers are applying for certification of a new product type, the test results must demonstrate an adequate correlation between the quality control test results and the TPC's quarterly test results as described in Unit III.E. Test results must also indicate that the formaldehyde emissions of the products are below the emission standards established by TSCA Title VI as discussed in greater detail in Unit III.C. The initial on-site inspection must demonstrate that the panel producer has the required quality control and quality assurance procedures in place to ensure that the products will continue to meet the emission standards. Multiple products can be grouped into a single product type for certification; however, formaldehyde emissions test results must demonstrate that grouped products have similar formaldehyde emission characteristics and that their emissions fit the same correlation curve or linear regression. Uncertified product produced after the manufactured-by date cannot be sold, supplied, or offered for sale in the United States.

EPA had proposed to require three months of quality control testing prior to certification but received numerous comments stating that this requirement was unnecessary, would create an undue delay in bringing new products to the market, and is not required by CARB. Commenters recommended that EPA's requirements for certification be consistent with the requirements in the CARB ATCM. EPA has decided to harmonize with the CARB ATCM by requiring correlation data and an initial on-site inspection conducted by the TPC, but not the proposed three months of testing. This is consistent with how products are being certified under the CARB ATCM and is sufficient to demonstrate that the panel producer is manufacturing products that meet the emission standard and has quality control procedures in place to ensure that the product will continue to meet the standards. Under this final rule, products currently certified by CARB-approved TPCs will be considered

certified for purposes of TSCA Title VI. However, as described in Unit III.B., EPA is allowing CARB-approved TPCs two years to become recognized by EPA under TSCA Title VI. Therefore, a panel producer whose TPC does not become recognized under TSCA Title VI in a timely manner would have to apply to an EPA-Recognized TPC to continue to make certified products after the manufactured-by date.

E. Formaldehyde Emissions Testing Requirements

TSCA Title VI requires that composite wood products be measured for compliance with the statutory emission standards by quarterly tests pursuant to test methods ASTM E1333–96 (2002) or ASTM D6007–02 (Refs. 39, 64). TSCA Title VI also requires that quality control tests be conducted pursuant to ASTM D6007–02, ASTM D–5582 (Ref. 65), or such other test methods as may be established by EPA through rulemaking. Under the statute, test results conducted using any test method other than ASTM E1333–96 (2002) must include a showing of equivalence by means that EPA must establish through rulemaking. Under TSCA Title VI, EPA must also establish, through rulemaking, the number and frequency of tests required to demonstrate compliance with the emission standards. This unit of the preamble discusses EPA's rulemaking on each of these statutory elements.

1. General testing requirements. EPA is finalizing the testing requirements as proposed with a few minor changes to definitions and terms used in the requirements based on public comments.

EPA received numerous comments on the proposed definitions of the terms ''product type,'' ''production line,'' ''lot,'' and the lack of definitions for the terms ''production run'' and ''batch.'' Many commenters were concerned that as proposed, every single batch or lot of product would need to be tested, and commenters stated that under the proposed definitions, producers of low volume specialty products would need to test more often than large volume producers. Therefore, EPA has made some changes to these definitions and to the terms used in the testing requirements to clarify that products with similar formaldehyde emissions can be grouped for testing purposes (both quality control testing and quarterly testing). EPA is adding a definition of the term ''resin system''. EPA is changing the definition of ''lot'' to be consistent with the definition in the CARB ATCM. In addition, EPA is no longer using the term ''batch'' as it was redundant with use of the term ''lot'' in the proposed rule and was confusing. EPA is modifying the definition of the term ''production line'' slightly to be consistent with use of the term not only in the particleboard and medium density fiberboard industry, but also the hardwood plywood industry. In addition, EPA is no longer using the term ''production run.''

EPA is finalizing as proposed the requirement that entities conducting formaldehyde testing must use the procedures, such as testing conditions and loading ratios, specified in the method being used. EPA is also finalizing the requirement that all equipment used in formaldehyde testing be calibrated and otherwise maintained and used in accordance with the equipment manufacturer's instructions. EPA received numerous public comments supporting these requirements. EPA is also finalizing the requirement that all panels be tested in an unfinished condition, prior to the application of a finishing or topcoat.

a. Quarterly testing requirements. EPA proposed to require that accredited TPCs conduct the quarterly tests required by TSCA Title VI. EPA is finalizing this requirement essentially as proposed except to clarify that the quarterly testing must be overseen by an EPA TSCA Title VI TPC but that the testing can be conducted by an accredited laboratory, owned or operated by a TPC or an accredited contract laboratory, which this final rule will refer to as a ''TPC laboratory.'' The statute requires these tests to be performed using ASTM E1333–96 (2002) or, upon a showing of equivalence as discussed in this Unit, ASTM D6007–02 (Refs. 39, 64). Under the authority provided by TSCA section 601(d)(5), EPA is incorporating ASTM E1333–10 into the final rule's testing requirements, rather than the 2002 version (Ref. 43). EPA is aware that these test methods and several other standards referenced in this final rule have been updated and plans to substitute successor standards after public notice and opportunity for comment, as appropriate.

Under the final rule, TPC laboratories must test randomly chosen samples from a single lot that is ready for shipment by the panel producer. Neither the top nor bottom composite wood product of a bundle can be selected because the emissions from these products may not be representative of the bundle. For particleboard and medium-density fiberboard, quarterly tests must be conducted on randomly selected samples of each product type (unless they qualify for reduced testing based on ULEF or NAF-based resin). For hardwood plywood, in consideration of a comment from HPVA that hardwood plywood producers may not be producing all of their product types when the TPC selects samples for testing, EPA is removing the requirement that samples be selected from the hardwood plywood product with the highest potential to emit formaldehyde and, instead, is requiring TPCs to randomly select samples for testing that are representative of the range of products produced by the panel producer.

As discussed previously, EPA is allowing products to be grouped for quarterly and quality control testing. EPA is allowing EPA TSCA Title VI TPCs to approve the grouping of products with similar formaldehyde emission characteristics, based on correlation data as described in Unit III.E.

EPA is finalizing the quarterly sample handling requirements as proposed, except for minor changes in use of the terms ''lot'' and ''product type,'' and in the requirements for product grouping as discussed in this Unit. Samples must be closely stacked or air tight wrapped between the time of sample selection and the start of test conditioning. Samples will also have to be labeled as such, signed by the TPC, protected by cover sheets, and promptly shipped to the laboratory testing facility. EPA is finalizing the requirement that conditioning begin as soon as possible, but no more than 30 calendar days after production.

b. Quality control test methods. With a showing of adequate correlation, EPA is allowing use of the following methods: ASTM D6007–02, ASTM D5582, EN 717–2 (Gas Analysis Method) (Ref. 66), DMC (Dynamic Microchamber) (Refs. 67–68), EN 120 (Perforator Method) (Ref. 69), and JIS A 1460 (24-hr Desiccator Method) (Ref. 70). EPA has determined that these are appropriate methods for quality control testing based on public comments, CARB's evaluation and approval of these methods as alternative small scale test methods, and because test results using these methods have been demonstrated to have adequate correlations with test results using ASTM E1333–10. EPA is establishing these methods pursuant to section 601(b)(3)(A)(ii) for quality control testing. EPA does not endorse any particular method over others.

Few comments were received in support of the addition of any other method, and the supporting commenters did not provide data or information

demonstrating equivalence or adequate correlation with ASTM E1333 that would justify their inclusion with the established methods. However, if EPA receives additional information and chooses to pursue adding another method, EPA will provide notice in the **Federal Register** and an opportunity for public comment as required by TSCA Title VI. EPA received several comments indicating that both the 2012 and 2007 user's manuals should be allowed for the Dynamic Microchamber Method; therefore, EPA is incorporating by reference both versions of the user's manuals.

For each quality control test method that will be used to perform quality control testing for a particular panel producer, the EPA TSCA Title VI TPC must establish, in consultation with the panel producer, a QCL. The QCL is the quality control test value that is the correlative equivalent to the emission standard based on the ASTM E1333–10 method. The QCL is established by using a simple linear regression where the dependent variables (Y-axis) are the quality control test results and the independent variables (X-axis) are the ASTM E1333–10 test results.

c. *Quality control testing frequency for particleboard and medium-density fiberboard that do not qualify for reduced testing based on ULEF or NAF-based resins.* EPA is finalizing the quality control testing frequency for particleboard and medium-density fiberboard as proposed. Quality control tests will be required at least once per shift for each production line for each product type. Quality control tests must also be conducted whenever a product type production ends, whenever there is a significant change to resin formulation or use, when a decrease in press time of more than 20 percent occurs, and any time quality control employees have reason to believe that the panel being produced may not meet the requirements of the applicable standards.

EPA is finalizing reduced quality control testing requirements as proposed for particleboard and medium-density fiberboard when the panel producer demonstrates consistent operations and low variability of test values. The panel producer must request approval from an EPA TSCA Title VI TPC. If approved, quality control testing will still have to occur at least once per 48-hour production period. As proposed, a 30 panel running average, consisting of the average of the results of the 30 most recently sampled panels, must be maintained, and depending on whether the average remains two or three standard deviations below the designated QCL for the previous 60 consecutive days or more, testing frequency may be reduced to one test per 24-hour or 48-hour production period, respectively. An EPA TSCA Title VI TPC must approve a request for reduced quality control testing as long as the data submitted by the panel producer demonstrate compliance with the criteria and the TPC does not otherwise have reason to believe that the data are inaccurate or that the panel producer's production processes are inadequate to ensure continued compliance with the emission standards. Based on comments received, EPA is clarifying in this final rule that reduced testing privileges will continue unless revoked by a TPC as a result of an emission test exceedance or if testing indicates the panel producer no longer meets the eligibility requirements.

d. Proposed quality control testing frequency for hardwood plywood that does not qualify for reduced testing based on ULEF or NAF-based resins. EPA is finalizing the frequency of quality control testing for hardwood plywood essentially as proposed. EPA is removing the proposed requirement to test per production line based on comments indicating that a hardwood plywood panel producer's production line can consist of several multiple-opening hot presses and glue spreaders that are often used to produce any and all of the panel producer's certified product types. EPA's quality control testing frequency requirements for hardwood plywood are generally similar to CARB's requirements and are likewise based on production volume. Hardwood plywood panel producers must generally test each product type weekly, with one to four tests being required based on total weekly hardwood plywood production by the panel producer. For some small specialty panel producers, even one quality control test per week per product type would be excessive. In order to address the inequity of requiring small manufacturers to conduct many more tests than required of large manufacturers for the same production volume, if weekly production of hardwood plywood at the panel producer is less than 100,000 square feet, but more than 100,000 square feet is produced per month, EPA is requiring one quality control test per 100,000 square feet of each product type produced. If the panel producer produces less than 100,000 square feet of a particular product type per month, EPA is requiring only one quality control test of that product type per month when the product type is produced. For low volume producers, EPA had proposed to require testing per production run and per lot; however, numerous commenters pointed out that with the proposed definition of lot, this requirement could lead to low volume producers testing at a higher frequency than some high volume producers. By removing the requirement to test per production run and per lot, EPA is ensuring that the testing requirement will not be too burdensome for panel producers that manufacture low volumes of hardwood plywood. EPA is including the requirement of periodic testing to ensure that if a product type is produced several times per year, at less than 100,000 square feet, several quality control tests will be conducted. EPA is concerned that one test would not be sufficient to ensure compliance if there is a gap in production of more than one month. In addition, EPA is clarifying that product types not being manufactured during a particular week do not need to be manufactured just so that they can be tested.

Based on supporting comments, EPA is also including a requirement for hardwood plywood panel producers to conduct quality control testing when certain changes are made to resin formulation or use, press time is reduced by more than 20%, or quality control employees have reason to believe that the panel being produced may not meet the requirements of the applicable standard. CARB included these requirements in the March 2014 mark-up of the ATCM (Ref. 51).

EPA is not promulgating a reduced quality control testing provision for hardwood plywood similar to the provision for particle board and medium-density fiberboard because HPVA's comments indicated that such a provision is not necessary and because no commenters suggested criteria for qualification.

2. Means of showing test method equivalence. EPA is finalizing the means of showing test method equivalence essentially as proposed. EPA proposed to require that equivalence between ASTM E1333–10 and any other test method used be demonstrated by the TPC for each laboratory used by the TPC or panel producer that is using the alternative method at least once each year or whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel. In this final rule, EPA is clarifying that TPCs are responsible for demonstrating equivalence between ASTM E1333–10 and ASTM D6007–02 if the TPC laboratory uses ASTM D6007–02 for

quarterly or verification testing. In this final rule, EPA is allowing demonstration of equivalence to be reduced to at least once every two years once it has been established every year for three consecutive years. EPA is making this change to match CARB amendments to the ATCM currently under consideration by CARB (Ref. 51) and because CARB recommended this in submitted comments. In EPA's view, after a TPC has consistently demonstrated equivalence over a three year period, it is not necessary to require the TPC to continue to demonstrate equivalence every year.

Many commenters indicated that EPA used the term ''equivalence'' incorrectly in the proposed rule when referring to comparison of ASTM E1333–10 and quality control test methods. EPA used the term ''equivalence'' because it is the term used in TSCA Title VI. However, in this final rule, EPA will use the term ''correlation'' for the comparison of ASTM E1333–10 and quality control methods to meet the TSCA Title VI requirement of demonstrating equivalence. EPA is also clarifying in this final rule that the panel producer is responsible for ensuring that an adequate correlation has been demonstrated between the quality control methods that are used for testing its products annually or at least once every two years once it has been established for three consecutive years. Panel producers must also establish a new correlation whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel. EPA is requiring that a new correlation needs to be established whenever a TPC's quarterly test results compared with the panel producer's quality control test results do not fit the previously established correlation. In addition, if a panel producer fails two quarterly tests in a row, a new correlation curve needs to be established. EPA did not receive any adverse comments regarding these requirements. The panel producer may use its own laboratory, a TPC laboratory, or any other laboratory for testing, but it is the panel producer's responsibility to ensure that this requirement is met. The panel producer's TPC (or the TPC's laboratory) will evaluate the quality control data and compare it with the quarterly test data to establish a linear regression equation and determine whether the correlation is adequate as described later in this Unit.

One commenter stated that EPA should clarify that the equivalence is specific not only to the test methods, but also the equipment. EPA agrees and is therefore clarifying in this final rule that equivalence or correlation must be demonstrated for each testing apparatus. Several commenters indicated that EPA should not require the equivalence protocol when ASTM D6007–02 is used as a quality control method and that the equivalence protocol should only be required for TPCs or their contract laboratories using ASTM D6007–02 for quarterly testing. Therefore, EPA is clarifying in this final rule that when ASTM D6007–02 is used for quality control testing, only a demonstration of correlation between ASTM D6007–02 and ASTM E1333–10 is required.

EPA is requiring that equivalence be demonstrated in the ranges of formaldehyde concentrations that are representative of the emissions of the products that the TPC certifies. EPA is requiring a minimum of five comparison sample sets. In addition, EPA is allowing for flexibility in sampling and not requiring testing of nine specimens representing evenly distributed portions of an entire panel for demonstrating equivalence between ASTM D6007–02 and ASTM E1333–10 as is required in the CARB ATCM. Most commenters support this flexibility. For some types of panels, within panel variability is such that fewer specimens can be tested, but for other panels, testing of at least nine specimens will be needed. TPCs and panel producers are best able to determine the sampling and testing needed to account for within panel variability for a specific product type, and EPA is therefore allowing for flexibility in the distribution and number of specimens to require for the small chamber test comparison sample set. If laboratories have difficulty meeting the equivalence or correlation requirements, they may need to increase the number of samples. Specifics on how the equivalence demonstration must be performed can be found in 40 CFR 770.20(d)(1).

For the purposes of meeting the TSCA Title VI requirement of demonstrating equivalence between ASTM E1333–10 and any quality control test method used for measuring formaldehyde emissions, EPA is requiring a demonstration of correlation. A linear regression with an acceptable correlation must be established, as defined by the correlation coefficient, or ''r'' value. As discussed in the preamble of the proposed rule, although correlation does not show that the test methods give equal results, it demonstrates whether a quality control test method can be used to adequately estimate the corresponding ASTM E1333–10 test result. Therefore, if there is an acceptable correlation, the quality control test method can be used to estimate whether the product meets the emission standards. The correlation will be based on a minimum sample size of five data pairs and a simple linear regression where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E1333–10 test value. EPA is finalizing the minimum acceptable correlation coefficients (''r'' values) for the correlation as proposed; they can be found at § 770.20(d)(2) of this rule. The number of data pairs is represented by the letter ''n'' in the regulatory text. For example, correlations based on five data pairs have 3-degrees of freedom, and the correlation coefficient needs to be 0.878 or greater. As discussed in the proposed rule, because of the low emissions required for composite wood products, it may be necessary to include more than five data pairs and/or a range of products (with a suitable range in emissions, *e.g.,* 0–0.1 ppm) in the testing to achieve acceptable correlation coefficients.

3. Non-complying lots. EPA received many comments on the proposed provisions for non-complying lots. Nearly all commenters objected to EPA's proposed requirement that a panel producer retain product belonging to lots selected for sampling until the panel producer receives the test result. Commenters also made suggestions with regard to the definition of non-complying lot.

EPA agrees with the commenter who noted that quality control tests are often not directly comparable to the emission standard and has modified the proposed definition so that the term ''non-complying lot'' means any lot of composite wood product represented by a quarterly test value or quality control test result that indicates that the lot exceeds the applicable standard for the particular composite wood product in § 770.10(b). EPA is also clarifying in the definition that a quality control test result that exceeds the QCL is considered a test result that indicates that the lot from which the sample was taken exceeds the applicable standard. As proposed, the definition in the final rule also states that, in the case of a quarterly test value, only the particular lot from which the sample was taken would be considered a non-complying lot; lots produced after the previous quarterly test but before the lot from which the sample was taken would still be considered certified product. The final rule definition further states that future production of product type(s) represented by a failed quarterly test would not be considered certified and would have to be treated as a non-complying lot until the product type(s)

are re-qualified through a successful quarterly test.

Most commenters did not support EPA's proposed requirement that panel producers retain product belonging to lots selected for sampling until the test results are received by the panel producer. EPA proposed this requirement to ensure that non-complying products do not end up in the stream of commerce. However, commenters thought that this would disrupt supply chains and be very costly for panel producers, particularly in the case of quarterly tests, because of the time involved in shipping and testing product. Commenters were concerned that panel producers would not have sufficient warehouse capacity to store lots associated with quarterly test samples until the test results are received. On the other hand, a trade association representing fabricators supported EPA's proposed requirement, stating that fabricators have been in the position of receiving non-complying product from panel producers but not being informed of the product's non-complying status until after the product had moved into downstream production. In EPA's view, holding lots until test results are received is the best way to ensure that non-complying product is not distributed in commerce, but EPA is also concerned about the impacts on industry supply chains from holding product, particularly product belonging to lots selected for quarterly testing. Most commenters supported a requirement to notify customers that had received products belonging to a non-complying lot. Many automatically assumed that panel producers would support their customers and address non-complying product that had been distributed before the test results were received, whether by recalling the product, by retesting samples retained by the panel producer, or by working with the customer to age or otherwise treat the product. The panel producer is responsible for non-complying product that it has inadvertently distributed, but EPA also understands the importance of allowing panel producers flexibility in managing their responsibility. Therefore, the final rule requires panel producers to notify, within 72 hours of receiving notice of a failing test result, any fabricators, distributors, or retailers that received non-complying product. The notification must inform the customer of the type of test failed and include a description of the composite wood product belonging to the non-complying lot, a statement that the non-complying product must be isolated from other composite wood products and must not be further distributed in commerce, and a description of the steps the panel producer intends to take with respect to the product. The rule further requires panel producers to either treat, retest, and certify the non-complying product while it remains in the possession of the customer or recall the non-complying product and dispose of it or treat, retest and certify it.

EPA is generally finalizing the rest of the provisions relating to the handling of non-complying lots as proposed, except that several commenter suggestions for clarification were incorporated. Under this final rule, panel producers must segregate the non-complying lot from other product and products in non-complying lots must only be sold, supplied, or offered for sale in the United States if a test value that meets the applicable standard is obtained after the products are treated with scavengers to absorb excess formaldehyde, or treated through another process that reduces formaldehyde emissions, *e.g.* aging. Retesting must include at least one test panel selected from each of three separate bundles, with the selected panels being representative of the entire non-complying lot and not from the top or bottom of a bundle. The test panels may be selected from properly stored samples set aside by the panel producer for retest in the event of a failure. In order to recertify the lot, the average of all of the samples must test below the applicable standard. EPA also proposed to require panel producers to keep records of the disposition of non-complying lots, including the specific treatment used and the subsequent test results demonstrating compliance. As pointed out by commenters, quality control test results are not always directly comparable with the emission standards, so the test result language in this section clarifies that results of a retest of a failed quarterly test must demonstrate compliance with the applicable emission standard, while results of a retest of a failed quality control test must be at or below the level that indicates that the product is in compliance with the emission standards. Finally, in response to commenter suggestions, EPA is promulgating a definition of the term ''scavenger'' that more precisely describes the role of scavengers in the context of this regulation.

F. Quality Assurance and Quality Control Requirements for Composite Wood Product Panel Producers

Panel producers are responsible for ensuring that their products meet the emission standards of TSCA Title VI. Quality assurance and quality control requirements for panel producers are necessary to ensure that all of their products comply with the applicable standards, including those that are not actually tested. EPA proposed quality assurance and quality control requirements that would be virtually identical to the requirements of the CARB ATCM and that would help ensure proper handling of test samples, test equipment, and quality control testing. EPA is generally finalizing these provisions as proposed, with some clarifications and additions suggested by commenters that address important aspects of producing and supplying a product that meets TSCA Title VI requirements.

The final rule requires each panel producer to have a written quality control manual at each location that produces composite wood products. The manual must include a description of the organization of the quality control department, sampling procedures and sample handling, quality control testing frequency, procedures to identify production changes that may result in changes in formaldehyde emissions, recordkeeping and labeling procedures, description of product type, and resin percentage and press time for each product type, and procedures for handling non-complying lots, including a description of how the panel producer will ensure compliance with the notification requirements. The manual must be reviewed and approved by an EPA TSCA Title VI TPC to ensure that the manual is complete and that the panel producer's procedures are adequate to ensure that the TSCA Title VI emission standards are being met on an ongoing basis. The requirement for a quality control manual is consistent with CARB.

Each panel producer must designate a quality control facility for conducting quality control formaldehyde testing of their product. The quality control facility must be a laboratory owned and operated by the panel producer, a TPC, or a contract laboratory.

Each panel producer must also designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emissions quality control. The quality control manager must have the authority to take actions necessary to ensure that applicable emission standards are being met. The panel producer must identify the quality control manager and his or her qualifications in writing to the TPC and must notify the TPC in writing within ten calendar days of any change in the identity of the quality control manager

and provide the TPC with the new quality control manager's qualifications. The quality control manager must review and approve all reports of quality control testing conducted on the production of the panel producer. The quality control manager is also responsible for ensuring that the samples are collected, packaged, and shipped according to the procedures specified in the quality control manual. The panel producer quality control manager must monitor the testing facility's results, and immediately inform the TPC in writing of any significant changes in production that could affect formaldehyde emission rates.

Each quality control facility must have quality control employees with adequate experience and/or training to conduct accurate and precise chemical quantitative analytical tests. The quality control manager must identify each person conducting formaldehyde quality control testing in the quality control manual.

EPA requested comment on whether the regulation should include minimum qualifications for quality control managers and quality control staff, such as education, experience, or training requirements. Commenters did not favor minimum qualifications, preferring instead to allow panel producers, with TPC input, more flexibility in choosing quality control managers and employees that are capable of performing the required duties. EPA agrees with these commenters and is not incorporating minimum education, experience, or training requirements into the regulation.

Panel producers are required to submit monthly product data reports for each panel producer, production line and product type, to their TPC. The content requirements for the product data reports are virtually identical to the CARB requirements and include a data sheet for each specific product type with test and production information, a quality control graph containing the established QCL and shipping QCL (if applicable) the results of quality control tests, and retest values. As discussed in more detail in Unit III.F., these quality assurance and quality control requirements do not apply to any product type made with a NAF-based resin or ULEF resin for which the panel producer is eligible for an exemption from the third-party certification requirements, except for the purpose of applying for re-approval for the exemption.

G. NAF-Based and ULEF Resins

TSCA Title VI section 601(d)(2)(D) and (E) directs EPA to include, in its implementing regulations, provisions related to products made with NAF-based and ULEF resins. The statute also defines, under section 601(a)(7) and (10) respectively, what constitutes NAF-based and ULEF resins, in terms of the composition of the resin system and maximum formaldehyde emissions for composite wood products made with these resin systems. In general, a NAF composite wood product cannot incorporate a resin formulated with formaldehyde as part of the crosslinking structure. A ULEF composite wood product is one made from resins that may contain formaldehyde, but emit it at particularly low levels. The statutory maximum emissions for products made with NAF-based or ULEF resins are identical to those in the CARB ATCM.

EPA is finalizing NAF and ULEF provisions essentially as proposed. If certain emission thresholds are met, EPA is providing producers of panels made with NAF-based resins or ULEF resins with an exemption from TPC oversight and formaldehyde emissions testing after an initial testing period of three months for each product type made with NAF-based resins or six months for each product type made with ULEF resins. These specific initial testing periods are required by the statute and are designed to ensure that the products meet the TSCA section 601(a) formaldehyde emission standards for products made with NAF-based or ULEF resins. Because EPA is only requiring quality control testing when products are actually produced and is including provisions for reduced testing for hardwood plywood panel producers that manufacture low volumes of products, EPA is adding the clarification that the three or six months of quality control testing must include at least 5 quality control tests for NAF approvals and at least 10 quality control tests for ULEF approvals. This requirement is meant to preclude the possibility of panel producers manufacturing low volumes or infrequently just to qualify for NAF or ULEF reduced testing or exemption from certification, and because fewer quality control tests would be insufficient to judge whether a product should qualify for reduced testing or exemption from certification. EPA chose a minimum of five tests for NAF approval because this is the minimum needed for demonstrating correlation. EPA is requiring at least 10 quality control tests for ULEF approvals because the statutory testing requirements for ULEF qualification under TSCA Title VI are double those for NAF qualification.

Whether using a NAF-based or ULEF resin to qualify for the exemption from TPC oversight and formaldehyde emissions testing for a particular product type, there can be no test result indicating emissions higher than 0.05 ppm of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard during the initial testing period. In addition, test results for 90 percent of the required quality control testing must indicate emissions of no higher than 0.04 ppm of formaldehyde.

If less stringent emission standards than these are met, producers of panels made with ULEF resins may still qualify for reduced formaldehyde emissions testing—but not the third-party certification exemption or the exemption from emissions testing after the initial six months. To qualify for this reduced testing provision for products made with ULEF resins, there can be no test result indicating emissions higher than 0.05 ppm of formaldehyde for hardwood plywood, 0.08 ppm for particleboard, 0.09 ppm for medium-density fiberboard, and 0.11 ppm for thin medium-density fiberboard during the initial six month testing period. In addition, test results for 90 percent of the required quality control testing must indicate emissions of no higher than 0.05 ppm of formaldehyde for particleboard, 0.06 ppm for medium-density fiberboard, and 0.08 ppm for thin medium-density fiberboard. Under this reduced testing provision, qualifying panels would only need to be quality control tested at least once per week per product type, except that hardwood plywood panel producers who qualify for less frequent quality control testing may continue to perform the lesser amount of testing. For these panels, what would otherwise be quarterly testing by an EPA TSCA Title VI TPC would instead only be required every six months.

An EPA TSCA Title VI TPC must oversee the testing during the initial testing period, which must include at least one test result for the NAF exemption or two test results for either ULEF provision under ASTM E1333–10 or, upon a showing of equivalence as discussed in this Unit, ASTM D6007–02 (Refs. 43–44). To receive a third-party certification exemption or reduced testing under this NAF/ULEF provision, the panel producer will be required to apply to an EPA TSCA Title VI TPC or CARB for approval for reduced testing or a third-party certification exemption based on the regulatory requirements.

EPA had proposed to have TPCs review all of the applications; however, several commenters expressed concern about this. Their concerns include potential conflicts of interest, and potential for inconsistency among TPC reviews. Therefore, EPA is also allowing CARB to review applications for NAF and ULEF under the TSCA Title VI program, as long as CARB continues to have requirements that are at least as stringent as EPA's requirements, which EPA affirms is currently true. Should EPA determine that CARB's requirements are no longer at least as stringent was EPA's requirements, then EPA will publish a notice in the **Federal Register** announcing EPA's determination.

As noted, panel producers can also apply to their EPA TSCA Title VI TPC for NAF and ULEF approvals. EPA has determined that allowing TPCs to approve applications for NAF/ULEF reduced testing and/or a limited exemption from TPC oversight does not inherently present a conflict of interest and the provisions of this final rule that require TPC impartiality are applicable to TPCs reviewing and approving NAF/ULEF applications (see Unit III.B.7.). The specific testing requirements and eligibility criteria applicable to NAF/ULEF exemptions will greatly reduce the likelihood of inconsistency in TPC reviews.

To maintain eligibility for a third-party certification exemption, at least once every two years after the conclusion of the initial testing period, the panel producer must reapply for exemption to an EPA TSCA Title VI TPC or CARB. Because the CARB ATCM requires applications and reapplications for these third-party certification exemptions to be submitted to CARB, EPA will accept CARB approvals and re-approvals for as long as CARB's exemption criteria remain at least as stringent as EPA's. This will avoid duplicate applications for those panel producers that operate in California. Re-applicants to the EPA program must include one test result for NAF renewal and two test results for ULEF renewal under ASTM E1333–10 or, upon a showing of equivalence as discussed in this Unit, ASTM D6007–02, that demonstrate continued compliance with the reduced formaldehyde emission standards for each product type (Refs. 43–44). The test(s) must be based on products randomly selected and tested by a TPC laboratory. In the case of approval for ULEF reduced testing, no periodic reapplication to a TPC is necessary because the panel producer must have ongoing TPC oversight. However, if CARB approves reduced testing for ULEF, CARB may require periodic reapplications. The current CARB regulations require panel producers eligible for reduced testing to reapply to CARB every two years.

In general, testing records and other records demonstrating eligibility for a third-party certification exemption or reduced testing, such as records showing the resin used to manufacture the eligible products, must be maintained for a minimum of three years from the date that the record was created. Commenters generally indicated that initial testing records should be kept for as long as a panel producer claims exemption or reduced testing. EPA agrees with these commenters. In addition, EPA agrees that a review of the initial testing period documentation may be useful in the event that a product made under a NAF or ULEF exemption is determined to exceed the applicable standard. Therefore, the final rule requires records of the initial testing period be kept for as long as a panel producer is producing composite wood products under an exemption.

Numerous commenters indicated that EPA should minimize the amount of potentially confidential information (*e.g.,* resin formulation) that TPCs are required to maintain. To address the comments on CBI concerns, EPA is removing the requirement included in the proposal that specific resin formulation information be included with applications for NAF and ULEF approvals and instead only requiring identification of the resin system. The resin system is meant to be a generalized description of the type of resin used. This is unlikely to be CBI, but an entity that believes the resin system is CBI can have their TPC submit a claim for this information on their behalf.

EPA proposed that any change in the resin formulation, the core material, or any other part of the manufacturing process that may affect formaldehyde emission rates would render the product ineligible for the reduced testing approval or third-party certification exemption and requested comment on whether other events, such as failed quarterly or routine quality control tests, should invalidate a reduced testing approval. Commenters provided suggestions for how EPA should handle changes in manufacture or emission test result failures for products that have received NAF or ULEF approvals. Taking these comments into consideration, EPA is requiring at least one quality control test and one quarterly test for NAF products, or five quality control tests and one quarterly test for ULEF products, every time there is an operational or process change that may affect formaldehyde emissions, such as a change in resin formulation, press cycle duration, temperature, or amount of resin used per panel. EPA has concluded that a change in resin system and addition of products requires a new NAF or ULEF application for third-party certification exemption or reduced testing since these are major changes, which could require designation as a new product type, rather than operational or process changes. In addition, EPA is including in this final rule that a failed TPC quarterly test or quality control test invalidates an approval for a third-party certification exemption or reduced testing, and EPA is requiring that a panel producer reapply with a complete new application if its approval is invalidated because of a failed test result. A failed test is a serious concern and therefore, a panel producer needs to be able to demonstrate that its product can meet the NAF or ULEF requirements by requalifying with the full testing requirements.

EPA proposed a ULEF reduced testing provision and requested comment on the utility of this option. Very few manufacturers have sought the ULEF reduced testing provision under the CARB ATCM in lieu of the total exemption from TPC oversight and formaldehyde emissions testing requirements after the initial testing period. As such, EPA anticipates that the vast majority of ULEF resin-based composite wood product manufacturers will apply for the full exemption from TPC oversight and formaldehyde emissions testing after the initial testing period. However, commenters indicated that they support the reduced testing provision; therefore, EPA is including this provision in this final rule.

EPA also requested comments, information, and data on the broader question of giving composite wood products made with ULEF resins preferential treatment under TSCA. EPA discussed some concerns about products made with urea-formaldehyde-based resins. In EPA's view, it is more difficult to ensure that formaldehyde emissions from products made with these resins remain low over time, irrespective of environmental conditions. It is well known that urea-formaldehyde resins can release formaldehyde when exposed to heat and humidity because of the chemistry of the resin, and EPA discussed some studies in the proposed rule on formaldehyde emissions under conditions of high heat and humidity. Several commenters expressed concern

about these studies, indicating that TSCA Title VI cites test methods that specify temperature and humidity; these commenters argue that the studies are therefore inappropriate and irrelevant.

EPA specifically requested comment on whether the ULEF provisions should be limited to products made with a subset of ULEF resins that do not contain urea-formaldehyde polymer—in other words, limited to no-added urea formaldehyde-based (NAUF) resins. Most commenters were opposed to this idea and instead support having both NAF and ULEF provisions that are identical to the provisions in the CARB ATCM. In contrast, one commenter only supports NAF and NAUF exemptions from TPC oversight, not ULEF. This commenter stated that ''UF resin, with its propensity to emit formaldehyde continuously upon aging, makes it distinct from all other formaldehyde-based resin systems'' (Ref. 71). EPA recognizes that the chemistry of urea-formaldehyde resins presents challenges for controlling formaldehyde emissions from the resulting composite wood products. However, EPA is finalizing the NAF and ULEF provisions as proposed. In making this decision, EPA considered the fact that TSCA Title VI requires upfront testing to confirm that panels made with ULEF resins (as well as panels made with NAF-based resins) meet statutory emission limits that are lower than the basic emission standards for composite wood products. EPA also considered Congressional intent and the interest in harmonization with the CARB ATCM.

H. De Minimis Exception

Section 601(d)(2)(L) of TSCA allows EPA to promulgate, for products and components containing *de minimis* amounts of composite wood products, an exception to all of the requirements of the implementing regulations other than the formaldehyde emission standards. While EPA did not propose an exception from any of the regulatory requirements for products containing *de minimis* amounts of composite wood products, commenters overwhelmingly favored a *de minimis* exception.

After considering the comments, EPA is promulgating a *de minimis* exception from the labeling requirements for finished goods and component parts sold separately to end users that contain no more than 144 square inches of composite wood products, based on the surface area of its largest face. For example, a frame for an eight-inch by ten-inch picture is made up of two-inch wide and one-inch thick composite wood product strips. The outer dimensions of the frame would be 14 inches by 12 inches and the inner dimensions would be 10 inches by 8 inches. This frame contains 88 square inches of composite wood product and would qualify for the *de minimis* exception ($[12 \times 14] - [10 \times 8]$). This *de minimis* level, suggested by a commenter, is appropriate because it would eliminate the labeling requirements for very small products. It would also eliminate the labeling requirements for finished goods made of non-regulated material, such as solid wood, that contain small amounts of composite wood, such as hardwood plywood joining biscuits. A labeling requirement for such products could create confusion amongst consumers as to whether or not the product is solid wood. Finally, in this context, EPA has determined that 144 square inches of composite wood product in a finished good actually represents a trivial amount of composite wood product, as opposed to the much larger thresholds suggested by some commenters.

The exception does not apply to finished goods (and component parts sold separately to end users) which are used in combination or in multiples in order to create larger surfaces in the final use, such as flooring or ceiling tiles. Products that are sold separately to consumers and not intended to be used in multiples would be eligible for this exception (*e.g.,* a plywood rack designed to be attached to a bicycle). Component parts that are sold to fabricators of finished goods would not be eligible for this exception.

EPA notes that this exception is for the labeling requirements alone. EPA does not believe it can ensure compliance with the emission standards if it finalizes a *de minimis* exception to the recordkeeping requirements. EPA notes that its authority to establish a *de minimis* exception applies only to the regulatory requirements, not the statutory emission standards. Thus, even products containing a *de minimis* amount of composite wood must be made from panels that are compliant with the regulatory requirements and emission standards. Without records, there would be no way for the Agency, or a downstream purchaser, to determine whether these products were made from compliant composite wood panels.

I. Chain-of-Custody, Recordkeeping, and Labeling Requirements

Section 601(d)(2) of TSCA Title VI also directs EPA to consider chain of custody, recordkeeping, and labeling requirements. EPA proposed chain of custody, recordkeeping, and labeling requirements that were similar to those under the CARB ATCM, reasoning that these requirements also support compliance with TSCA Title VI without undue burden. EPA's proposal departed from the CARB ATCM approach by including a three-year recordkeeping period, instead of CARB's two years, and by reducing recordkeeping for distributors and retailers. EPA also proposed to require that panel producers make quarterly and quality control testing records available to their customers upon request. All of these elements are discussed in more detail in this Unit.

1. Chain of custody and recordkeeping requirements. Most records required to be retained under this regulation must be kept for a period of three years from the date that they are generated. Many commenters supported a two-year recordkeeping requirement, citing consistency with the CARB ATCM, while others supported longer periods. The three-year recordkeeping period is reasonable, given that EPA must monitor TSCA Title VI compliance on the part of hundreds of thousands of entities nationwide. In addition, required records would have to be provided to EPA upon request to facilitate compliance monitoring activities.

As proposed, producers of hardwood plywood, particleboard, and medium-density fiberboard panels must maintain records of quarterly emissions testing and records of quality control testing. These records must identify the TPC conducting or overseeing the testing, and must include the date, the product type tested, the lot number that the tested material represents, and the test results. In addition, panel producers must maintain production records, purchaser and transporter information, and information on the disposition of non-complying lots.

After December 12, 2023, laminated product producers whose products are exempt from the definition of hardwood plywood will have to maintain records demonstrating use of compliant cores or platforms and phenol-formaldehyde resins or resins formulated with no added formaldehyde as part of the resin cross-linking structure, including platform production or purchase records, the resin trade name, resin manufacturer contact information, and resin supplier contact information, or, if the resin is made in-house, records sufficient to demonstrate that the resin qualifies for the exemption.

In order to assist customers such as fabricators, distributors, importers, and retailers in determining whether they are purchasing compliant composite wood products, EPA is requiring that

panel producers make available to their direct customers, upon request, the results of quarterly emissions test results for the product types purchased. While information collected under TSCA may be entitled to confidential treatment if it meets the standard for Exemption 4 in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), TSCA section 14 provides that health and safety studies and data derived from health and safety studies, are not entitled to confidential treatment, irrespective of the Exemption 4 standard, unless the release of data derived from such studies would disclose confidential processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, disclose the confidential portion of the mixture comprised by any of its chemical substances. For the reasons discussed in the proposal, EPA has determined that quarterly test results are not entitled to treatment as CBI. In order to minimize paperwork and preserve the confidentiality of the supply chain, EPA is limiting the disclosure requirement to direct purchasers (*i.e.,* those purchasing directly from mills). Thus the quarterly test results and associated information (date of test, test method, panel producer name and produce description) do not need to be carried with the product through the supply chain.

Because of the volume and complexity of quality control test results, EPA is not requiring panel producers to release this quality control information to direct purchasers. However, EPA considers quality control test results and the fact that a mill has had failed quality control tests to be health and safety studies and data derived from health and safety studies. Also as proposed, producers of hardwood plywood, particleboard and medium-density fiberboard panels using NAF-based resins or ULEF resins who qualify for the reduced testing and/or third-party certification exemption discussed in Unit III.G. must maintain records demonstrating initial and continued eligibility for the reduced testing or third-party certification exemption. In addition, the panel producer must keep production records and information on resin trade name, resin manufacturer and supplier contact information, and resin use.

Under the proposal, importers, fabricators, distributors, and retailers would be required to take steps to ensure that they are purchasing composite wood products or component parts that comply with the emission standards and to document these steps. As proposed, in order to document compliance, the importer or fabricator would have to obtain from the supplier records identifying the panel producer(s) that produced the composite wood products and the dates that the composite wood products were manufactured and purchased from the panel producer(s), as well as bills of lading or invoices that include a written affirmation from the supplier that the composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are compliant with this subpart.

The proposed requirement to take steps to ensure that compliant products are being purchased would also have applied to distributors and retailers. Rather than include specific required documentation for these entities, the proposal requested comment on the documentation that should be required. The only specific records the proposal would have required distributors and retailers to keep were invoices and bills of lading, and compliance statements on these documents would not have been mandatory. EPA reasoned in the proposal that this would be sufficient because these records would enable EPA to identify the producer or importer of composite wood panels, component parts, or finished goods being sold by distributors and retailers. EPA also stated that, for finished goods, these records would also permit the identification of the producer of the composite wood panels that make up the finished goods. EPA concluded that, without imposing additional recordkeeping burdens on most distributors and retailers, these records would allow EPA to effectively monitor compliance with TSCA Title VI.

EPA received a number of comments on these requirements, some specific to importer responsibilities. Commenters argued that, in many cases, the importer is two or more steps in the supply chain removed from the panel producer and would not be able to obtain this information, particularly for imported finished goods. Some commenters were concerned about supply chain confidentiality and objected to a requirement that distributors disclose their suppliers to their customers. EPA understands the concerns expressed by these commenters. However, in order to be able to ensure that imported composite wood products, component parts, and finished goods were produced in compliance with TSCA Title VI, EPA needs to know the mill and the date that the composite wood products were produced. For composite wood products made by overseas mills, EPA must look to the importer for this information. Without mill and production date information, EPA will not be able to check with the appropriate TPC to determine whether the product was certified. For these reasons, EPA is finalizing a requirement that the importer be able to provide these records to EPA within 30 calendar days of request. Because of the supplier chain issues raised by commenters, EPA is not requiring importers to obtain these records directly from suppliers. Importers may arrange, by contact or some other means, to have their suppliers provide these records directly to EPA within 30 calendar days of request. Importers must keep the compliance statements located on invoices, bills of lading, or other comparable documents. EPA notes that the recordkeeping requirements for imported products will be equivalent to the aggregate recordkeeping requirements for domestically produced products. The only distinction would be that the responsibility for ensuring pre-importation supply chain records are maintained would fall on the importer instead of being spread out amongst different entities in the supply chain.

For the reason stated in the proposal, that invoices and bills of lading will permit EPA to identify the sources of composite wood products, component parts, or finished goods for a particular distributor or retailer, EPA is also finalizing the recordkeeping requirements for distributors and retailers as proposed. In addition, because invoices and bills of lading will allow EPA to identify a fabricator's sources of composite wood products or component parts, just as such records facilitate the identification of distributor's or retailer's sources, EPA will only require fabricators to keep invoices and bills of lading. Fabricators who are also laminators must keep these records as well as the records required for laminated product producers.

EPA specifically asked for comment on whether distributors and retailers should be required to obtain and retain bills of lading or invoices with a written affirmation from the supplier, and whether other recordkeeping requirements would be appropriate. While CARB's comments indicated that these statements were required under CARB and recommended that EPA require the same, other commenters believed that the requirement was unnecessary. EPA has determined that requiring a compliance statement is minimally burdensome, that many are already complying with the CARB requirement, and that obtaining these statements will enlist fabricators, distributors, and retailers in helping to

ensure compliance with TSCA Title VI by requiring them to ask questions of their suppliers if they do not see the compliance statement on their purchase documentation. The compliance statement refers to the compliance of the products as of the date of manufacture. So, for example, non-exempt laminated products made after December 12, 2023 would need to be compliant with the requirements for hardwood plywood in order to affirm compliance with TSCA Title VI. Obtaining and maintaining these bills of lading and invoices, or comparable documents, with a written statement from the supplier are reasonable precautions taken to purchase compliant products for fabricators, distributors, and retailers.

Entities that fit within two or more of these recordkeeping categories, such as a distributor that buys finished goods from both foreign and domestic companies for resale, must keep only the records for each product that correspond to the activities the entity undertook with respect to that product. For example, a distributor who purchases both foreign and domestic finished goods for resale must keep the following records:

- For foreign finished goods that the distributor imports, records identifying the panel producer(s) that produced the composite wood products incorporated into the finished goods and the dates that the products were produced or the ability to produce this information within 30 days, records identifying the supplier and the date of purchase, and bills of lading or invoices that include a written statement from the supplier that the composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are either compliant with this subpart or were manufactured before the manufactured-by date.
- For domestic finished goods, only bills of lading or invoices would need to be kept.

In the case of imported finished goods, only the importer would be responsible for ensuring that the records identifying the panel producer and the date that the composite wood products were manufactured are accessible to EPA upon request. For example, if the importer sells the goods to a domestic distributor, who then sells them to a domestic retailer, only the importer would have to ensure the additional records are kept. The domestic distributor and retailer would only be required to keep invoices and bills of lading.

2. Labeling. EPA is finalizing the labeling provisions as proposed, with several minor modifications. Panels or bundles of panels that are sold, supplied, or offered for sale in the United States must be labeled with the name of the panel producer, the lot number, the number of the accredited TPC, and markings indicating that the product complies with the TSCA Title VI emission standards. Fabricators of finished goods containing composite wood products must label every finished good they produce, or every box containing finished goods. These labels must contain the fabricator's name, the date the finished good was produced, and a statement that the finished goods are TSCA Title VI compliant. Panels may be shipped into, out of, and around the United States for quality control or quarterly tests provided that they are labeled ''For TSCA Title VI testing only, not for sale in the United States.'' The information required on the labels must be legible and in English, but it need not all be on a single label. Also, entities are free to combine the TSCA Title VI labels with CARB labels so long as all the required information is present, legible, in English and accurate. EPA notes that the phrase ''the date the finished good was produced'' means the actual date of production in ''Month/Year'' format, not the date the product was imported.

EPA does agree that in certain situations, this information has the potential to confuse consumers and may take up additional space on labels. For example, where a finished good is composed of multiple composite wood products, some of which are not produced under the NAF or ULEF provisions, and some of which are, it may be difficult for fabricators to design a label that efficiently describes the product. Thus, in the final regulations, labeling indicating that the composite wood products are NAF or ULEF is voluntary and at the discretion of the panel producer or fabricator. For finished goods that are partially made with panels produced under the NAF or ULEF exemptions, they may, at the discretion of the fabricator, be labeled with phrases such as ''product contains TSCA Title VI products and NAF/ULEF products,'' ''product contains TSCA Title VI products and NAF products,'' or ''product contains TSCA Title VI products and ULEF products,'' if is this is accurate. EPA disagrees with those commenters who thought that the labeling of products as NAF or ULEF creates an inappropriate market bias. TSCA Title VI explicitly allows EPA to provide an exemption from third-party certification and testing for these products, so the statute itself confers the opportunity for special treatment on these products. Far from creating an inappropriate market bias, labeling a product as NAF and ULEF provides valuable information to consumers (*e.g.,* some panels may not have a TPC because they are exempt from third-party certification), and allows consumers to know that these products meet the emission standards described in Unit III.C. EPA also notes that the CARB ATCM has NAF/ULEF labeling requirements.

The final rule allows panel producers to use a panel producer number or other identifier to protect supply chain confidentiality, as long as EPA is ultimately able to use the label information along with the records required by this rule to identify the panel producer. The expectation is that EPA will be able to trace back through the supply chain, using records identifying each entity's supplier, to eventually arrive at the panel producer, or an importer for composite wood products not produced domestically. For finished goods, EPA is requiring either the fabricator's name on the label or the name of a responsible downstream entity (*e.g.,* an importer, wholesaler, distributor, or retailer). Where a non-fabricator's name appears on the label, that entity is responsible for identifying the fabricator, and is responsible for the compliance of the labeled products, as if they were the fabricator. Fabricators may not put a downstream entity's name on the labels unless they have written consent from that entity to do so.

Although EPA proposed to allow labels to be in barcode format, the Agency agrees with commenters who thought that a barcode, as the sole form of label, would inhibit transparency. Even if the barcode was a universal open system, all entities along the supply chain may not have access to smartphones or barcode readers. This would create a technology barrier to accessing this information, and could prevent retailers that wish to check the information on labels to ensure it conforms to the information provided to them by their supplier. Thus, the final rule prohibits the use of barcodes, or non-text labels, as the sole label. Entities that wish to use barcodes or other non-text labels may do so but must also have the encoded TSCA Title VI information printed on the label in English text.

The final rule allows composite wood products and finished goods to be labeled by bundle or box, as opposed to being labeled individually. EPA generally agrees with those commenters who cited cost and feasibility concerns with an individual product labeling requirement. In addition, as noted by

some commenters, EPA agrees that an individual labeling requirement provides minimal benefit when applied to composite wood products supplied to fabricators who then incorporate them into finished goods. In lieu of labeling of individual products, EPA is requiring entities that divide and repackage bundles of regulated composite wood products or purchase these products for resale to have a system sufficient to identify the supplier of the panel and link the information on the label to the products. This information must be made available to potential customers upon request. Similarly, entities importing, selling, offering for sale or supplying finished goods that are not individually labeled must retain a copy of the label and make it available to potential customers upon request.

J. Sell-Through Provisions and Stockpiling

TSCA Title VI directs EPA to establish sell-through provisions for composite wood products, and finished goods containing regulated composite wood products, based on a designated date of manufacture, or ''manufactured-by'' date. Under the statute, composite wood products or finished goods manufactured before the specified manufactured-by date are not subject to statutory emission standards or testing requirements. TSCA Title VI requires that the manufactured-by date be no earlier than 180 calendar days after promulgation of the final implementing regulations.

TSCA Title VI also directs EPA to prohibit the sale of inventory that was stockpiled, which is defined in the statute as manufacturing or purchasing composite wood products between the date the statute was enacted and the date 180 calendar days following the promulgation of these regulations at a rate significantly greater than the rate during a particular base period. EPA is directed to define what constitutes ''a rate significantly greater'' and to establish the base period. Under the statute, the base period must end before July 7, 2010, the date that the Formaldehyde Standards for Composite Wood Products Act was enacted.

As proposed, EPA is finalizing the manufactured-by date at December 12, 2017, except that, as discussed in Unit III.A., the manufactured-by date for laminated products is December 12, 2023. EPA has determined that, for panel producers other than laminated product producers, this year will be sufficient to get all of the infrastructure in place.

The manufactured-by dates apply to regulated composite wood products, including laminated products, as well as finished goods containing such products. Composite wood products manufactured before the applicable manufactured-by date are not subject to the emission standards, nor are they required to be labeled or tested for emissions. Laminated products manufactured before the manufactured-by date for laminated products are not subject to the emission standards, but, after the manufactured-by date for composite wood products other than laminated products, they must be made with compliant composite wood product platforms and must be labeled in accordance with the fabricator labeling requirements. Composite wood products and laminated products manufactured before the applicable manufactured-by date can be incorporated into finished goods at any time. Retailers, fabricators, and distributors are permitted to continue to buy and sell these composite wood products and laminated products, as well as finished goods that incorporate these products, because they would be considered compliant with TSCA Title VI and its implementing regulations, assuming the absence of stockpiling as discussed later. Under TSCA, the term ''manufacture'' includes import, so the ''manufactured-by'' date would effectively be an ''imported-by'' date for imported goods.

In order to establish that a regulated composite wood product was made before the manufactured-by date, the panel producer or importer and any subsequent distributor, retailer or fabricator must document when the product was manufactured or that the panel was in their inventory on or before the date 180 calendar days after promulgation of these regulations. In the case of a finished good, any subsequent distributor, retailer or fabricator must document that the composite wood products making up the finished good were either manufactured before the manufactured-by date or were manufactured in accordance with TSCA Title VI. Documentation that the finished goods were in their inventory on or before that date 180 calendar days after promulgation of these regulations would be sufficient for these purposes. In order to reduce consumer confusion, products that are entirely made before the manufactured-by date may not be labeled as compliant with TSCA Title VI.

Selling stockpiled regulated composite wood panels and finished goods containing regulated composite wood products is prohibited. EPA proposed to define stockpiling as manufacturing or purchasing composite wood products between July 7, 2010, the date that the Formaldehyde Standards for Composite Wood Products Act was signed into law by the President, and 180 calendar days after promulgation of these regulations, for the purpose of circumventing the TSCA Title VI emission standards, at an average annual rate 20 percent greater than the amount manufactured or purchased during the 2009 calendar year. EPA is finalizing the provisions substantially as proposed, but clarifying that the Agency has the burden of showing that an increase in production or purchasing was for the purpose of circumventing the emission standards. Entities that have a greater than 20 percent increase in purchasing or production of regulated composite wood panels for some reason other than circumventing the emission standards will not be deemed to be stockpiling. Other reasons may include an immediate increase in customer demand or sales, or a planned business expansion. The stockpiling provisions do not apply to entities that were not in existence at the beginning of calendar year 2009 because a pre-TSCA Title VI baseline of production does not exist for these companies.

K. Import Certification

TSCA Title VI directs EPA, in coordination with U.S. Customs and Border Protection (CBP) and other appropriate Federal departments and agencies, to revise regulations promulgated pursuant to TSCA section 13 as necessary to ensure compliance. The TSCA section 13 regulations, promulgated by CBP, require importers to certify that shipments of chemical substances and mixtures are either in compliance with TSCA or not subject to TSCA. Most, if not all, products subject to TSCA Title VI would be considered articles. Articles, defined in 19 CFR 12.120(a), are generally formed to specific shapes or designs during manufacture and have end use functions related to their shape or design. Articles are generally exempt from the TSCA section 13 certification requirements, but the regulations at 19 CFR 12.121(b) recognize that EPA has the authority to, by regulation or order, make the requirements applicable to articles.

As proposed, no changes are being made to the regulations promulgated pursuant to TSCA section 13, but this final rule requires TSCA section 13 import certification for composite wood products that are articles. This does not represent a statement on the relative toxicity of formaldehyde, or of composite wood products; rather, it is a certification of compliance with TSCA.

Although this requirement is being finalized as proposed, EPA is delaying the compliance date for the import certification requirements until two years after the date of the publication of this rule to provide additional time for the supply chain to become familiar with the requirements and make any necessary adjustments to existing business processes. The Agency is committed to conducting outreach with regulated parties and working with industry associations to help educate producers and importers of composite wood products about the requirements of this final rule, including the TSCA section 13 import certification requirements. Beginning shortly after publication of the final rule, EPA will conduct outreach to the importer community which will entail providing training on the importer provisions and how to comply with the certification requirement. The outreach will include webinars, attending industry conferences, and meeting with interested groups. In addition, EPA is developing guidance for importers with additional information about how to comply with the certification requirement. The guidance will be in the form of documents that can be downloaded from EPA's Web site at: *http://www.epa.gov/formaldehyde.*

To comply with the import certification requirements, importers (or their agents) will be required to provide the following certification statement with other paperwork accompanying the imported shipment:

> I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

The documentation required by this final rule will generally be a sufficient basis for the import certification to the extent that such documentation demonstrates compliance. TSCA certification statements provided in paper have commonly been included on or attached to bills of lading, commercial invoices, or comparable documents. In order to submit a TSCA certification statement electronically, importers or their agents would need to submit it with their Customs entry filings for shipments in the Automated Commercial Environment (*i.e.,* CBP's primary automated and electronic system for commercial trade processing.) or any other CBP-authorized electronic data interchange system.

L. Enforcement

The failure to comply with any provision of TSCA Title VI, or the regulations implementing TSCA Title VI, is a prohibited act under TSCA section 15. Any person who commits a prohibited act under TSCA section 15 can be held liable for civil and criminal penalties, as appropriate.

M. HUD's Manufactured Housing Program

Under the authority of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.,* HUD regulates the construction of all manufactured homes built in the United States. The HUD standards established pursuant to the 1974 Act cover many aspects of manufactured home construction, including body and frame requirements, thermal protection, plumbing, electrical, and fire safety. (*See* 24 CFR parts 3280 and 3282). HUD oversees the enforcement of the construction standards through third party inspection agencies and State governments.

EPA and HUD are working together to ensure the appropriate application and implementation of requirements under the Formaldehyde Standards for Composite Wood Products Act of 2010. The HUD standards for manufactured housing include specific formaldehyde emission limits for plywood and particleboard materials installed in manufactured housing. In contrast, TSCA Title VI covers only hardwood plywood, a subset of plywood. In addition, TSCA Title VI also covers medium-density fiberboard, which is not covered by the current HUD standards. The HUD emission limits apply to any plywood or particleboard bonded with a resin system and to any plywood or particleboard coated with a surface finish containing formaldehyde. HUD's current formaldehyde emission limits are 0.2 ppm for plywood and 0.3 ppm for particleboard, as measured by ASTM E1333–96. These emission limits are higher than those established by the 2010 Act, but section 4 of the 2010 Act directs HUD to update its regulations to ensure that the regulations reflect the standards established by section 601 of TSCA.

In addition, the 2010 Act established a definition of ''recreational vehicle'' that is based on the definition established by HUD that is in effect at 24 CFR 3282.8 on the date of promulgation of regulations pursuant to TSCA Title VI. EPA acknowledges that HUD issued a proposed rule (81 FR 6806, February 9, 2016) that would, among other things, remove the current definition of ''recreational vehicle'' from 24 CFR 3282.8 and add an amended version of this definition in a proposed new CFR section. EPA and HUD believe that it was the intent of Congress that same definition of ''recreational vehicle'' be used in both this final rule and HUD's manufactured housing regulations. Therefore, EPA and HUD will continue working together to ensure that the regulatory definition is appropriately harmonized.

In the proposal, EPA requested comment on how best to harmonize EPA's regulatory program under TSCA Title VI with HUD's manufactured homes program. EPA received a handful of comments on this aspect of the proposal. Two commenters recommended a general consistency between the EPA and HUD regulations, although they did not offer specifics. At the suggestion of one of the commenters, EPA has added a sentence to the applicability provisions of the final rule to make it clear that the requirements apply to composite wood products used in manufactured housing.

IV. Incorporation by Reference

This final rule incorporates a variety of voluntary consensus standards by reference. In many cases, the consensus standards are used because TSCA Title VI directs that they be used. TSCA Title VI provides for quarterly and quality control testing for hardwood plywood, particleboard, and MDF using specified methods developed by ASTM International. TSCA Title VI also refers freely to voluntary consensus standards to assist in defining the composite wood products that are subject to the statute, such as hardwood plywood (ANSI/HPVA HP–1–2009), particleboard (ANSI A208.1–2009), and medium-density fiberboard (ANSI A208.2–2009) (Refs. 26, 47, and 72). Other voluntary consensus standards are being incorporated by reference into this final rule to provide flexibility to panel producers by permitting them to use additional quality control test methods already allowed by CARB under their ATCM. Finally, EPA is relying on voluntary consensus standards developed by ISO/IEC and already in use in the conformity assessment sector to establish a third-party certification program that is as robust as possible. Most of the entities that would have to comply with one of these standards, or at least have a good understanding of the contents of one of these standards, already own a copy. It would be difficult to be in business as a hardwood plywood mill, for example, if you were not familiar with the industry consensus on what is hardwood plywood. The

standards are all readily available electronically or in print, and are relatively inexpensive (less than $150 a copy).

The voluntary consensus standards being incorporated by reference into this final rule are summarized in this unit, along with contact information for purchasing a copy of each standard. Each of these standards is available for inspection at the OPPT Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

(a) *AITC, CPA, and HPVA standards.* Copies of these standards may be obtained from the specific publisher, as noted below, or from the American National Standards Institute, 1899 L Street NW., 11th Floor, Washington, DC 20036, or by calling (202) 293–8020, or at *http://ansi.org/.* Note that ANSI/AITC A190.1–2002 is published by the American Institute of Timber Construction. ANSI A135.4–2012, ANSI A135.5–2012, ANSI A135.6–2012, ANSI A135.7–2012, ANSI A208.1–2009, and ANSI A208.2–2009 are published by the Composite Panel Association. And ANSI ANSI/HPVA–HP–1–2009 is published by the Hardwood Plywood Veneer Association.

1. ANSI A135.4–2012, American National Standard, Basic Hardboard. This standard defines hardboard and describes requirements and test methods for water absorption, thickness swelling, modulus of rupture, tensile strength, surface finish, dimensions, squareness, moisture content, and edge straightness of five classes of basic hardboard, along with methods of identifying products conforming to the standard.

2. ANSI A135.5–2012, American National Standard, Prefinished Hardboard Paneling. This standard describes requirements and methods of testing for the dimensions, squareness, edge straightness, and moisture content of prefinished hardboard paneling and for the finish of the paneling, along with methods of identifying products conforming to the standard.

3. ANSI A135.6–2012, American National Standard, Engineered Wood Siding. This standard describes requirements and methods of testing for the dimensions, straightness, squareness, physical properties, and surface characteristics of engineered wood siding. This standard also defines trade terms used and describes methods of identifying products conforming to the standard.

4. ANSI A135.7–2012, American National Standard, Engineered Wood Trim. This standard describes requirements and methods of testing for the properties of engineered wood trim intended to be used as architectural trim. While primarily for exterior applications, these products can also be used indoors. Trim is the woodwork in the finish of a building, especially around openings and at corners, that is intended to be decorative and/or provide protection for joints covered by the product. Typical exterior trim includes corner boards, fascia, brick mold and window trim. Because engineered wood trim is not intended to be used as a structural material, it has no structural load-bearing performance requirements.

5. ANSI A208.1–2009, American National Standard, Particleboard. This standard describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for particleboard, along with methods of identifying products conforming to the standard.

6. ANSI A208.2–2009, American National Standard, Medium Density Fiberboard (MDF) for Interior Applications. This standard describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for MDF, along with methods of identifying products conforming to the standard.

7. ANSI/AITC A190.1–2002, American National Standard for Wood Products, Structural Glued Laminated Timber. This standard describes minimum requirements for the manufacture and production of structural glued laminated timber, including size tolerances, grade combinations, lumber, adhesives, and appearance grades.

8. ANSI/HPVA HP–1–2009, American National Standard for Hardwood and Decorative Plywood. This standard details the specific requirements for all face, back, and inner ply grades of hardwood plywood as well as formaldehyde emission limits, moisture content, tolerances, sanding, and grade marking.

(b) *ASTM material.* Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at *http://www.astm.org.*

1. ASTM D5055–05, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists. This specification gives procedures for establishing, monitoring, and reevaluating structural capacities of prefabricated wood I-joists, such as shear, moment, and stiffness. The specification also provides procedures for establishing common details and itemizes certain design considerations specific to wood I-joists.

2. ASTM D5456–06, Standard Specification for Evaluation of Structural Composite Lumber Products. This specification describes initial qualification sampling, mechanical and physical tests, analysis, and design value assignments. Requirements for a quality-control program and cumulative evaluations are included to ensure maintenance of allowable design values for the product.

3. ASTM D5582–00 (Reapproved 2006), Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator. This test method describes a small scale procedure for measuring formaldehyde emissions potential from wood products. The formaldehyde level is determined by collecting airborne formaldehyde in a small distilled water reservoir within a closed desiccator. The quantity of formaldehyde is determined by a chromotropic acid test procedure.

4. ASTM D6007–02, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber. This test method measures the formaldehyde concentrations in air from wood products under defined test conditions of temperature and relative humidity. Results obtained from this small-scale chamber test method are intended to be comparable to results obtained testing larger product samples by the large chamber test method for wood products, Test Method E 1333.

5. ASTM E1333–10, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber. This test method measures the formaldehyde concentration in air and emission rate from wood products containing formaldehyde under conditions designed to simulate product use. The concentration in air and emission rate is determined in a large chamber under specific test conditions of temperature and relative humidity. The general procedures are also intended for testing product combinations at product-loading ratios and at air-exchange rates typical of the indoor environment.

(c) *CEN materials.* Copies of these materials are not directly available from the European Committee for Standardization, but from one of CEN's National Members, Affiliates, or Partner Standardization Bodies. To purchase a standard, go to CEN's Web site, *http://www.cen.eu,* and select ''Products'' for more detailed information.

1. BS EN 120:1992, Wood based panels. Determination of formaldehyde content- Extraction method called the perforator method, English Version. This European standard describes an extraction method, known as the perforator method, for determining the formaldehyde content of unlaminated and uncoated wood-based panels.

2. BS EN 717–2:1995, Wood-based panels—Determination of formaldehyde release—Part 2: Formaldehyde release by the gas analysis method, English Version. This European standard describes a procedure for determination of accelerated formaldehyde release from wood-based panels.

(d) *Georgia Pacific material.* Copies of this material may be obtained from Georgia-Pacific Chemicals LLC, 133 Peachtree Street, Atlanta, GA 30303, or by calling (877) 377–2737, or at *http://www.gp-dmc.com/default.aspx.*

1. The GP Dynamic Microchamber computer-integrated formaldehyde test system, User Manual. Copyright 2012. The Dynamic Micro Chamber is a patented process for testing formaldehyde emissions (U.S. Patent # 5,286,363). The DMC provides a means of obtaining accurate formaldehyde emissions information from pressed panel products. This Manual describes the process for using the DMC.

2. The Dynamic Microchamber computer integrated formaldehyde test system, User Manual, Copyright 2007. This is the older version of the DMC Manual, which may also be followed when using the DMC to conduct formaldehyde emissions testing.

(e) *ISO material.* Copies of these materials may be obtained from the International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211, Geneve 20, Switzerland, or by calling +41–22–749–01–11, or at *http://www.iso.org.*

1. ISO/IEC 17011:2004(E), Conformity assessments—General requirements for accreditation bodies accrediting conformity assessment bodies (First edition), September 1, 2004. This standard specifies general requirements for accreditation bodies assessing and accrediting conformity assessment bodies. For the purposes of this standard, conformity assessment bodies are organizations providing the following conformity assessment services: Testing, inspection, management system certification, personnel certification, product certification and, in the context of this standard, calibration.

2. ISO/IEC 17020:2012(E), General criteria for the operation of various types of bodies performing inspections (Second Edition) March 1, 2012. This standard covers the activities of inspection bodies whose work can include the examination of materials, products, installations, plants, processes, work procedures or services, and the determination of their conformity with requirements and the subsequent reporting of results of these activities.

3. ISO/IEC 17025:2005(E), General requirements for the competence of testing and calibration laboratories (Second Edition), May 15, 2005. This standard specifies the general requirements for the competence to carry out tests or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

4. ISO/IEC 17065:2012(E), Conformity assessment—Requirements for bodies certifying products, processes and services (First Edition), September 15, 2012. This standard specifies requirements that are intended to ensure that certification bodies operate certification schemes in a competent, consistent and impartial manner. This standard can be used as a criteria document for accreditation or peer assessment or designation by governmental authorities, scheme owners and others.

(f) Copies of JIS A 1460:2001 Building boards-Determination of formaldehyde emission-Desiccator method, English Version, may be obtained from Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, or by calling +81–3–3583–8000, or at *http://www.jsa.or.jp/.* This method describes a method for testing formaldehyde emissions from construction boards by measuring the concentration of formaldehyde absorbed in distilled or deionized water from samples of a specified surface area placed in a glass desiccator for 24 hours.

(g) *NIST material.* Copies of these materials may be obtained from the National Institute of Standards and Technology (NIST) by calling (800) 553–6847 or from the U.S. Government Printing Office (GPO). To purchase a NIST publication you must have the order number. Order numbers may be obtained from the Public Inquiries Unit at (301) 975–NIST. Mailing address: Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070. If you have a GPO stock number, you can purchase printed copies of NIST publications from GPO. GPO orders may be mailed to: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000, placed by telephone at (866) 512–1800 (DC Area only: (202) 512–1800), or faxed to (202) 512–2104. Additional information is available online at: *http://www.nist.gov.*

1. Voluntary Product Standard PS 1–07 (2007), Structural Plywood. This standard describes the principal types and grades of structural plywood, covering the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content and packaging of structural plywood intended for construction and industrial uses. Test methods to determine compliance and a glossary of trade terms and definitions are included, as is a quality certification program involving inspection, sampling, and testing of products identified as complying with this standard by qualified testing agencies.

2. Voluntary Product Standard PS 2–04 (2004), Performance Standard for Wood-Based Structural-Use Panels. This standard covers performance requirements, adhesive bond performance, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels, such as plywood, waferboard, oriented strand board (OSB), structural particle board, and composite panels. The standard includes test methods, a glossary of trade terms and definitions, and a quality certification program involving inspection, sampling, and testing of products for qualification under the standard.

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 physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

1. California Environmental Protection Agency Air Resources Board (CARB). Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. Final Regulation Order. April 2008. *http://*

www.arb.ca.gov/regact/2007/compwood07/compwood07.htm.
2. USEPA. Policy on Evaluating Health Risks to Children. 1995. *http://www.epa.gov/sites/production/files/2014-5/documents/1995_childrens_health_policy_statement.pdf.*
3. USEPA, Office of Chemical Safety and Pollution Prevention (OCSPP). Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Final Rule (Economic Analysis). December 2015.
4. World Health Organization. Concise International Chemical Assessment Document 40: Formaldehyde. Published under the joint sponsorship of the United Nations Environment Programme, the International Labour Organization, and the World Health Organization, and produced within the framework of the Inter-Organization Programme for the Sound Management of Chemicals. Geneva. 2002.
5. Agency for Toxic Substances and Disease Registry. Toxicological Profile for Formaldehyde and 2010 Addendum to the Profile. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. 1999. *http://www.atsdr.cdc.gov/toxprofiles/tp111.html.*
6. Krzyzanowski M, Quackenboss JJ, Lebowitz MD. Chronic respiratory effects of indoor formaldehyde exposure. Environ Res 52(2):117–125. 1990.
7. Matsunaga, I, Miyake, Y, et al. Ambient formaldehyde levels and allergic disorders among Japanese pregnant women: baseline data from the Osaka maternal and child health study. Annals of Epidemiology 18(1): 78–84. (2008).
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9. Venn AJ, Cooper M, Antoniak M, Laughlin C, Britton, Lewis SA. Effects of volatile organic compounds, damp, and other environmental exposures in the home on wheezing illness in children. Thorax 58:955–960. 2003.
10. Dannemiller, KC; Murphy, JS; Dixon, SL; Pennell, KG; Suuberg, EM; Jacobs, DE; Sandel, M. Formaldehyde concentrations in household air of asthma patients determined using colorimetric detector tubes. Indoor Air 23: 285–294. 2013.
11. National Toxicology Program. Report on carcinogens. Thirteenth edition. Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service. 2014. *http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html.*
12. International Agency for Research on Cancer. Formaldehyde [IARC Monograph]. In A review of human carcinogens: Chemical agents and related occupations (pp. 401–435). Lyon, France. 2012. *http://monographs.iarc.fr/ENG/Monographs/vol100F/index.php.*
13. National Research Council (NRC). Review of the Formaldehyde Assessment in the National Toxicology Program 12th Report on Carcinogens. Washington DC: National Academies Press (US). 2014.
14. USEPA, Office of Air and Radiation. National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Final Rule. **Federal Register** (71 FR 8341, February 16, 2006) (FRL–8028–9). *http://www.epa.gov/ttn/atw/plypart/fr16fe06.pdf.*
15. USEPA, Office of Research and Development. Formaldehyde. Integrated Risk Information System (IRIS). 1991. *http://www.epa.gov/iris/subst/0419.htm.*
16. USEPA, ORD. IRIS Toxicological Review of Formaldehyde-Inhalation Assessment (2010 External Review Draft). *http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=223614.*
17. USEPA. Approach to Assessing Non-cancer Health Effects from Formaldehyde and Benefits from Reducing Non-cancer Health Effects as a Result of Implementing Formaldehyde Emission Limits for Composite Wood Products. 2013.
18. USEPA. Formaldehyde Emissions from Composite Wood Products; Disposition of TSCA Section 21 Petition; Notice. **Federal Register** (73 FR 36504, June 27, 2008).
19. USEPA. Formaldehyde Emissions from Composite Wood Products; Advanced notice of proposed rulemaking and notice of public meetings. **Federal Register**. (73 FR 73620, December 3, 2008) (FRL–8386–3).
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21. USEPA. Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products; Formaldehyde Emissions Standards for Composite Wood Products; Proposed Rule. **Federal Register** (78 FR 34796, June 10, 2013) (FRL–9342–4).
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31. CARB. Summary of ARB Testing of Laminated Products. August 19, 2013.
32. Comment submitted by Jackson Morrill, Director, and Laura Brust, Assistant General Counsel, American Chemistry Council Formaldehyde Panel. October 9, 2013. EPA–HQ–OPPT–2012–0018–0581.
33. Comment submitted by Bill Perdue, Vice President, Regulatory Affairs, American Home Furnishings Alliance. October 2013. EPA–HQ–OPPT–2012–0018–0562.
34. Remarks by Kelly Shotbolt, President, Flakeboard. Transcript of the April 28, 2014 Public Meeting. EPA–HQ–OPPT–2012–0018–0631, pp. 47–55.
35. Comment submitted by Gail Overgard, Advisor to the Board, Timber Products Company. April 2014. EPA–HQ–OPPT–2012–0018–0601.
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37. Georgia Pacific. Letter to Lynn Vendinello. August, 15, 2011.
38. Chimar-Hellas. Update on the Formaldehyde Release from Wood-Based Panels. Undated.
39. ASTM E1333–96 (Reapproved 2002). Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
40. CARB. Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Appendix H. March 9, 2007.
41. Comment submitted by Winslow Sargeant, Ph.D., Chief Counsel for Advocacy and David Rostker, Assistant Chief Counsel Office of Advocacy, U. S. Small Business Administration's Office of Advocacy. May 20, 2014. EPA–HQ–OPPT–2012–0018–0529.
42. Comment submitted by the Federal Wood Industries Coalition. May 8, 2014. EPA–HQ–OPPT–2012–0018–0623
43. ASTM International. ASTM E–1333–10, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
44. ASTM International. ASTM D–6007–02 (2008), Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small Scale Chamber.

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47. ANSI. American National Standard for Medium Density Fiberboard (MDF) for Interior Applications, ANSI A208.2 2009.
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49. ANSI. American National Standard, Prefinished Hardboard Paneling, ANSI A135.5 2004.
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51. CARB. Workshop Discussion Draft, Amended Regulation Order. March 18, 2014. *http://www.arb.ca.gov/toxics/compwood/amended0318.pdf.*
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57. ISO/IEC Guide 65:1996(E), General requirements for bodies operating product certification systems (First Edition). 1996.
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74. USEPA. Information Collection Request (ICR) for the Formaldehyde Emission Standards for Composite Wood Products Act Final Regulations. EPA ICR No. 2446.02 and OMB No. 2070–0185.
75. USEPA. Final Regulatory Flexibility Analysis for Formaldehyde Emission Standards for Composite Wood Products. December 2015.
76. USEPA. Unfunded Mandates Reform Act Statement. Formaldehyde Emission Standards for Composite Wood Products; Final. December 2015.

VI. Statutory and Executive Order Reviews

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 an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Final Rule'' (Economic Analysis, Ref. 3) is available in the docket and is summarized here.

1. *Entities subject to the rule.* EPA analyzed the effect of this rule on accreditation bodies, TPCs, panel producers, fabricators, wholesalers (*i.e.,* distributors and importers), and retailers. Due to the similarities between this rule and the CARB ATCM, the incremental costs and benefits of this rule are determined in part by the degree to which firms are already complying with the ATCM. Table 3 summarizes the estimated number of entities subject to the TSCA Title VI rule and their baseline compliance with the CARB ATCM.

TABLE 3—NUMBER OF ENTITIES IN THE UNITED STATES SUBJECT TO THE RULE

Type	TSCA universe	Baseline condition (CARB ATCM universe)
Accreditation bodies	4 firms	All 4 ABs currently accredit TPCs participating in the CARB ATCM program.
Third-party certifiers	11 firms	All 11 TPCs currently certify stock panels mills under the CARB ATCM.
Stock panel producers (*i.e.,* manufacturers).	90 mills operated by 54 firms	79 mills have been certified by CARB for at least one product, but 16 mills make at least one product that is not CARB certified. Depending on the product type, 98% to 100% of U.S. production volume is CARB certified.
Laminated product producers (*i.e.,* laminators).	7,000 to 14,000 firms	Laminators are considered fabricators under the CARB ATCM. Nationally, 32,000 of the combined group are subject to CARB ATCM requirements.
Fabricators	66,000 to 73,000 firms	

TABLE 3—NUMBER OF ENTITIES IN THE UNITED STATES SUBJECT TO THE RULE—Continued

Type	TSCA universe	Baseline condition (CARB ATCM universe)
Wholesalers (i.e., distributors)	86,000 firms, of which 24,000 are importers.	32,000 are subject to CARB ATCM requirements, of which 9,000 are importers.
Retailers	759,000 firms	195,000 are subject to CARB ATCM requirements.
Total	925,000 firms	

2. *Options evaluated.* Congress directed EPA to consider a number of elements for inclusion in the implementing regulations, and EPA considered various options for addressing these elements. For many of the provisions, such as the product-inventory sell-through provision and the stockpiling prohibition, EPA did not have the data needed to make quantitative estimates of the effects of different options. EPA did have sufficient information to analyze options for how the definition of hardwood plywood addresses laminated products, the recordkeeping required by the rule, and the frequency of quality control testing for small production volumes of hardwood plywood. The options EPA analyzed are displayed in Table 4.

TABLE 4—OPTIONS ANALYZED IN THE ECONOMIC ANALYSIS

Option	Description
Option 1: Laminates included in hardwood plywood (HWPW) definition with NAF exemption.	Laminated products made with resins formulated with no-added formaldehyde as part of the resin cross-linking structure are exempt from the definition of hardwood plywood. Otherwise, laminated product producers must be certified by a TPC, and have products tested to demonstrate that they meet a 0.05 ppm emission standard beginning 1 year after promulgation of the final rule. This option is equivalent to EPA's proposed rule from June 2013. Reduced recordkeeping for wholesalers and retailers that do not import. Reduced quality control (QC) testing for small hardwood plywood production.
Option 2 (*Final Rule*): Laminates included in HWPW definition with NAF and PF exemption.	Laminated products made with phenol-formaldehyde (PF) resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure are exempt from the definition of hardwood plywood. Otherwise, laminated product producers have 7 years after promulgation of the rule to be certified by a TPC, and have products tested to demonstrate that they meet a 0.05 ppm emission standard. Construction firms are not considered fabricators or retailers. Reduced recordkeeping for fabricators, wholesalers and retailers that do not import. Reduced QC testing for small hardwood plywood production.
Option 3: Platform-specific emissions limits for laminates with reduced testing with NAF and PF exemption.	Laminated products made with phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure are exempt from the definition of hardwood plywood. Otherwise, laminated products must have an annual small chamber test demonstrating that they meet the emission standards of the platform used (0.05, 0.09, 0.11, or 0.13 ppm) beginning 2 years after promulgation, but certification is not required. Reduced recordkeeping for wholesalers and retailers that do not import. Reduced QC testing for small hardwood plywood production.
Option 4: Laminate emissions standard consistent with CARB discussion draft.	Laminated products must meet an emissions standard of 0.13 ppm beginning 3 years after promulgation, but no testing or certification is required for laminated product producers. (The laminated product requirements are consistent with the CARB discussion proposal for laminated products from March 2014.) Reduced recordkeeping for wholesalers and retailers that do not import. Reduced QC testing for small hardwood plywood production. Supplier notification required.
Option 5: All laminates exempt from HWPW definition.	No emission standards apply to laminated products, and there are no testing or certification requirements for laminated product producers. Reduced recordkeeping for wholesalers and retailers that do not import. Reduced QC testing for small hardwood plywood production. Supplier notification required.
Option 6: Fully consistent with current CARB ATCM.	No emissions standard and no testing or certification required for laminated products. This option does not include the reductions in recordkeeping requirements or the reductions in QC testing for small volume hardwood plywood production that are included in the other options. Supplier notification required.

3. *Benefits.* Reductions in formaldehyde emissions from composite wood products benefits individuals who reside, work, or otherwise spend a substantial amount of time where new composite wood products are introduced to an indoor space. The Economic Analysis (Ref. 3) estimates the benefits of lowering formaldehyde emissions from composite wood products.

Formaldehyde is classified as a known human carcinogen by the National Toxicology Program, based on evidence in humans and animals (Ref. 3). EPA's quantified benefits estimates include the avoided cases of nasopharyngeal cancer (representing upper respiratory tract cancers caused by exposure to formaldehyde). The National Toxicology Program (NTP) has identified formaldehyde as causing myeloid leukemia, and the NRC review of the formaldehyde assessment in NTP's 12th Report on Carcinogens (Ref. 13) concluded that there is a causal association between formaldehyde exposure and myeloid leukemia. The International Agency for Research on Cancer Monograph 100F concluded that formaldehyde causes leukemia with a majority of the Working Group viewing the evidence as sufficient. EPA did not

have sufficient information to derive a concentration-response function for myeloid leukemia and thus could not estimate the number of cases that would be avoided by reducing formaldehyde exposure.

In addition to cancer, the 2010 draft IRIS assessment identified seven categories of non-cancer health effects from formaldehyde exposure (sensory irritation, upper respiratory tract pathology, pulmonary function effects, asthma and allergic sensitization, immune function effects, neurological and behavioral toxicity, and developmental and reproductive toxicity) and it proposed reference concentrations (RfCs) based on four effects: sensory irritation, pulmonary function effects, asthma and allergic sensitization (atopy), and reproductive toxicity. The NRC review of the draft IRIS assessment was released in April 2011 (Ref. 73), and EPA is currently revising the draft in response.

Overall, EPA concluded that, at this time, it only has sufficient information on the relationship between formaldehyde exposure and sensory irritation (*i.e.,* irritation of the eye, nose, and throat) to include a valuation estimate in the overall benefits analysis. However, the valuation studies that were the basis of EPA's benefits estimate only reflected the willingness to pay to avoid eye irritation or itching eyes. EPA's quantified benefits calculation may be underestimating the benefits of avoided exposures, because individuals are likely to have a higher willingness to pay to avoid the additional symptoms of nose and throat irritation.

Formaldehyde exposure is associated with a range of respiratory related effects. Effects from repeated exposure in humans include irritation of the upper respiratory tract, decrements in pulmonary function, and nasal epithelial lesions such as metaplasia and loss of cilia. Animal studies suggest that formaldehyde may also cause airway inflammation. The potential effects of occupational and residential formaldehyde exposure on asthma have been investigated in a number of studies. Although findings are mixed, formaldehyde appears to trigger asthma attacks or related respiratory symptoms (such as wheezing or decreased pulmonary function) in those occupationally exposed and/or sensitized. A number of studies have found no association between formaldehyde exposure and the prevalence of asthma symptoms at low exposure levels; other studies, however, observed increased risks of other allergic conditions or increased severity of asthma symptoms among children with wheeze in the previous year. There are several studies that suggest that formaldehyde may increase the risk of asthma, particularly in the young, including a study that provided suggestive evidence that children are more sensitive than adults to exposure to formaldehyde in relation to chronic respiratory symptoms and pulmonary function. Formaldehyde exposure has been associated with immune system perturbations, suggesting that potential effects of formaldehyde exposure on the immune system may be an important part of biological pathways for triggering asthmatic responses or the severity of asthma symptoms. EPA does not feel that it has sufficient information at this time on the relationship between formaldehyde exposure and respiratory outcomes to include a valuation estimate in the overall benefits analysis.

Epidemiologic studies suggest an association between occupational exposure to formaldehyde and adverse reproductive outcomes in women, including reduced fertility. EPA does not feel that it has sufficient information at this time on the relationship between formaldehyde exposure and reduced fertility to include a valuation estimate in the overall benefits analysis.

EPA concluded that, at this time, it only has sufficient information about the relationship of formaldehyde exposure and the number of cases of nasopharyngeal cancer and eye irritation to include valuation estimates of the endpoints in the quantified benefits analysis. Although uncertainty remains regarding how best to quantify formaldehyde exposure's effect on other health outcomes, EPA considers these effects to be important unquantified impacts that contribute to the overall benefits of this rule, as indicated by the ''+B'' in the various tables summarizing benefits.

Table 5 shows the number of cases avoided for an average year of regulation. The avoided cancer cases occur over the lifetimes of the individuals with exposure reductions.

TABLE 5—NUMBER OF CASES AVOIDED FOR AN AVERAGE YEAR OF REGULATION

Option	Cancer		Eye irritation	
	Lower estimate	Higher estimate	Lower estimate	Higher estimate
Option 1: Laminates Included in HWPW Definition with NAF Exemption	30	74	101,840	686,754
Option 2: Final Rule—Laminates Included in HWPW Definition after 7 Years with NAF and PF Exemption	26	65	92,218	604,155
Option 3: Platform-Specific Emissions Limits for Laminates with Reduced Testing	28	69	98,279	642,120
Option 4: Laminate Emissions Standard Consistent with CARB Discussion Draft	19	64	79,190	600,072
Option 5: Exempt All Laminates from HWPW Definition	11	27	53,730	273,758
Option 6: Fully Consistent with Current CARB ATCM	11	27	53,730	273,758

Table 6 displays the benefits for the options. The total quantified benefits of the rule are between $64 million and $186 million per year (in 2013 dollars) using a 3% discount rate for annualization, and between $26 million and $79 million per year using a 7% discount rate. The majority of the quantified benefits are attributable to reductions in cancer risk.

TABLE 6—BENEFITS OF THE OPTIONS

[Millions 2013$]

Option	3% Discount rate		7% Discount rate	
	Lower estimate	Higher estimate	Lower estimate	Higher estimate
Option 1: Laminates included in HWPW Definition with NAF Exemption	$77 + B	$226 + B	$34 + B	$105 + B
Option 2: Final Rule—Laminates included in HWPW definition after 7 Years with NAF and PF Exemption.	64 + B	186 + B	26 + B	79 + B
Option 3: Platform-Specific Emissions Limits for Laminates with Reduced Testing	71 + B	207 + B	30 + B	95 + B
Option 4: Laminate Emissions Standard Consistent with CARB Discussion Draft	48 + B	189 + B	21 + B	86 + B
Option 5: All Laminates Exempt from HWPW Definition	29 + B	82 + B	13 + B	37 + B
Option 6: Fully Consistent with Current CARB ATCM	29 + B	82 + B	13 + B	37 + B

"B" represents the unquantified health benefits

There are various reasons why the total quantified benefits may be underestimated. For example, there are a number of potential health effects that are not included in this analysis, which are represented in the table using the indicator "+B". Monetization of any health endpoint identified requires an estimated concentration-response function that can be appropriately linked for use in the economic analyses. At this time, EPA only has sufficient data to quantify the benefits of avoided cases of cancer and sensory irritation, and the benefits estimates for these two endpoints are incomplete. The estimated cancer benefits do not include avoided cases of myeloid leukemia. The estimated benefits for sensory irritation are only based on eye irritation, and do not reflect the benefits of avoiding nose and throat irritation.

4. *Costs.* The Economic Analysis estimates the incremental cost to firms located in the U.S. of complying with the requirements of the rule compared to the activities that firms are already undertaking, often in response to the CARB ATCM. The total costs by option are displayed in Table 7. Annualized costs of the rule are $38 million to $83 million per year using a 3% discount rate and $43 million to $78 million per year using a 7% discount rate. Annualized costs for the other options ranged from $87 million to $297 million per year using a 3% discount rate, and $105 million to $301 million per year using a 7% discount rate.

TABLE 7—TOTAL COSTS BY OPTION

[Millions 2013$]

Option	Annualized (3%)		Annualized (7%)	
	Low	High	Low	High
Option 1: Laminates included in hardwood plywood (HWPW) definition with NAF exemption	$155	$297	$167	$301
Option 2: Final Rule—Laminates included in HWPW definition with NAF and PF exemption	38	83	43	78
Option 3: Platform-specific emissions limits for laminates with reduced testing	97	102	114	119
Option 4: Laminate emissions standard consistent with CARB discussion draft	88	88	105	105
Option 5: All laminates exempt from HWPW definition	87	87	105	105
Option 6: Fully consistent with current CARB ATCM	124	124	142	142

Table 8 indicates the cost of the final rule (Option 2) by industry type.

TABLE 8—COSTS OF FINAL RULE BY INDUSTRY TYPE

[Millions 2013$]

Industry type	Annualized (3%)		Annualized (7%)	
	Low	High	Low	High
Accreditation Bodies	$0.01	$0.01	$0.01	$0.01
Third-Party Certifiers	0.01	0.01	0.01	0.01
Stock panel producers	2	2	2	2
Laminators	26	72	26	62
Fabricators (excluding laminators)	6	5	9	8
Wholesalers	1	1	2	2
Retailers	3	3	5	5
Total	38	83	43	78

The cost estimates for Options 1 and 2 may be overestimates, in that they underestimate the savings that may accrue to laminated product producers that switch to phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure in order to avoid the costs of TPC certification and product testing. EPA's calculations assumed that producers switching to qualified resins may incur capital costs for new equipment in order to use qualified resins, and ongoing costs (such as decreases in productivity, or increases in resin costs and product rejection rates) such that the total cost of switching resins would be equivalent to the cost of certification and testing. In reality, EPA believes that Option 1's NAF exemption and Option 2's NAF and PF exemption would result in significant cost savings for some producers. However, EPA lacked sufficient information to estimate the magnitude of such cost savings.

Furthermore, EPA may be overestimating the cost for Option 2 because the analysis does not account for potential long-term savings that may accrue as a result of setting the manufactured-by date for laminated products 7 years from the promulgation of the rule. EPA believes that the 7 year period will reduce costs because laminated product producers will be able to more efficiently evaluate different resin technologies and, where they choose to switch to a phenol-formaldehyde resin or a resin formulated with no-added formaldehyde as part of the resin cross-linking structure, to successfully implement a new resin in their production process. There may also be technological innovation during this 7 year period that will reduce the cost or remove some of the technical barriers to using qualified resins in some applications. However, EPA did not have sufficient information to estimate the savings to due efficiencies or innovation. Furthermore, the industry may be able to develop and conduct studies that support additional exemptions or changes to the rule during this 7 year period, or after that period, and apply to the Agency for an exemption of their laminated product from the definition of hardwood plywood. Again, EPA was unable to predict the cost savings that may result from such activities.

5. *Net benefits.* Net benefits are the difference between benefits and costs. The net benefits for the options are displayed in Table 9. The rule is estimated to result in quantified net benefits of −$19 million to $148 million per year using a 3% discount rate, and −$53 million to $36 million per year using a 7% discount rate. Quantified net benefits for the other options range from −$220 million to $109 million per year using a 3% discount rate and −$268 million to −$20 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects. EPA considers health benefits from avoided health effects to be potentially important non-monetized impacts that contribute to the overall net benefits of this rule, and has represented their inclusion in Table 9 using the letter ''B''.

TABLE 9—NET BENEFITS OF THE OPTIONS

[Millions 2013$]

Option	3% Discount rate		7% Discount rate	
	Lower estimate	Higher estimate	Lower estimate	Higher estimate
Option 1: Laminates included in HWPW Definition with NAF Exemption	($220) + B	$71 + B	($268) + B	($62) + B
Option 2: Final Rule—Laminates included in HWPW definition after 7 Years with NAF and PF Exemption.	($19) + B	$148 + B	($53) + B	$36 + B
Option 3: Platform-Specific Emissions Limits for Laminates with Reduced Testing	($31) + B	$109 + B	($88) + B	($20) + B
Option 4: Laminate Emissions Standard Consistent with CARB Discussion Draft	($40) + B	$101 + B	($85) + B	($20) + B
Option 5: All Laminates Exempt from HWPW Definition	($58) + B	($6) + B	($92) + B	($67) + B
Option 6: Fully Consistent with Current CARB ATCM	($95) + B	($43) + B	($130) + B	($105) + B

''B'' represents the unquantified health benefits.

The final rule (Option 2) has higher estimated net benefits than the other options. The lower estimate of quantified net benefits for the final rule are negative, but EPA believes these quantified estimates overstate costs and significantly undercount the benefits. After assessing both the costs and the benefits of the rule, and considering the unquantified cost savings and benefits, EPA has made a reasoned determination that the benefits of the rule justify its costs.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this rule have been submitted to OMB for review and approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2446.02, and the OMB Control No. 2070–0185 (Ref. 74). 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.

The new information collection activities contained in this rule are designed to assist the Agency in meeting the requirement in section 601(d) of TSCA that EPA promulgate implementing regulations in a manner that ensures compliance with the TSCA Title VI emission standards. The new information collection requirements affect firms that sell, supply, offer for sale, or manufacture (including import) hardwood plywood, particleboard, MDF, or finished goods containing these materials in the United States, as well as firms that provide testing and third-party certification or oversight services. Although firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this rule become mandatory for that firm.

Respondents/affected entities: Panel producers, fabricators, distributors, retailers, TPCs, and ABs.

Respondent's obligation to respond: Mandatory (15 U.S.C. 2697 *et seq.*).

Estimated number of respondents: 990,000 firms, including 66,000 foreign firms.

Frequency of response: On occasion.

Total estimated burden: 1.5 million hours per year when excluding burden for activities performed in the baseline; 1.7 million hours per year when including burden for activities

performed in the baseline. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $105 million per year when excluding cost for activities performed in the baseline; $138 million per year when including cost for activities performed in the baseline; with no 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)

Pursuant to sections 603 and 609(b) of the RFA, 5 U.S.C. 601 *et seq.,* EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. Summaries of the IRFA and Panel recommendations are presented in the proposed rule at 78 FR 34820.

As required by section 604 of the RFA, the EPA prepared a final regulatory flexibility analysis (FRFA) for this action (Ref. 75). The complete FRFA is available in the docket and is summarized here.

1. Need For and Objectives of the Rule. TSCA section 601(d) directs EPA to promulgate regulations to implement the formaldehyde standards for composite wood products described in TSCA section 601(b)(2). EPA is issuing this rule under TSCA Title VI to implement the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. As directed by the statute, this rule includes provisions relating to, among other things, laminated products, products made with ultra-low emitting formaldehyde or no-added formaldehyde resins, third-party testing and certification requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through provisions, including a product stockpiling prohibition.

The legal basis for the rule is TSCA section 601(d), which provides authority for the Administrator to ''promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).'' Therefore, the central objective of this rule is to ensure compliance with the TSCA Title VI formaldehyde emission standards.

2. Description and Number of Small Entities to Which the Rule Will Apply. The rule potentially affects small ABs and TPCs, as well as manufacturers (including importers), fabricators, distributors, and retailers of composite wood products. For purposes of assessing the impacts of the rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA estimates that the rule will affect approximately 922,000 small entities.

3. Projected Compliance Requirements. As directed by the statute, this rule includes provisions relating to, among other things, laminated products, products made with no-added formaldehyde resins or ultra-low emitting formaldehyde resins, third-party testing and certification requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through provisions, including a product stockpiling prohibition. This rule establishes requirements for ABs, TPCs, manufacturers (including importers), fabricators, distributors, and retailers of composite wood products.

The regulatory provisions in this rule are designed to ensure compliance with the TSCA Title VI formaldehyde emission standards while aligning, where practical, with the regulatory requirements under the CARB ATCM to reduce formaldehyde emissions from composite wood products. By aligning itself with the existing CARB requirements where practical, EPA seeks to avoid differing or duplicative regulatory requirements that would result in an increased burden on the regulated community. However, EPA deviated from the CARB ATCM where doing so would reduce burden while still ensuring compliance with the TSCA Title VI emission standards. The rule has annualized costs that are $41 million to $99 million per year less than an alternative that is fully consistent with the CARB ATCM, and benefits that are $13 million to $104 million per year higher.

4. Classes of Small Entities Subject to the Compliance Requirements. Small entities include small businesses, small organizations, and small governmental jurisdictions. The small businesses that are potentially directly regulated by this rule are ABs, TPCs, manufacturers (including importers), fabricators, distributors, or retailers of composite wood products. The small organizations that are potentially directly regulated by the rule are small ABs and TPCs. No small governments are expected to be directly regulated by the rule.

5. Professional Skills Needed to Comply. ABs must assess TPCs to determine whether they are eligible for accreditation. Product ABs are responsible for ensuring that a TPC has a process in place to verify the accuracy of the formaldehyde quarterly and quality control tests, and that the TPC has a process in place to monitor panel producer quality assurance programs, and conduct independent inspections of panel producers, their quality control testing facilities and their laboratories. Laboratory ABs are responsible for verifying that the TPC laboratory is experienced and capable of conducting formaldehyde emissions tests. These activities are the part of the basic function of ABs, so qualified ABs should already have the skills needed to conduct them. ABs must also submit an application to EPA and enter into a recognition agreement, keep records, and submit notifications and an annual report, but these activities do not require any special skills.

TPCs must conduct inspections of composite wood products and properly train and supervise inspectors to inspect composite wood products, and have demonstrated experience in performing or verifying formaldehyde emissions testing on composite wood products. TPCs must also verify that each panel producer has adequate quality assurance and quality control procedures and inspect each panel producer, its products, and its records at least quarterly. These activities are the part of the basic function of TPCs, so qualified TPCs should already have the skills needed to conduct them. TPCs must also submit an application to EPA, keep records, and submit notifications and an annual report, but these activities do not require any special skills.

Each panel producer must designate a person as quality control manager with adequate experience and/or training to

be responsible for formaldehyde emission quality control. EPA has not incorporated minimum education, experience, or training requirements for this position, but experience in the wood products industry or a degree in chemistry or a related field might provide the skills needed to comply with the requirements.

A panel producer must be able to follow sampling and handling procedures for the material that is to be tested. However, those procedures must be described in the facility's quality control manual, and specified skills should not be needed to follow the written procedures.

Each panel producer must also designate a quality control facility for conducting quality control formaldehyde testing, and the quality control facility must have quality control employees with adequate experience and/or training to conduct accurate chemical quantitative analytical tests. But instead of performing these functions themselves, panel producers have the option of hiring an accredited TPC or a contract laboratory to fulfill these requirements.

To obtain product certification, a panel producer must apply to an accredited TPC, and must provide information and notifications to the TPC. Finally, manufacturers, fabricators, distributors, or retailers of composite wood products must maintain records. None of these activities requires any special skills.

6. Other Federal Rules that may Duplicate, Overlap, or Conflict with the Rule. HUD has regulations governing formaldehyde emission levels from plywood and particleboard materials installed in manufactured homes. (See 24 CFR 3280.308.) However, TSCA Title VI establishes specific formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard and does not provide EPA with the authority to modify these standards. Furthermore, the Formaldehyde Standards for Composite Wood Products Act, which includes TSCA Title VI, directs HUD to revise their regulations to ensure that they reflect the emission standards in TSCA Title VI. And the HUD regulations do not deal with the other elements addressed in these implementing regulations (where EPA does have the authority to make determinations) such as laminated products, products made with no-added formaldehyde resins or ultra-low emitting formaldehyde resins, testing requirements, chain of custody documentation, and product inventory sell-through provisions. Therefore, the regulatory provisions for which EPA has flexibility in implementing the statute do not duplicate, overlap, or conflict with any other Federal rules.

7. Potential Economic Impacts on Small Entities. Of the approximately 922,000 small entities affected by the rule, almost 910,000 (about 99 percent) are expected to have costs impacts that are less than one percent of their revenues, nearly 7,000 entities (less than 1 percent) are expected to experience impacts at levels between one and three percent of their revenue, and 5,000 entities (less than 1 percent) are expected to incur costs exceeding three percent of their revenues.

Many of the entities with cost impacts above 1 percent of their revenues are fabricators, wholesalers, and retailers with annualized costs less than $250 (*i.e.,* they are firms with annual revenues below $25,000). These entities account for 98 percent of those with cost impacts that are between 1 and 3 percent and 100 percent of those with cost impacts that exceed 3 percent.

8. Small Business Advocacy Review Panel. As required by section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The Panel solicited input on all aspects of the rule. Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the FRFA. It is important to note that the Panel's findings and discussion were based on the information available at the time the final report was prepared (Ref. 23). EPA has continued to conduct analyses relevant to the rule. The Panel's most significant findings and recommendations on the TSCA Title VI implementing regulations are discussed in the preamble to the proposed rule and in the FRFA for this action.

9. Alternatives incorporated into the rule. Over the course of this rulemaking, EPA considered alternatives for various provisions of the rule. EPA made a concerted effort to keep the costs and burdens associated with this rule as low as possible while still ensuring compliance with the TSCA Title VI emission standards. In developing the rule, EPA considered the statutory requirements and the benefits from protection of human health and the environment, as well as the compliance costs imposed by the rule, both in general and on small entities. EPA took a number of steps to reduce the economic impact that might be imposed by this rule, on both small and large entities, where doing so was consistent with the statutory mandate. For example, EPA established a different compliance schedule for laminated product producers by setting the manufactured-by date for laminated products at 7 years after promulgation. As another example, EPA has simplified compliance requirements by allowing laminated product producers, wholesalers, and retailers that do not import products to use invoices, bills of lading, or comparable documents to fulfil their recordkeeping and chain-of-custody obligations. The emission standards are performance standards rather than design standards. And the rule does not regulate construction firms that are renovating, remodeling, or selling buildings from the definitions of fabricator and retailer. These provisions are not limited to small entities but, given the number of small entities in the affected industries, they will benefit many small entities.

EPA's Economic Analysis analyzed options with different provisions for the definition of hardwood plywood; the emission standards for laminated products; the testing and certification requirements for laminated products; the implementation dates for laminated product emissions, testing and certification requirements; and the chain of custody and recordkeeping requirements. Although EPA did not have sufficient information to analyze and quantify the cost and burden reductions resulting from many of the provisions it adopted, they still reduce the impacts of the rule. Some of the steps that EPA took include the following, which are described in more detail in the FRFA for this action. These steps include:

- Aligning with the CARB ATCM where practical.
- Defining hardwood plywood to exempt laminated products made with phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure and compliant platforms, and allowing laminated products made into component parts to take advantage of the exemption.
- Establishing the manufactured-by date for laminated products at 7 years after promulgation.
- Reducing recordkeeping for non-manufacturers.
- Reducing testing for NAF and ULEF products.
- Not requiring retailers to relabel products that they divide or repackage.

- Reducing quality control testing for small hardwood plywood production.
- Reducing quality control testing for certain panel producers with consistent operations.
- Allowing grouping of products and product types for testing.
- Defining hardboard based on industry standards.
- Extending the manufactured-by date for the sell-through provisions.
- Allowing alternate test methods for quality control testing.
- Not requiring recordkeeping for most exempt products.
- Allowing TPCs approved by CARB to certify products under TSCA Title VI for two years after the publication of the final rule.
- Allowing reciprocity for CARB-approved TPCs.
- Allowing representative emission levels to be used to demonstrate test method equivalence.
- Creating a *de minimis* exception.
- Not requiring retention of tested lots while awaiting the test results.

10. Alternatives considered but not incorporated into the rule. EPA also considered and rejected several alternatives for the regulation of laminated products, which could have reduced the economic impacts of the rule on small entities. For the reasons described below, these alternatives are not consistent with the statutory objectives and thus are not incorporated in the final rule. Additional information on the alternatives that EPA considered is presented elsewhere in this notice.

a. *Complete exemption of laminated products from the definition of hardwood plywood.* This alternative is consistent with the current CARB ATCM. However, the rulemaking record contains ample evidence that some laminated products can have high formaldehyde emissions. CARB provided data on laminated product testing conducted in cooperation with the American Home Furnishings Alliance (AHFA). CARB tested 16 different sets of samples, each consisting of the same type of MDF or particleboard panel in three different states: Raw; with a veneer attached with a urea-formaldehyde resin; and with a stain or finish applied to the veneer. In most cases, the laminated products emitted more formaldehyde than was emitted by the platforms, likely due to the resin used to affix the veneer. In several cases, the formaldehyde emissions from the laminated product were considerably higher than the emissions from the platform.

Considering the laminated products in the CARB/AHFA data set without stain or finish (which is how the TSCA Title VI emission standards are applied), only one of the 16 samples had emissions below 0.05 ppm, the standard for hardwood plywood. For 13 of 16 samples, the emissions from the veneered product were higher than from the corresponding raw platform, with increases ranging from 0.04 ppm to 1.17 ppm. Laminated product often had emissions that were an order of magnitude higher than the particleboard or MDF platforms that they were made from. Eleven of the 16 samples had emissions above the standard for their platform type. Five of the eight samples made with MDF exceeded the 0.11 ppm Phase II standard for MDF, with emissions ranging from 0.17 ppm to 1.35 ppm. Six of the eight samples made with particleboard exceeded the 0.09 ppm Phase II standard for particleboard, with emissions ranging from 0.13 to 1.29 ppm.

EPA reads TSCA Title VI to include laminated products as hardwood plywood unless EPA can make the case, based on available and relevant information, that they should be excluded. EPA finds that the CARB/AHFA data set provides ample evidence that the process of lamination with urea-formaldehyde resins generally increases formaldehyde emissions from composite wood products. Therefore, completely exempting laminated products from the definition of hardwood plywood would not be consistent with the statutory objectives.

b. *Emission standard of 0.13 ppm for laminated products with no testing or certification.* This alternative is consistent with CARB's March 2014 discussion draft. The record, especially the CARB/AHFA data set, demonstrates that some laminated products have high formaldehyde emissions, so a requirement that the platform be compliant does not ensure that a laminated product made with urea-formaldehyde resin will also be compliant with a 0.13 ppm standard. While thirteen of the raw platforms in the CARB/AHFA data set complied with the relevant Phase II emissions standard, only 5 of the 16 veneered samples without stain or finish met the 0.13 ppm level. Nine of the 16 samples had emissions ranging from 0.17 to 1.35 ppm. For 13 of 16 samples, the emissions from the veneered product were higher than from the raw platform. These increases ranged from 0.04 ppm to 1.17 ppm, and represented an increase of 57 percent to 2,533 percent compared to the platform emissions.

Given the CARB/AHFA data set, with formaldehyde emissions from most veneered samples exceeding 0.13 ppm, EPA is unable to find that this approach is consistent with the statutory objectives. To the contrary, this data set provides evidence that without some sort of active effort to control formaldehyde emissions, whether through the use of phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure or some emissions testing, it is likely that many laminated products will exceed a 0.13 ppm emission standard. Therefore, a 0.13 ppm emission standard for laminated products with no testing or certification would not be consistent with the statutory objectives.

c. *Platform-specific emission standards, annual testing, no certification.* Under this alternative, unfinished laminated products would have to meet the emissions limit for the type of platform they are made with (0.05 ppm for veneer core, 0.09 ppm for particleboard, 0.11 ppm for MDF, and 0.13 ppm for thin MDF). An annual emissions test would be required, but TPC certification would not be required.

The record, especially the CARB/AHFA data set, demonstrates that some laminated products have high formaldehyde emissions, so a requirement that the platform be compliant does not, by itself, ensure that a laminated product made with urea-formaldehyde resin will also be compliant with the platform emission standard. While 13 of the 16 platforms met the Phase II emission standards, only 5 of 16 of the veneered products without stain or finish met the emission standard for their platform.

Furthermore, an annual emission test may not be sufficient to ensure compliance for products, particularly those made with urea-formaldehyde resin. Several public commenters were concerned about the effect of reduced testing requirements for laminated products. One questioned whether an annual test could account for variation in production processes and seasonal variations. Another claimed that it is inconceivable that an effective and reliable enforcement scheme could be developed that hinged on a single yearly test. Yet another stated that annual testing could be misleading, because the testing may not be accurate or representative of average emissions. EPA agrees that more than one test per year is important to ensure that laminated products that are not made with phenol-formaldehyde resins or resins formulated with no-added formaldehyde as part of the resin cross-linking structure comply with the emission standard.

EPA also believes that TPCs have an important role to play in ensuring

compliance. Various factors (such as resin system, core type, core resin type, veneer type, and number of plies) could influence formaldehyde emissions from hardwood plywood, including laminated products. EPA is allowing TPCs to approve the grouping of products with similar formaldehyde emission characteristics for quarterly and quality control testing. EPA believes that the TPC, working in conjunction with the platform producer, is in the best position to select the product(s) to be tested in order to determine whether production at the facility is in compliance with the emission standards.

Therefore, a platform-specific emission standard for laminated products with annual testing but no certification would not be consistent with the statutory objectives.

d. *Conclusion.* On the basis of information currently available to the Agency, EPA has concluded that these alternative options are not consistent with TSCA Title VI's statutory objective to reduce formaldehyde emissions from composite wood products.

In addition, EPA is preparing a Small Entity Compliance Guide to help small entities comply with this rule. The guide or guides will have information to assist small TPCs, ABs, fabricators, panel producers, importers, distributors, and retailers. After the date that this rule's requirements take effect the guide or guides will be available on EPA's Web site *http://www.epa.gov/formaldehyde.*

D. Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared a written statement required under section 202 of UMRA (Ref. 76). The statement is included in the docket for this action and briefly summarized here.

1. *Authorizing legislation.* This rule is issued under the authority of section 601 of TSCA, 15 U.S.C. 2697.

2. *Cost-benefit analysis.* The Economic Analysis (Ref. 3) presents the costs of the rule as well as various regulatory options and is summarized in Unit VI.A. The rule is calculated to result in a total cost of $253 million to $359 million in the first year, although this is likely an overestimate. (The rule allows laminators 7 years before they must begin using NAF or PF resins and compliant platforms, or have their products tested and certified. EPA's analysis assumes that laminated product producers that decide to switch to qualified resins would incur all the transition costs in the first year, while in reality those costs are likely to be spread over the 6 year period.) The subsequent year costs are lower, so that the total annualized cost of this rule is $38 million to $83 million per year when using a 3 percent discount rate and $43 million to $78 million per year using a 7 percent discount rate. When adjusted for inflation, the $100 million UMRA threshold is equivalent to approximately $153 million in 2013 dollars. Thus, the first cost of the rule to the private sector and State, local, and Tribal governments in the aggregate may exceed the inflation-adjusted UMRA threshold.

This rule will reduce exposures to formaldehyde, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits (due to avoided incidence of nasopharyngeal cancer and eye irritation) are $64 million to $186 million per year using a 3% discount rate, and $26 million to $79 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.

Net benefits are the difference between benefits and costs. The rule is estimated to result in quantified net benefits of −$19 million to $148 million per year using a 3% discount rate, and −$53 million to $36 million per year using a 7% discount rate. EPA considers unquantified cost savings for laminated product producers (from the NAF and PF exemption and the 7 year period to meet the emission standards) as well as the additional unquantified health benefits to be potentially important non-monetized impacts that contribute to the overall net benefits of this rule.

3. *State, local, and Tribal government input.* Consistent with the intergovernmental consultation provisions of section 204 of the UMRA EPA has consulted with governmental entities affected by this rule. With the assistance of the National Conference of State Legislatures, EPA consulted with state environmental health directors, who were generally supportive of EPA's efforts. And EPA has met with officials from the state of California on numerous occasions to discuss aspects of the CARB ATCM and its implementation. California is very supportive of EPA's efforts to promulgate regulations to implement national composite wood product formaldehyde emission standards that are modeled on the CARB ATCM.

4. *Least burdensome option.* Consistent with section 205, EPA has identified and considered a reasonable number of regulatory alternatives. TSCA Title VI establishes specific formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard and does not provide EPA with the authority to modify these standards. The statute further directs EPA to promulgate implementing regulations that address elements such as laminated products, products made with ultra low-emitting formaldehyde resins, products made with no-added formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through provisions. EPA has considered a number of regulatory alternatives for regulating laminated products, as described in Unit III and elsewhere in this Unit, as well as in the Economic Analysis (Ref. 3). The final rule has the lowest cost of the alternatives that EPA considered. Furthermore, the available information indicates that laminated products made with urea-formaldehyde resins can have high formaldehyde emissions. Therefore, on the basis of information currently available to the Agency, EPA has concluded that the alternative options for laminated products would not be consistent with the statutory objective to reduce formaldehyde emissions from composite wood products. After assessing both the costs and the benefits of the rule (both quantified and unquantified), EPA has determined that the rule is the least burdensome option that is consistent with TSCA Title VI's objective.

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

E. Executive Order 13132: Federalism

This 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). The rule would not regulate tribal governments directly, it would regulate

entities that accredit TPCs, certify panel producers, or manufacture (including import), fabricate, distribute, or sell composite wood products. Governments do not typically engage in these activities. Tribal governments do not typically engage in these activities. 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 subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and the EPA believes that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects on children. This action's health and risk assessments are described in Units I.F. and II.A. and contained in the economic analysis (Ref. 3). As described therein, exposure to formaldehyde may cause disproportionate effects on children compared to adults both in terms of cancer risk, and respiratory effects. The rule itself will not have disproportionally high and adverse effects on children. Rather, these standards would reduce emissions of formaldehyde from composite wood products for individuals of all ages that are exposed and children may accrue higher benefits from the exposure reductions compared to adults.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have any adverse effect on the supply, distribution, or use of energy. Further, this rule is not likely to have any adverse energy effects because it regulates formaldehyde emissions from composite wood products and does not require any action related to the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards, many of which EPA is directed to use by TSCA Title VI. Technical standards identified in the statute include the two quarterly test methods, ASTM E1333–96 and ASTM D6007–02, a quality control test method, ASTM D5582–00, and various standards that define specific composite wood products, such as ASTM D–5456–06 (Structural Composite Lumber Products), ASTM D–5055–05 (Prefabricated Wood I-Joists), ANSI/AITC A190.1 (Structural Glued Laminated Timber), ANSI/HPVA HP–1–2009 (Hardwood and Decorative Plywood), ANSI A208.2–2009 (Medium Density Fiberboard), ANSI A208.1–2009 (Particleboard), PS 1–07 (Structural Plywood), and PS 2–04 (Wood-Based Structural-Use Panels).

In addition, EPA has identified other voluntary consensus standards and incorporated them into this action. These include standards for accreditation and certification (ISO/IEC 17011, ISO/IEC 17020, ISO/IEC 17025, and ISO/IEC 17065), as well as the revised quarterly test method, ASTM E1333–10, and standards that define hardboard, ANSI A135.4, ANSI A135.5, ANSI A135.6, and ANSI 135.7. EPA is allowing certain alternative quality control test methods that are incorporated in voluntary consensus standards, EN 717–2 (gas analysis), EN 120 (perforator), and JIS A 1460 (24-hour desiccator).

EPA is using voluntary consensus standards issued by the International Organization for Standardization, ASTM International, the American National Standards Institute, the National Institute of Standards and Technology, the European Committee for Standardization, Georgia Pacific Chemicals LLC, and the Japanese Standards Association. Copies of the standards referenced in the regulatory text have been placed in the docket for this rule. See Unit IV for information on how to obtain copies of these standards from other sources.

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

EPA has determined that 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, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The results of this evaluation are contained in the Economic Analysis (Ref. 3).

The Economic Analysis, described in Unit VI.A, monetizes the benefits from reducing the number of cases of nasopharyngeal cancer and sensory irritation and includes an environmental justice analysis that expands on the primary benefits analysis by analyzing the monetized impacts specifically for minority and low-income populations. Results indicate that disaggregation of total benefits by population groups leads to variation in the range of individual benefits, by minority population. The affected Non-Hispanic White population accounts for 63% of the total affected population, and accrues 59% of the quantified benefits. In comparison, for minority populations the quantified benefits equal or exceed their share of the total population. Minority populations represent about 37% of the individuals affected by the rule and are estimated to accrue about 41% of the rule's quantified benefits. The affected Non-Hispanic Black population account for 11% of the total affected population, accrue 12% of the quantified benefits. The affected Hispanic population account for 17% of the total affected population, and accrue 19% of the quantified benefits. The affected Non-Hispanic American Indian or Alaska Native population account for 0.7% of the total affected population, accrue 0.7% of the quantified benefits. The affected low-income population account for 15% of the total affected population and accrue 18% of the quantified benefits.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* 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 a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: July 27, 2016.

Gina McCarthy,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended by adding part 770 to read as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

Subpart A—General Provisions

Sec.

770.1 Scope and applicability.
770.2 Effective dates.
770.3 Definitions.
770.4 Exemption from the hardwood plywood definition for certain laminated products.
770.5 Prohibited acts.

Subpart B—EPA TSCA Title VI Third-Party Certification Program

770.7 Third-party certification.
770.8 Applications, notifications, and reports.

Subpart C—Composite Wood Products

770.10 Formaldehyde emission standards.
770.12 Stockpiling.
770.15 Composite wood product certification.
770.17 No-added formaldehyde-based resins.
770.18 Ultra low-emitting formaldehyde resins.
770.20 Testing requirements.
770.21 Quality control manual, facilities, and personnel.
770.22 Non-complying lots.
770.24 Samples for testing.
770.30 Importers, fabricators, distributors, and retailers.
770.40 Reporting and recordkeeping.
770.45 Labeling.

Subpart D—Incorporation by Reference

770.99 Incorporation by reference.

Authority: 15 U.S.C. 2697(d).

Subpart A—General Provisions

§ 770.1 Scope and applicability.

(a) This part contains formaldehyde emission standards, testing and certification provisions, and other requirements for the manufacture (including import), distribution, and sale of composite wood products, component parts that contain composite wood products, and finished goods that contain composite wood products.

(b) This part applies to:

(1) Laboratory Accreditation Bodies (ABs) and Product ABs that are accrediting third-party certifiers (TPCs) for TSCA Title VI (15 U.S.C. 2697(d)) purposes and those that wish to commence accrediting TPCs for TSCA Title VI purposes.

(2) TPCs that are certifying composite wood products for TSCA Title VI compliance and those that wish to commence certifying composite wood products for TSCA Title VI compliance.

(3) Any composite wood products, and component parts or finished goods containing these materials, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States, including composite wood products used or installed in manufactured housing.

(c) Subparts B, C, and D of this part do not apply to the following:

(1) Any finished good that has previously been sold or supplied to an end user, an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale. For example, subparts B, C, and D of this part do not apply to antiques or secondhand furniture.

(2) Hardboard.

(3) Structural plywood, as specified in PS 1–07, Voluntary Product Standard—Structural Plywood (incorporated by reference, see § 770.99).

(4) Structural panels, as specified in PS 2–04, Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99).

(5) Structural composite lumber, as specified in ASTM D5456–06, Standard Specification for Evaluation of Structural Composite Lumber Products (incorporated by reference, see § 770.99).

(6) Oriented strand board.

(7) Glued laminated lumber, as specified in ANSI/AITC A190.1–2002, Structural Glued Laminated Timber (incorporated by reference, see § 770.99).

(8) Prefabricated wood I-joists, as specified in ASTM D5055–05, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists (incorporated by reference, see § 770.99).

(9) Finger-jointed lumber.

(10) Wood packaging, including pallets, crates, spools, and dunnage.

(11) Composite wood products used inside the following:

(i) New vehicles (other than recreational vehicles) that are constructed entirely from new parts and that have never been the subject of a retail sale or registered with the applicable State or other governmental agency.

(ii) New rail cars.

(iii) New boats.

(iv) New aerospace craft.

(v) New aircraft.

(d) The emission standards in § 770.10 do not apply to windows that contain composite wood products, if the windows contain less than five percent by volume of composite wood products, combined, in relation to the total volume of the finished window.

(e) The emission standards in § 770.10 do not apply to exterior doors and garage doors that contain composite wood products, if:

(1) The doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(2) The doors contain less than three percent by volume of composite wood products, combined, in relation to the total volume of the finished exterior door or garage door.

§ 770.2 Effective dates.

(a) This rule is effective February 10, 2017.

(b) Laboratory and Product ABs that wish to accredit TPCs for TSCA Title VI purposes may apply to EPA beginning February 10, 2017 to become recognized. Laboratory and Product ABs must be recognized by EPA before they begin to provide and at all times while providing TSCA Title VI accreditation services.

(c) TPCs that are not approved by the California Air Resources Board (CARB) that wish to provide TSCA Title VI certification services may apply to EPA beginning February 10, 2017 to become recognized. TPCs must be recognized by EPA and comply with all of the applicable requirements of this part before they begin to provide and at all times while providing TSCA Title VI certification services.

(d) Notwithstanding any other provision of this part, TPCs that are approved by CARB to certify composite wood products have until December 12, 2018 to become accredited by an EPA TSCA Title VI AB(s) pursuant to the requirements of this part. During this two-year transition period, existing CARB-approved TPCs and CARB TPCs approved during this transition period may carry out certification activities under TSCA Title VI, provided that they remain approved by CARB and comply with all aspects of this part other than the requirements of § 770.7(c)(1)(i) and (ii) and (c)(2)(iii) and (iv). After the two-year transition period, CARB-approved TPCs may continue to certify composite wood products under TSCA Title VI provided the TPC maintains its CARB approval, follows the requirements under this part, submits to EPA documentation from CARB supporting their eligibility for reciprocity and has received EPA recognition as an EPA TSCA Title VI TPC. All TPCs that are certifying products as compliant with TSCA Title VI, both during and after the transition period, are subject to enforcement actions for any violations of TSCA Title VI or these regulations.

(e) After December 12, 2017, all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of composite wood products, and component parts or finished goods containing these materials, must comply with this part, subject to the following:

(1) After December 12, 2017, laminated product producers must comply with the requirements of this part that are applicable to fabricators.

(2) After December 12, 2023, producers of laminated products must comply with the requirements of this part that are applicable to hardwood

plywood panel producers (in addition to the requirements of this part that are applicable to fabricators) except as provided at § 770.4.

(3) After December 12, 2023, producers of laminated products that, as provided at § 770.4, are exempt from the definition of ''hardwood plywood'' must comply with the recordkeeping requirements in § 770.40(c) and (d) (in addition to the requirements of this part that are applicable to fabricators).

(4) Composite wood products manufactured (including imported) before December 12, 2017 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.

§ 770.3 Definitions.

For the purposes of this part, the following definitions apply:

Accreditation Body or *AB* means an organization that provides an impartial verification of the competency of conformity assessment bodies or TPCs.

Agent for Service means an entity designated by a TPC or AB to receive legal documents on their behalf.

Article means a manufactured item which:

(1) Is formed to a specific shape or design during manufacture;

(2) Has end use functions dependent in whole or in part upon its shape or design during the end use; and

(3) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in 19 CFR 12.120(a)(2), except that fluids and particles are not considered articles regardless of shape or design.

Assessment means a process to include an on-site review undertaken by an AB to assess the competence of all operations of a conformity assessment body and TPC, based on particular standard(s) and/or other normative documents for a defined scope of accreditation, as defined in ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99).

Bundle means more than one composite wood product, component part, or finished good fastened together for transportation or sale.

Combination core means a platform for making hardwood plywood or laminated products that consists of a combination of layers of veneer and particleboard or medium density fiberboard.

Component part means an object other than a panel that contains one or more composite wood products and is used in the construction or assembly of finished goods. Component parts that are sold directly to consumers are considered finished goods.

Composite core means a platform for making hardwood plywood or laminated products that consists of particleboard and/or medium density fiberboard, or combination core.

Composite wood product means hardwood plywood made with a veneer or composite core, medium-density fiberboard, and particleboard.

Distributor means any person or entity to whom a composite wood product, component part, or finished good is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers and retailers are not distributors.

Engineered veneer means a type of veneer that is created by dyeing and gluing together leaves of veneer in a mold to produce a block. The block is then sliced into leaves of veneer with a designed appearance that is highly repeatable.

EPA TSCA Title VI Laboratory Accreditation Body or *EPA TSCA Title VI Laboratory AB* means an AB that has a recognition agreement with EPA under the EPA TSCA Title VI Third-Party Certification Program, accredits a TPC's testing laboratory or contract testing laboratory to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part and the formaldehyde test methods used to comply with this part, and assesses the testing laboratory's conformance to ISO/IEC 17020:2012(E) (incorporated by reference, see § 770.99) in order to perform laboratory testing services.

EPA TSCA Title VI Product Accreditation Body or *EPA TSCA Title VI Product AB* means an AB that has a recognition agreement with EPA under the EPA TSCA Title VI Third-Party Certification Program, accredits a TPC to ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include composite wood products and this part, and assesses the TPC's conformance to ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99) in order to perform product certification.

EPA TSCA Title VI Third-Party Certifier or *EPA TSCA Title VI TPC* means a conformity assessment body that provides both product certification services and laboratory testing services (either directly or through contracted services), is accredited by an EPA TSCA Title VI Product AB and an EPA TSCA Title VI Laboratory AB (unless the laboratory testing services are contracted to a laboratory accredited by an EPA TSCA Title VI Laboratory AB), and is recognized by EPA pursuant to § 770.7(c).

Fabricator means a person or entity who incorporates composite wood products into component parts or into finished goods. This includes laminated product producers, but persons or entities in the construction trades are not fabricators by renovating or remodeling buildings.

Finished good means any good or product, other than a panel, that contains hardwood plywood (with a veneer or composite core), particleboard, or medium-density fiberboard and that is not a component part or other part used in the assembly of a finished good. Site-built buildings or other site-built real property improvements are not considered finished goods.

Hardboard means a composite panel composed of cellulosic fibers, consolidated under heat and pressure in a hot press by: A wet process; or a dry process that uses a phenolic resin, or a resin system in which there is no formaldehyde as part of the resin cross-linking structure; or a wet formed/dry pressed process; and that is commonly or commercially known, or sold, as hardboard, including any product conforming to one of the following ANSI standards: Basic Hardboard (ANSI A135.4–2012) (incorporated by reference, see § 770.99), Prefinished Hardboard Paneling (ANSI A135.5–2012) (incorporated by reference, see § 770.99), Engineered Wood Siding (ANSI A135.6–2012) (incorporated by reference, see § 770.99), or Engineered Wood Trim (ANSI A135.7–2012) (incorporated by reference, see § 770.99). There is a rebuttable presumption that products emitting more than 0.06 ppm formaldehyde as measured by ASTM E1333–10 (incorporated by reference, see § 770.99) or ASTM D6007–02 (incorporated by reference, see § 770.99) are not hardboard.

Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP–1–2009 (incorporated by reference, see § 770.99)) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS 1–07, Voluntary Product Standard—Structural Plywood (incorporated by reference, see § 770.99), or PS 2–04, Voluntary Product

Standard—Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99). In addition, hardwood plywood includes laminated products except as provided at § 770.4.

Importer means any person or entity who imports composite wood products, component parts, or finished goods into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States pursuant to 15 U.S.C. 2612(a)(1)). Importer includes:

(1) The entity primarily liable for the payment of any duties on the products; or

(2) An authorized agent acting on the entity's behalf.

Intended for interior use means intended for use or storage inside a building or recreational vehicle, or constructed in such a way that it is not suitable for long-term use in a location exposed to the elements. Windows, doors, and garage doors with at least one interior-facing side are intended for interior use.

Laboratory Accreditation Body or *Laboratory AB* means an AB that accredits conformity assessment body testing laboratories.

Laminated product means a product in which a wood or woody grass veneer is affixed to a particleboard core or platform, a medium-density fiberboard core or platform, or a veneer core or platform. A laminated product is a component part used in the construction or assembly of a finished good. In addition, a laminated product is produced by either the fabricator of the finished good in which the product is incorporated or a fabricator who uses the laminated product in the further construction or assembly of a component part.

Laminated product producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) laminated products on the premises. Laminated product producers are fabricators and, after December 12, 2023, laminated product producers are also hardwood plywood panel producers except as provided at § 770.4.

Lot means the panels produced from the beginning of production of a product type until the first quality control test; between one quality control test and the next; or from the last quality control test to the end of production for a particular product type.

Medium-density fiberboard means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2–2009 (incorporated by reference, see § 770.99)).

No-added formaldehyde-based resin means a resin formulated with no added formaldehyde as part of the resin crosslinking structure in a composite wood product that meets the emission standards in § 770.17(c).

Non-complying lot means any lot of composite wood product represented by a quarterly test value or quality control test result that indicates that the lot exceeds the applicable standard for the particular composite wood product in § 770.10(b). A quality control test result that exceeds the QCL is considered a test result that indicates that the lot exceeds the applicable standard. Future production of the product type(s) represented by a failed quarterly test are not considered certified and must be treated as a non-complying lot until the product type(s) are re-qualified through a successful quarterly test.

Panel means a thin (usually less than two inches thick), flat, usually rectangular piece of particleboard, medium-density fiberboard or hardwood plywood. Embossing or imparting of an irregular surface on the composite wood products by the original panel producer during pressing does not remove the product from this definition. Cutting a panel into smaller pieces, without additional fabrication, does not make the panel into a component part or finished good. This does not include items made for the purpose of research and development, provided such items are not sold, supplied, or offered for sale.

Panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products on the premises.

Phenol-formaldehyde resin means a resin that consists primarily of phenol and formaldehyde and does not contain urea-formaldehyde.

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1–2009 (incorporated by reference, see § 770.99)). Particleboard does not include any product specified in PS 2–04, Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99).

Product Accreditation Body or *Product AB* means an AB that accredits conformity assessment bodies who perform product certification.

Product type means a type of composite wood product, or group of composite wood products, made by the same panel producer with the same resin system that differs from another product type based on panel composition and formaldehyde emission characteristics. Grouped products must have similar formaldehyde emission characteristics and their emissions must fit the same correlation curve or linear regression.

Production line means a set of operations and physical industrial or mechanical equipment used to produce a composite wood product in one facility utilizing the same or similar equipment and quality assurance and quality control procedures.

Purchaser means any panel producer, importer, fabricator, distributor, or retailer that acquires composite wood products, component parts, or finished goods for purposes of resale in exchange for money or its equivalent.

Quality control limit or *QCL* means the value from the quality control method test that is the correlative equivalent to the applicable emission standard based on the ASTM E1333–10 method (incorporated by reference, see § 770.99).

Reassessment means an assessment, as described in sections 7.5 to 7.11 of ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99), except that experience gained during previous assessments shall be taken into account.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projections;

(3) Self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Retailer means any person or entity that sells, offers for sale, or supplies directly to consumers composite wood products, component parts or finished goods that contain composite wood products, except that persons or entities in the construction trades are not considered retailers by selling, renovating, or remodeling buildings.

Resin system means type of resin used, including but not limited to urea-formaldehyde, soy, phenol-formaldehyde, or melamine-urea-formaldehyde.

Scavenger means a chemical or chemicals that can be applied to resins or composite wood products either during or after manufacture and that react with residual or excess formaldehyde to reduce the amount of

formaldehyde that can be emitted from composite wood products.

Shipping quality control limit means a quality control limit that is developed in conjunction with an EPA TSCA Title VI TPC that is based on panels prior to shipment rather than immediately after manufacturing.

Stockpiling means manufacturing or purchasing composite wood products, whether in the form of panels or incorporated into component parts or finished goods, between July 7, 2010 and June 12, 2017 at an average rate at least 20% greater than the average rate of manufacture or purchase during the 2009 calendar year for the purpose of circumventing the emission standards and other requirements of this subpart.

Thin medium-density fiberboard means medium-density fiberboard that has a thickness less than or equal to 8 millimeters or 0.315 inches.

Third-party certifier or *TPC* means a conformity assessment body that provides both product certification services and laboratory testing services (either directly or through contracted services).

TPC laboratory means a laboratory or contract laboratory of an EPA TSCA Title VI TPC that is accredited by an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99), and whose inspection activities are in conformance with ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

Surveillance On-Site Assessment means a set of on-site activities that are less comprehensive than reassessment, to monitor the continued fulfilment by accredited conformance assessment bodies of requirements for accreditation, as described in sections 7.5 to 7.11 of ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99).

Ultra low-emitting formaldehyde resin means a resin in a composite wood product that meets the emission standards in § 770.18(c).

Veneer means a sheet of wood or woody grass with a maximum thickness of 6.4 millimeters (¼ inch) that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm; including engineered veneer.

Veneer core means a platform for making hardwood plywood or laminated products that consists of veneer.

Woody grass means a plant of the family *Poaceae* (formerly *Gramineae*) with hard lignified tissues or woody parts.

§ 770.4 Exemption from the hardwood plywood definition for certain laminated products.

(a) *Current exemptions.* The definition of the term ''hardwood plywood'' in § 770.3 does not include:

(1) Laminated products made by attaching a wood or woody grass veneer with a phenol-formaldehyde resin to a platform that has been manufactured in compliance with this part (including either certified in accordance with § 770.15, manufactured with no-added formaldehyde-based resins under § 770.17, or manufactured with ultra low-emitting formaldehyde-based resins under § 770.18).

(2) Laminated products made by attaching a wood or woody grass veneer with a resin formulated with no-added formaldehyde as part of the resin cross-linking structure to a platform that has been manufactured in compliance with this part (including either certified in accordance with § 770.15, manufactured with no-added formaldehyde-based resins under § 770.17, or manufactured with ultra low-emitting formaldehyde-based resins under § 770.18).

(b) *Rulemaking petitions for exemption.* (1) Any person may petition the Agency to initiate a rulemaking for additional exemptions for laminated products from the definition of the term ''hardwood plywood,'' pursuant to 15 U.S.C. 2697(a)(3)(C)(i)(I).

(2) Each petition should provide all available and relevant information, including studies conducted and formaldehyde emissions data, and should be submitted to: Director, National Program Chemicals Division, Office of Pollution Prevention and Toxics (MC 7404T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460–001.

(3) EPA will promptly review each submitted petition and, where appropriate, publish a proposed rule in the **Federal Register** based on the petition and provide a public comment period of generally 30 days before taking a final action.

§ 770.5 Prohibited acts.

(a) Failure or refusal to comply with any requirement of TSCA section 601 (15 U.S.C. 2697) or this part is a violation of TSCA section 15 (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this part, is a violation of TSCA section 15 (15 U.S.C. 2614).

(c) Making false or misleading statements in any statement, certification, or record required by this part is a violation of TSCA section 15 (15 U.S.C. 2614).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

Subpart B—EPA TSCA Title VI Third-Party Certification Program

§ 770.7 Third-party certification.

(a) *EPA TSCA Title VI Product ABs.* To participate in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI Product AB, a Product AB must have the qualifications described in this section, submit an application and enter into a recognition agreement with EPA as described in this section, and, upon recognition from EPA, impartially perform the responsibilities described in this section.

(1) *Qualifications.* To qualify for recognition by EPA in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI Product AB, an applicant Product AB must:

(i) Be a signatory to the International Accreditation Forum, Inc.'s (IAF) Multilateral Recognition Arrangement (MLA) through level three, or have membership in one of the IAF recognized regional accreditation cooperations, or an equivalent organization as determined by EPA;

(ii) Be in conformance with ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99); and

(iii) Be competent to perform accreditation activities for product certification according to ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99).

(2) *Application.* To be recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program, a Product AB must submit an application to EPA in accordance with § 770.8 that contains the following:

(i) Name, address, telephone number, and email address of the organization or primary contact;

(ii) Documentation of IAF MLA signatory status, membership in one of the IAF recognized regional accreditation cooperations, or an equivalent organization as determined by EPA;

(iii) Description of any other qualifications related to the Product AB's experience in performing product accreditation of TPCs for manufactured products including an affirmation that assessors will be technically competent to assess a TPC's ability to perform their activities under paragraph (c)(4) of this section; and

(iv) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the AB or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part. ABs may share an agent for service.

(3) *Recognition agreement.* To be recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program, a Product AB must enter into a recognition agreement with EPA that describes the EPA TSCA Title VI Product AB's responsibilities under this subpart.

(i) Each recognition agreement will be valid for three years.

(ii) Each recognition agreement will identify an EPA Recognition Agreement Implementation Officer and an EPA TSCA Title VI Product AB Implementation Officer that will serve as the point of contact for the EPA TSCA Title VI Third-Party Certification Program.

(iii) To renew a recognition agreement for an additional three-year period, the EPA TSCA Title VI Product AB must submit an application for renewal in accordance with § 770.8 before the three-year period of the recognition agreement lapses. The application must indicate any changes from the EPA TSCA Title VI Product AB's initial application or most recent renewal application.

(iv) If an EPA TSCA Title VI Product AB fails to submit an application for renewal prior to the expiration of the previous recognition agreement, its recognition will lapse and the EPA TSCA Title VI Product AB may not provide accreditation services under TSCA Title VI.

(v) If an EPA TSCA Title VI Product AB does submit an application for renewal prior to the expiration of the previous recognition agreement, it may continue to provide TSCA Title VI accreditation services under the terms of its previous recognition agreement until EPA has taken action on its application for renewal of the recognition agreement.

(4) *Impartiality.* EPA TSCA Title VI Product ABs must act impartially when performing activities under the EPA TSCA Title VI Third-Party Certification Program. To demonstrate impartiality, Product ABs must:

(i) Ensure that an accreditation decision regarding a TPC is made by persons different from those who conducted the assessment of the TPC; and

(ii) Ensure that the AB's personnel who assess TPCs or make decisions regarding accreditation do not receive financial benefit from the outcome of an accreditation decision.

(5) *Responsibilities.* Each EPA TSCA Title VI Product AB has the following responsibilities under the EPA TSCA Title VI Third-Party Certification Program:

(i) *Accreditation.* EPA TSCA Title VI Product ABs must determine the accreditation eligibility, and accredit if appropriate, each TPC seeking recognition under the EPA TSCA Title VI Third-Party Certification Program by performing an assessment of each TPC as described in this section. The assessment must include all of the following components:

(A) An on-site assessment by the EPA TSCA Title VI Product AB to determine whether the TPC meets the requirements of ISO/IEC 17065:2012(E), is in conformance with ISO/IEC 17020:1998(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 (incorporated by reference, see § 770.99) and the EPA TSCA Title VI TPC requirements under this part. In performing the on-site assessment, the EPA TSCA Title VI Product AB must:

(*1*) Develop a checklist of the EPA TSCA Title VI TPC requirements under paragraph (c)(4) of this section and the key accreditation elements of ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99); and

(*2*) Use the checklist for each on-site assessment.

(B) A review of the approach that the TPC will use to verify the accuracy of the formaldehyde emissions tests conducted by the TPC laboratory and the formaldehyde quality control tests conducted by or for the panel producers producing composite wood products that are subject to the requirements of TSCA Title VI.

(C) A review of the approach that the TPC will use for evaluating a panel producer's quality assurance and quality control processes, the proficiency of the panel producer's quality assurance and quality control personnel, the required elements of a panel producer's quality assurance and quality control manual, and sufficiency of on-site testing facilities as applicable.

(D) A review of the approach that the TPC laboratory will use for establishing correlation or equivalence between ASTM E1333–10 and ASTM D6007–02, if used, (incorporated by reference, see § 770.99) or allowable formaldehyde test methods listed under § 770.20.

(E) A review of the approach that the TPC will use for evaluating the process for sample selection, handling, and shipping procedures that the panel producer will use for quality control testing as applicable.

(F) A review of the accreditation credentials of the TPC laboratory, including a verification that the laboratory has been accredited to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products and the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02, if used, by an EPA TSCA Title VI Laboratory AB (incorporated by reference, see § 770.99).

(ii) *Reassessment.* Each EPA TSCA Title VI Product AB must, in accordance with ISO/IEC 17011:2004(E) section 7.11 (incorporated by reference, see § 770.99), conduct an on-site reassessment or surveillance on-site assessment at least every two years of each EPA TSCA Title VI TPC that the AB has accredited.

(iii) *Suspension, reduction, withdrawal.* Each EPA TSCA Title VI Product AB must suspend, reduce, or withdraw the accreditation of an EPA TSCA Title VI TPC that the AB has accredited when circumstances warrant.

(iv) *Notifications.* Each EPA TSCA Title VI Product AB must provide, in accordance with § 770.8, the following notifications to EPA, as applicable:

(A) Notification of the loss of its status as a signatory to the IAF MLA, or loss of membership in one of the IAF recognized regional accreditation cooperations, or an equivalent organization as determined by EPA must be provided within five calendar days of the date that the body receives notification of the loss of its signatory or membership status.

(B) Notification that an EPA TSCA Title VI TPC has failed to comply with any provision of this part must be provided within 72 hours of the time the Product AB identifies the deficiency. The notice must include a description of the steps taken to address the deficiency.

(C) Notification of suspension, reduction or withdrawal of an EPA TSCA Title VI TPC's accreditation must be provided within 72 hours of the time that the suspension, reduction or withdrawal takes effect.

(D) Notification of a change in a non-domestic Product AB's agent for service must be provided within five calendar days.

(v) *Records.* Each EPA TSCA Title VI Product AB must maintain, in electronic form, the checklists and other records documenting compliance with the requirements for assessment, reassessment, and surveillance on-site

assessments of EPA TSCA Title VI TPCs for three years.

(vi) *Annual report.* Each EPA TSCA Title VI Product AB must provide, in accordance with § 770.8, an annual report on or before March 1st of each year for the AB services performed during the previous calendar year including the number and locations of assessment, reassessment, and surveillance on-site assessments performed for each EPA TSCA Title VI TPC.

(vii) *EPA meetings.* Each EPA TSCA Title VI Product AB must meet with EPA at least once every two years in person, via teleconference, or through other virtual methods to discuss the implementation of the EPA TSCA Title VI Third-Party Certification Program.

(viii) *Inspections.* Each EPA TSCA Title VI Product AB must allow inspections of the AB's facilities by EPA, at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and a written notification to the AB.

(b) *EPA TSCA Title VI Laboratory ABs.* To participate in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI Laboratory AB, a Laboratory AB must have the qualifications described in this section, submit an application and enter into a recognition agreement with EPA as described in this section, and, upon recognition from EPA, impartially perform the responsibilities described in this section.

(1) *Qualifications.* To qualify for recognition by EPA under the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI Laboratory AB, an applicant Laboratory AB must:

(i) Be a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or have membership in one of the ILAC recognized regional accreditation cooperations, or an equivalent organization as determined by EPA;

(ii) Be in conformance with ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99);

(iii) Be competent to perform accreditation activities for laboratory accreditation according to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99); and

(iv) Be competent to ensure EPA TSCA Title VI TPC inspection activities are in conformance with ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

(2) *Application.* To be recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program, a Laboratory AB must submit an application to EPA, which may be submitted in conjunction with a Product AB application. For recognition, a Laboratory AB must submit an application in accordance with § 770.8 that contains the following:

(i) Name, address, telephone number, and email address of the organization or primary contact;

(ii) Documentation of ILAC MRA signatory status, membership in one of the ILAC recognized regional accreditation cooperations, or an equivalent organization as determined by EPA;

(iii) Description of any other qualifications related to the Laboratory AB's experience in performing laboratory accreditation and inspection certification of TPCs including an affirmation that assessors will be technically competent to assess TPCs ability to perform their activities under paragraph (c)(4) of this section; and

(iv) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the AB or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part. ABs may share an agent for service.

(3) *Recognition agreement.* To be recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program, a Laboratory AB must enter into a recognition agreement with EPA that describes the EPA TSCA Title VI Laboratory AB's responsibilities under this subpart.

(i) Each recognition agreement will be valid for three years.

(ii) Each recognition agreement will identify an EPA Recognition Agreement Implementation Officer and an EPA TSCA Title VI Laboratory AB Implementation Officer that will serve as the point of contact for the EPA TSCA Title VI Third-Party Certification Program.

(iii) To renew a recognition agreement for an additional three-year period, the EPA TSCA Title VI Laboratory AB must submit an application for renewal in accordance with § 770.8 before the three-year period of the recognition agreement lapses. The application must indicate any changes from the EPA TSCA Title VI Laboratory AB's initial application or most recent renewal application.

(iv) If an EPA TSCA Title VI Laboratory AB fails to submit an application for renewal prior to the expiration of the previous recognition agreement, its recognition will lapse and the EPA TSCA Title VI Laboratory AB may not provide accreditation services under TSCA Title VI.

(v) If an EPA TSCA Title VI Laboratory AB does submit an application for renewal prior to the expiration of the previous recognition agreement, it may continue to provide TSCA Title VI accreditation services under the terms of its previous recognition agreement until EPA has taken action on its application for renewal of the recognition agreement.

(4) *Impartiality.* EPA TSCA Title VI Laboratory ABs must act impartially when performing activities under the EPA TSCA Title VI Third-Party Certification Program. To demonstrate impartiality, Laboratory ABs must:

(i) Ensure that an accreditation decision regarding a TPC is made by persons different from those who conducted the assessment of the TPC; and

(ii) Ensure that the AB's personnel who assess TPCs or make decisions regarding accreditation do not receive financial benefit from the outcome of an accreditation decision.

(5) *Responsibilities.* Each EPA TSCA Title VI Laboratory AB has the following responsibilities under the EPA TSCA Title VI Third-Party Certification Program:

(i) *Accreditation.* EPA TSCA Title VI Laboratory ABs must determine the accreditation eligibility, and accredit if appropriate, each TPC seeking recognition under the EPA TSCA Title VI Third-Party Certification Program by performing an assessment of each TPC. The assessment must include an on-site assessment by the EPA TSCA Title VI Laboratory AB to determine whether the laboratory meets the requirements of ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99), is in conformance with ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99) and the EPA TSCA Title VI TPC requirements under this part including the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02 (incorporated by reference, see § 770.99), if used. In performing the on-site assessment, the EPA TSCA Title VI Laboratory AB must:

(A) Develop a checklist of the TPC requirements under paragraph (c)(4) of this section and the key conformity elements of ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99); and

(B) Use the checklist for each on-site assessment.

(ii) *Reassessment.* Each EPA TSCA Title VI Laboratory AB must, in accordance with ISO/IEC 17011:2004(E) section 7.11 (incorporated by reference,

see § 770.99), conduct a follow-up reassessment or surveillance on-site assessment of each TPC laboratory that the AB has accredited.

(iii) *Proficiency.* Each EPA TSCA Title VI Laboratory AB must verify the accuracy of the formaldehyde emissions tests conducted by the TPC laboratory by ensuring the TPC laboratory participates in the CARB interlaboratory comparison for formaldehyde emissions when offered. In lieu of participation in the CARB interlaboratory comparison ensure that the TPC laboratory participates in an EPA-recognized proficiency testing program, if available.

(iv) *Suspension, reduction, withdrawal.* Each EPA TSCA Title VI Laboratory AB must suspend, reduce, or withdraw the accreditation of a TPC laboratory that the AB has accredited when circumstances warrant.

(v) *Notifications.* Each EPA TSCA Title VI Laboratory AB must provide, in accordance with § 770.8, the following notifications to EPA as applicable:

(A) Notification of the loss of its status as a signatory to the ILAC MRA, or loss of membership in one of the ILAC recognized regional accreditation cooperations, or an equivalent organization as determined by EPA, within five calendar days of the date that the body receives notice of the loss of its signatory or membership status.

(B) Notification that a TPC laboratory has failed to comply with any provision of this part within 72 hours of the time the Laboratory AB identifies the deficiency. The notice must include a description of the steps taken to address the deficiency.

(C) Notification of suspension, reduction or withdrawal of a TPC laboratory's accreditation within 72 hours of the time that the suspension, reduction or withdrawal takes effect.

(D) Notification of a change in a non-domestic Laboratory AB's agent for service within five calendar days.

(vi) *Records.* Each EPA TSCA Title VI Laboratory AB must maintain, in electronic form, the checklists and other records documenting compliance with the requirements for assessment, reassessment, and surveillance on-site assessments of TPC laboratories for three years.

(vii) *Annual report.* Each EPA TSCA Title VI Laboratory AB must provide, in accordance with § 770.8, an annual report to EPA on or before March 1st of each year for AB services performed during the previous calendar year including the number and locations of assessment, reassessment, and surveillance on-site assessments performed for each TPC laboratory.

(viii) *EPA meetings.* Each EPA TSCA Title VI Laboratory AB must meet with EPA at least once every two years in person, via teleconference, or through other virtual methods to discuss the implementation of the EPA TSCA Title VI Third-Party Certification Program.

(ix) *Inspections.* Each EPA TSCA Title VI Laboratory AB must allow inspections of the AB's facilities by EPA, at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and a written notification to the AB.

(c) *EPA TSCA Title VI Third-Party Certifiers.* To participate in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI TPC, a TPC must be accredited by an EPA TSCA Title VI Product AB, use a laboratory that is accredited by an EPA TSCA Title VI Laboratory AB, have the other qualifications described in this subsection, submit an application and be recognized by EPA, and, upon recognition from EPA, impartially perform the responsibilities described in this section. Alternatively, CARB-approved TPCs must meet the criteria for reciprocity in paragraph (d) of this section and comply with the requirements of this part in order to be recognized by EPA as an EPA TSCA Title VI TPC.

(1) *Qualifications.* To qualify for recognition by EPA in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI TPC, an applicant TPC must:

(i) Be accredited by an EPA TSCA Title VI Product AB to ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99), with a scope of accreditation that includes include composite wood products and this part—Formaldehyde Standards for Composite Wood Products;

(ii) Be, or have a contract with a laboratory that is, accredited by an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products and the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02, if used (incorporated by reference, see § 770.99);

(iii) Have the ability to conduct inspections of composite wood products and properly train and supervise inspectors to inspect composite wood products in conformance with ISO/IEC 17020:1998(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 (incorporated by reference, see § 770.99);

(iv) Have demonstrated experience in the composite wood product industry with at least one type of composite wood product and indicated the specific product(s) the applicant intends to certify; and

(v) Have demonstrated experience in performing or verifying formaldehyde emissions testing on composite wood products, including experience with test method ASTM E1333–10 and ASTM D6007–02, if used, (incorporated by reference, see § 770.99), and experience evaluating correlation between test methods. Applicant TPCs that have demonstrated experience with test method ASTM D6007–02 only, must be contracting testing with a laboratory that has a large chamber and demonstrate its experience with ASTM E1333–10.

(2) *Application.* Before certifying any products under this part, a TPC must be recognized by EPA under the EPA TSCA Title VI Third-Party Certification Program. To be recognized by EPA, a TPC must submit an application in accordance with § 770.8 and renew that application every two years. The application must contain the following:

(i) Email address of the organization or primary contact, organization name, organization telephone number, and organization address;

(ii) Type of composite wood products that the applicant intends to certify;

(iii) A copy of the TPC's certificate of accreditation from an EPA TSCA Title VI Product AB to ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99) with a scope of accreditation that includes composite wood products and this part—Formaldehyde Standards for Composite Wood Products;

(iv) A copy of the TPC laboratory's certificate of accreditation from an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) with a scope of accreditation to include this part—Formaldehyde Standards for Composite Wood Products and the formaldehyde test methods ASTM E1333–10 and ASTM D6007–02 (incorporated by reference, see § 770.99), if used;

(v) An affirmation of the TPC's ability to conduct inspections of composite wood products and properly train and supervise inspectors to inspect composite wood products in conformance with ISO/IEC 17020:1998(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 (incorporated by reference, see § 770.99);

(vi) A description of the TPC's experience in the composite wood product industry with at least one type of composite wood product and indicate

the specific product(s) the applicant intends to certify;

(vii) A description of the TPC's experience in performing or verifying formaldehyde emissions testing on composite wood products;

(viii) A description of the TPC's experience with test method ASTM E1333–10 and/or ASTM D6007–02, if used, (incorporated by reference, see § 770.99), and experience evaluating correlation between test methods. Applicant TPCs that have experience with test method ASTM D6007–02 only, must be contracting testing with a laboratory that has a large chamber and describe its experience with ASTM E1333–10; and

(ix) If not a domestic entity, the name and address of an agent for service located in the United States. Service on this agent constitutes service on the TPC or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part. TPCs may share an agent for service.

(3) *Impartiality.* EPA TSCA Title VI TPCs must act impartially in accordance with their accreditation when performing activities under the EPA TSCA Title VI Third-Party Certification Program. To demonstrate impartiality, TPCs must:

(i) Not also be, or have a financial interest in a panel producer, fabricator, laminated product producer, importer, designer, distributor or retailer of composite wood products;

(ii) Ensure that TPC management personnel and TPC personnel involved in the review and certification decision-making process for composite wood products are not involved in activities within the same or separate legal entity that may compromise the impartiality of its certification decision-making process, such as advocacy or consulting activities;

(iii) Ensure that TPC management personnel and TPC personnel of the same or separate legal entity involved in activities such as advocacy or consulting are not involved in the management of the certification body, the review, or the certification decisions; and

(iv) Ensure that TPC management personnel and TPC personnel certifying composite wood products sign a conflict of interest statement attesting that they will receive no financial benefit from the outcome of certification.

(4) *Responsibilities.* Each EPA TSCA Title VI TPC has the following responsibilities under the EPA TSCA Title VI Third-Party Certification Program:

(i) *Certification.* EPA TSCA Title VI TPCs certify composite wood products that are produced in accordance with this part and that comply with the emission standards of TSCA Title VI and this part, in accordance with ISO/IEC 17065:2012(E) (incorporated by reference, see § 770.99). For each panel producer making composite wood products certified by the TPC, the EPA TSCA Title VI TPC must:

(A) Verify that each panel producer has adequate quality assurance and quality control procedures and is complying with the applicable quality assurance and quality control requirements of this part;

(B) Verify each panel producer's quality control test results compared with test results from ASTM E1333–10 and ASTM D6007–02, if used, (incorporated by reference, see § 770.99) by having the TPC laboratory conduct quarterly tests and evaluate test method equivalence and correlation as required under § 770.20;

(C) In consultation with the panel producer, establish quality control limits (QCLs) for formaldehyde emissions, and, if applicable, shipping quality control limits or other formaldehyde emission limits, for each panel producer and product type;

(D) Establish, for each panel producer, the process that will be used to determine if products are exceeding the applicable QCL;

(E) Provide its CARB or EPA TPC number to each panel producer for labeling and recordkeeping; and

(F) Inspect each panel producer, its products, and its records at least quarterly in conformance with ISO/IEC 17020:1998(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 (incorporated by reference, see § 770.99).

(ii) *Laboratories.* For quarterly testing, each EPA TSCA Title VI TPC must use only laboratories that have been accredited by an EPA TSCA Title VI Laboratory AB and that either participate in the CARB interlaboratory comparison for formaldehyde emissions when offered or in an EPA-recognized proficiency or interlaboratory program, if available.

(iii) *NAF and ULEF.* For panel producers that do not receive approval for NAF or ULEF third-party certification exemptions or ULEF reduced testing from CARB, EPA TSCA Title VI TPCs must review applications for NAF or ULEF third-party certification exemptions or ULEF reduced testing. Each EPA TSCA Title VI TPC must approve these applications within 90 calendar days of receipt if the panel producer demonstrates that the requirements for third-party certification exemption under § 770.17 or § 770.18 or reduced testing under § 770.18 are met.

(iv) *Reduced testing for medium-density fiberboard or fiberboard.* EPA TSCA Title VI TPCs must review applications from panel producers to reduce the number of quality control tests for particleboard and medium-density fiberboard, and approve these applications within 90 calendar days of receipt if the panel producer demonstrates that the requirements for reduced testing under § 770.20(b)(2)(ii) are met.

(v) *Notifications to EPA.* Each EPA TSCA Title VI TPC must provide, in accordance with § 770.8, the following notifications to EPA, as applicable:

(A) Notification of an approved or rejected application, including a renewal application, for a NAF or ULEF third-party certification exemption or ULEF reduced testing within five calendar days of the approval or rejection with copies of all approved applications forwarded to EPA within 30 calendar days of approval.

(B) Notification of an approved or rejected application, including a renewal application, for reduced testing for medium-density fiberboard or particleboard within five calendar days of the approval or rejection with copies of all approved applications forwarded to EPA within 30 calendar days of approval.

(C) Notification of a panel producer exceeding its established QCL for more than two consecutive quality control tests within 72 hours of the time that the TPC becomes aware of the second exceedance. The notice must include the product type, dates of the quality control tests that exceeded the QCL, quality control test results, ASTM E1333–10 (incorporated by reference, see § 770.99) correlative equivalent values, the established QCL value(s) and the quality control method used.

(D) Notification of each failed quarterly test, that is any sample that exceeds the applicable formaldehyde emission standard in § 770.10, within 72 hours. Information in this notification is not eligible for treatment as confidential business information.

(E) Notification of a change in a non-domestic TPC's agent for service within five calendar days.

(F) Notification of a loss of accreditation or notification that the TPC has discontinued its participation in the EPA TSCA Title VI Third-Party Certification Program must be provided within 72 hours.

(vi) *Other notifications.* Each EPA TSCA Title VI TPC must provide the following notifications, if applicable:

(A) Notification of each failed quarterly test, that is any sample that exceeds the applicable formaldehyde emission standard in § 770.10, to the panel producer in writing within 72 hours. Information in this notification is not eligible for treatment as confidential business information.

(B) Notification of a loss of accreditation or notification that the TPC has discontinued its participation in the EPA TSCA Title VI Third-Party Certification Program within 72 hours to all panel producers for which it provides EPA TSCA Title VI certification services.

(C) Notification of any changes in personnel qualifications, procedures, or laboratories used, to the TPC's EPA TSCA Title VI ABs within 30 calendar days.

(vii) *Records.* Each EPA TSCA Title VI TPC must maintain, in electronic form, the following records for three years from the date the record is created, and provide them to EPA within 30 calendar days of a request from EPA:

(A) A list of panel producers and their respective products and product types, including type of resin systems used, that the EPA TSCA Title VI TPC has certified;

(B) Results of inspections and formaldehyde emissions tests conducted for and linked to each panel producer and product type;

(C) A list of laboratories used by the EPA TSCA Title VI TPC, as well as all test methods used, including test conditions and conditioning time, and quarterly test results;

(D) Methods and results for establishing test method correlations and equivalence;

(E) Documentation for NAF or ULEF third-party certification exemptions or ULEF reduced testing approvals, including the name of the panel producer, facility, products approved, type of resin systems used and dates of approval;

(F) Documentation of reduced testing approval for panel producers of medium-density fiberboard or particleboard, including the name of the panel producer, products approved and dates of approval; and

(G) A copy of the most recent assessment, reassessment, and/or surveillance on-site assessment report provided by its EPA TSCA Title VI ABs.

(viii) *Annual report.* Each EPA TSCA Title VI TPC must provide, in accordance with § 770.8, an annual report on or before March 1st of each year for the TPC services performed during the previous calendar year. Quarterly test results, the test method, date of test, and product tested (including the product name or description and panel producer name) are not eligible for treatment as confidential business information. The report must contain all of the following elements, as applicable:

(A) The following information for each panel producer making composite wood products certified by the TPC, the EPA TSCA Title VI TPC:

(*1*) Composite wood products that the EPA TSCA Title VI TPC has certified during the previous calendar year;

(*2*) Types of resin systems used for the composite wood products certified;

(*3*) Dates of quarterly inspections;

(*4*) For each quarterly test, the date, result, test method, and whether a contract laboratory was used;

(*5*) For each failed quarterly test, the product type, the volume of product affected, the results of recertification testing, and a description of the final disposition of the affected product, including how the non-complying lot was addressed;

(*6*) For each non-complying lot resulting from a failed quality control test, the test date, method, product type, volume of product affected, lot numbers, the results of retesting, and a description of the final disposition of the affected product, including how the non-complying lot was addressed; and

(*7*) Any corrective actions that resulted from quarterly tests and inspections.

(B) A list of laboratories and test methods used by the TPC, number and volume (cubic meters) of large and small chambers, date of equivalence determination and equivalence data.

(C) Any non-conformities identified by its EPA TSCA Title VI AB(s) and how they were addressed.

(D) The results compared with the mean of the interlaboratory comparison for all formaldehyde emissions interlaboratory comparison tests other than the CARB interlaboratory comparison or, if available, the results of an EPA-recognized proficiency testing program.

(ix) *Assessments and inspections.* Upon request, each EPA TSCA Title VI TPC must allow EPA representatives to:

(A) Accompany the TPC's staff during an assessment, reassessment or surveillance on-site assessment of the TPC by its AB(s); and

(B) Inspect the TPC's facilities, at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and a written notification to the TPC.

(d) *Reciprocity for third-party certifiers approved by the California Air Resources Board (CARB)*—(1) *During transitional period.* The transitional period is defined as the two-year period beginning on December 12, 2016 and ending on December 12, 2018. TPCs already approved by CARB and TPCs subsequently approved by CARB during the transition period must apply for EPA recognition in accordance with § 770.8 before they can certify any products under this part. Once recognized by EPA, CARB-approved TPCs become EPA TSCA Title VI TPCs and may certify composite wood products under TSCA Title VI until December 12, 2018 as long as they:

(i) Remain approved by CARB; and

(ii) Comply with all aspects of this part other than the requirements of paragraphs (c)(1)(i) and (ii) and (c)(2)(iii) and (iv) of this section. This includes:

(A) Provide panel producers with the TPC number issued by CARB; and

(B) Provide the annual report required by paragraph (c)(4)(viii) of this section to CARB and EPA during the two-year transitional period.

(C) Provide notifications required by paragraph (c)(4)(v) to EPA.

(2) *After transition period.* (i) TPCs approved by CARB may continue to certify composite wood products under TSCA Title VI after the two-year transitional period if the TPC:

(A) Maintains its CARB approval;

(B) Complies with the requirements of this part;

(C) Submits to EPA, in accordance with § 770.8:

(*1*) Documentation from CARB that specifies eligibility for reciprocity; and

(*2*) A copy of the application submitted to CARB to be recognized as a TPC under the CARB ATCM.

(D) Receives EPA recognition as an EPA TSCA Title VI TPC.

(ii) EPA retains the authority to deny recognition of CARB-approved TPCs who seek recognition through reciprocity in the EPA TSCA Title VI Third-Party Certification Program if EPA has information indicating that the TPC is not qualified.

(e) *Suspension, revocation or modification of recognition*—(1) *Third-party certifiers.* EPA may suspend, revoke or modify the recognition of a TPC, if the TPC:

(i) Fails to comply with any requirement of TSCA Title VI or this part;

(ii) Makes any false or misleading statements on its application, records, or reports; or

(iii) Makes substantial changes to personnel qualifications, procedures, or laboratories that make the TPC or TPC

laboratory unable to comply with any applicable requirements of this part.

(2) *ABs.* EPA may suspend, revoke or modify the recognition of an AB if the AB:

(i) No longer maintains signatory status to the IAF MLA or ILAC MRA, membership in one of the IAF/ILAC recognized regional accreditation cooperations, or an equivalent organization as determined by EPA;

(ii) Fails to comply with any requirement of TSCA Title VI or this part;

(iii) Makes any false or misleading statements on its application, records, or reports; or

(iv) Makes substantial changes to personnel qualifications or procedures that make the AB, TPC and/or TPC laboratory unable to comply with any applicable requirements of this part.

(3) *Process for suspending, revoking or modifying recognition.* (i) Prior to taking action to suspend, revoke or modify recognition, EPA will notify the participant AB or the participant TPC in writing of the following:

(A) The legal and factual basis for the proposed suspension, revocation or modification;

(B) The anticipated commencement date and duration of the suspension, revocation or modification;

(C) Actions, if any, which the affected AB or TPC may take to avoid suspension, revocation or modification, or to receive recognition in the future; and

(D) The opportunity and method for requesting a hearing with EPA prior to final suspension, revocation or modification.

(ii) If the affected AB or TPC requests a hearing in writing to EPA within 30 calendar days of receipt of the notification, EPA will:

(A) Provide the affected AB or TPC an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for the proposed action; and

(B) Appoint an impartial EPA official as Presiding Officer to conduct the hearing. The Presiding Officer will:

(*1*) Conduct a fair, orderly, and impartial hearing within 90 calendar days of the request for a hearing;

(*2*) Consider all relevant evidence, explanations, comments, and arguments submitted; and

(*3*) Notify the affected AB or TPC in writing within calendar 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action which may be subject to judicial review. The order must contain the basis, commencement date, and duration of the suspension, revocation or modification.

(iii) If EPA determines that the public health, interest, or welfare warrants immediate action to revoke the recognition of an AB or TPC prior to the opportunity for a hearing, it will notify the affected AB or TPC of its right to request a hearing on the immediate revocation within 15 calendar days of the revocation taking place and the procedures for the conduct of such a hearing.

(iv) Any notification, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by TSCA section 14. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under TSCA section 14.

(v) EPA will maintain a publicly available list of ABs on its Web site whose recognition has been suspended, revoked or modified, or reinstated and a publicly available list of TPCs whose recognition has been suspended, revoked, modified, or reinstated.

(vi) Unless the decision and order issued under paragraph (e)(3) of this section specify otherwise, an AB or a TPC whose recognition has been revoked must reapply for recognition in order to become recognized under this part again.

(vii) Unless the decision and order issued under paragraph (e)(3) of this section specify otherwise, an AB whose recognition has been revoked or a TPC whose recognition has been revoked, must immediately notify all TPCs or panel producers to which it provides TSCA Title VI accreditation or certification services of the revocation.

(f) *Effect of the loss of recognition or accreditation.* (1) If an AB is removed or withdraws from the EPA TSCA Title VI Third-Party Certification Program:

(i) For reasons other than fraud or providing false or misleading statements, and other than a reason that implicates a particular TPC in a violation of TSCA Title VI, TPCs accredited by that AB can continue to certify products under TSCA Title VI for 180 calendar days, after which the TPCs must be accredited again by another EPA TSCA Title VI AB and re-recognized by EPA.

(ii) Due to fraud or providing false or misleading statements with respect to a particular TPC, or for any other reason that implicates a particular TPC in a violation of TSCA Title VI, that TPC may not provide any TSCA Title VI certification services until it has been accredited again by another EPA TSCA Title VI AB and re-recognized by EPA.

(2) If a TPC loses its accreditation, or if TPC is removed or withdraws from the EPA TSCA Title VI Third-Party Certification Program:

(i) For reasons other than fraud or providing false or misleading statements, and other than a reason that implicates a particular panel producer in a violation of TSCA Title VI, the panel producers that used the TPC to certify their products must enlist another EPA TSCA Title VI TPC to certify their products within 90 calendar days. If the panel producer is not able to obtain the services of another EPA TSCA Title VI TPC within 90 days, the panel producer may request from EPA a 90 calendar day extension. During the time a panel producer is seeking a new TPC, it must continue to comply with all other requirements of TSCA Title VI, including quality control testing.

(ii) Due to fraud or providing false or misleading statements with respect to a particular panel producer, or for any other reason that implicates a particular panel producer in a violation of TSCA Title VI, that panel producer may not sell, supply, offer for sale, or manufacture composite wood products for sale in the United States until its composite wood products have been recertified by another EPA TSCA Title VI TPC.

(g) *Process for denying EPA TSCA Title VI recognition.* (1) Upon EPA denying a request for recognition of an AB or TPC, EPA will notify the AB or TPC in writing of the following:

(i) The legal and factual basis for the denial; and

(ii) Actions, if any, which the affected AB or TPC may take to receive recognition in the future.

(2) [Reserved]

§ 770.8 Applications, notifications, and reports.

(a) All applications, notifications, and reports that are required to be submitted to EPA under this subpart must be submitted via the EPA Central Data Exchange (CDX) found at *https://cdx.epa.gov.*

(b) If the EPA CDX is unavailable, EPA will so inform EPA TSCA Title VI ABs and TPCs and will make electronic applications and reporting forms available online at *http://www.epa.gov/formaldehyde.*

(c)(1) Persons submitting a notice under this rule are subject to EPA confidentiality regulations at 40 CFR part 2, subpart B, except that the

certification in paragraph (c)(2) of this section must also be provided when asserting a claim of confidentiality.

(2) In submitting a claim of confidentiality, a person must certify the truth of the following four statements concerning all information which is claimed as confidential:

(i) My company has taken measures to protect the confidentiality of the information.

(ii) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law.

(iii) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person.

(iv) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

Subpart C—Composite Wood Products

§ 770.10 Formaldehyde emission standards.

(a) Except as otherwise provided in this part, the emission standards in this section apply to composite wood products sold, supplied, offered for sale, or manufactured (including imported) on or after December 12, 2017 in the United States. These emission standards apply regardless of whether the composite wood product is in the form of a panel, a component part, or incorporated into a finished good.

(b) The emission standards are based on test method ASTM E1333–10 (incorporated by reference, see § 770.99), and are as follows:

(1) For hardwood plywood made with a veneer core or a composite core, 0.05 parts per million (ppm) of formaldehyde.

(2) For medium-density fiberboard, 0.11 ppm of formaldehyde.

(3) For thin medium-density fiberboard, 0.13 ppm of formaldehyde.

(4) For particleboard, 0.09 ppm of formaldehyde.

§ 770.12 Stockpiling.

(a) The sale of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, is prohibited after December 12, 2017.

(b) To determine whether stockpiling has occurred, the rate of manufacture or purchase is measured as follows:

(1) For composite wood products in the form of panels, the rate is measured in terms of square footage of panels produced.

(2) For composite wood products incorporated into component parts or finished goods, the rate is measured in terms of the square footage of composite wood product panels purchased for the purpose of incorporating them into component parts or finished goods.

(c) Manufacturers or purchasers who have, in an annual year, a greater than 20% increase in manufacturing or purchasing composite wood products relative to annual year 2009 for some reason other than circumventing the emission standards would not be in violation of this section. Such reasons may include, but are not limited to:

(1) A quantifiable immediate increase in customer demand or sales.

(2) A documented and planned business expansion.

(3) The manufacturer or purchaser was not in business at the beginning of calendar year 2009.

(4) An increase in production to meet increased demand resulting from an emergency event or natural disaster.

(d) In order to be found to be stockpiling an entity must be increasing the rate of manufacturing or purchasing for the purpose of circumventing the emission standards.

§ 770.15 Composite wood product certification.

(a) After December 12, 2017, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are permitted to be sold, supplied, offered for sale, or manufactured (including imported) in the United States, unless the product is specifically exempted by this part.

(b) Certified composite wood products are those that are produced or fabricated in accordance with all of the provisions of this part.

(c) To obtain product certification, a panel producer must apply to an EPA TSCA Title VI TPC.

(1) For panel producers that do not have any previous product certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, the application must contain the following:

(i) The panel producer's name, address, telephone number, and other contact information;

(ii) A copy of the panel producer's quality control manual as required by § 770.21(a);

(iii) Name and contact information for the panel producer's quality control manager;

(iv) An identification of the specific products for which certification is requested, and the resin system used in panel production;

(v) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–02 must include a showing of equivalence in accordance with § 770.20(d)(1);

(vi) At least five quality control tests conducted in accordance with § 770.20(b)(1);

(vii) Linear regression equation and correlation data; and

(viii) Results of an initial, on-site inspection by the TPC of the panel producer.

(2) For panel producers applying for certification of a new product type but that have previous product certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, the application must contain the following:

(i) The panel producer's name, address, and telephone number;

(ii) An identification of the specific products for which certification is requested, and the resin system used in panel production;

(iii) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007– 02 must include a showing of equivalence in accordance with § 770.20(d)(1);

(iv) At least five quality control tests conducted in accordance with § 770.20(b)(1);

(v) Linear regression equation and correlation data; and

(vi) Description of any changes in the panel producer's quality control manual and a copy of those changes.

(d) The EPA TSCA Title VI TPC must act on a panel producer's complete application within 90 calendar days of receipt by reviewing all of the components of the application.

(1) If the application indicates that the candidate product achieves the applicable emission standards described in § 770.10, adequate correlation as described in § 770.20(d)(2), and that the panel producer is meeting the requirements in § 770.21, the EPA TSCA Title VI TPC will approve the application.

(2) If the application is from a panel producer that did not previously have products certified by a CARB-approved TPC or an EPA TSCA Title VI TPC, the EPA TSCA Title VI TPC will review the quality control manual and results of the on-site initial inspection and approve or disapprove the quality control manual.

(3) If the application does not demonstrate that the candidate product achieves the applicable emission

standards described in § 770.10, the EPA TSCA Title VI TPC will disapprove the application. A new application may be submitted for the candidate product at any time.

(e) If a product is certified by a CARB-approved TPC, it will also be considered certified under TSCA Title VI until December 12, 2018 after which the TPC needs to receive recognition as an EPA TSCA Title VI TPC under § 770.7(d) in order for the product to remain certified.

(f) To maintain certification, the panel producer making the certified product must get inspected by its EPA TSCA Title VI TPC quarterly as well as meet the testing requirements under § 770.20.

(g) If the certified product fails a quarterly test, certification for any product types represented by the sample is suspended until a compliant quarterly test result is obtained in accordance with § 770.22.

§ 770.17 No-added formaldehyde-based resins.

(a) Producers of composite wood product panels made with no-added formaldehyde-based resins may apply to an EPA TSCA Title VI TPC or to CARB for a two-year exemption from the testing requirements in § 770.20 and certification requirements in §§ 770.15 and 770.40(b). The application must contain the following:

(1) The panel producer's name, address, and telephone number;

(2) An identification of the specific product and the resin system;

(3) At least one test conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–02 must include a showing of equivalence in accordance with § 770.20(d)(1); and

(4) Three months of routine quality control tests under § 770.20, including a showing of correlation in accordance with § 770.20(d)(2), totaling not less than five quality control tests.

(b) The EPA TSCA Title VI TPC will approve a panel producer's application within 90 calendar days of receipt if the application is complete and demonstrates that the candidate product achieves the emission standards described in paragraph (c) of this section.

(c) As measured according to paragraphs (a)(3) and (4) of this section, the emission standards for composite wood products made with no-added formaldehyde-based resins are as follows:

(1) No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(2) No higher than 0.04 ppm of formaldehyde for 90% of the three months of routine quality control testing data required under paragraph (a)(4) of this section.

(d) Products that meet the requirements specified under § 770.17(c)(1) and (2) and have obtained exemption from the California Air Resources Board will also be exempt from the requirements in §§ 770.15, 770.20, and 770.40(b), as long as the requirements of the California Air Resources Board remain as stringent as EPA's requirements.

(e) After the two-year period of the initial exemption, and every two years thereafter, in order to continue to qualify for the exemption from the testing and certification requirements, the panel producer must reapply to an EPA TSCA Title VI TPC or to CARB and obtain at least one test result in accordance with paragraph (a)(3) of this section that complies with the emission standards in paragraph (c)(1) of this section.

(f) Any time there is an operational or process change that is likely to affect formaldehyde emissions, such as a change in resin formulation, press cycle duration, temperature, or amount of resin used per panel, at least one quality control test under § 770.20 and at least one test result in accordance with paragraph (a)(3) of this section that indicate compliance with the emission standards in paragraph (c)(1) of this section are required.

(g) A change in the resin system invalidates the exemption for any product produced with the different resin after such a change.

§ 770.18 Ultra low-emitting formaldehyde resins.

(a) Producers of composite wood product panels made with ultra low-emitting formaldehyde resins may apply to an EPA TSCA Title VI TPC or CARB for approval either to conduct less frequent testing than is specified in § 770.20 or approval for a two-year exemption from the testing requirements in § 770.20 and certification requirements in §§ 770.15 and 770.40(b). The application must contain the following:

(1) The panel producer's name, address, and telephone number;

(2) An identification of the specific product type, including resin system;

(3) At least two tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007–02 must include a showing of equivalence in accordance with § 770.20(d)(1); and

(4) Six months of routine quality control tests under § 770.20, including a showing of correlation in accordance with § 770.20(d)(2), totaling not less than ten quality control tests.

(b) The EPA TSCA Title VI TPC will approve a panel producer's application within 90 calendar days of receipt if the application is complete and demonstrates that the candidate product achieves the emission standards required for reduced testing as described in paragraph (c) of this section or the emission standards required for a two-year exemption as described in paragraph (d) of this section.

(c) As measured according to paragraphs (a)(3) and (4) of this section, the emission standards for reduced testing for composite wood products made with ultra low-emitting formaldehyde resins are as follows:

(1) No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood, 0.08 ppm for particleboard, 0.09 ppm for medium-density fiberboard, and 0.11 ppm for thin medium-density fiberboard.

(2) For 90% of the six months of routine quality control testing data required under paragraph (a)(4) of this section, no higher than 0.05 ppm of formaldehyde for particleboard, no higher than 0.06 ppm of formaldehyde for medium-density fiberboard, and no higher than 0.08 ppm of formaldehyde for thin medium-density fiberboard.

(d) As measured according to paragraphs (a)(3) and (4) of this section, the emission standards for an exemption from the testing and certification requirements of § 770.20 for composite wood products made with ultra low-emitting formaldehyde resins are as follows:

(1) No test result higher than 0.05 ppm of formaldehyde for hardwood plywood or 0.06 ppm of formaldehyde for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(2) For 90% of the six months of routine quality control testing data required under paragraph (a)(4) of this section, no higher than 0.04 parts per million of formaldehyde.

(e) Products that have obtained an exemption from the California Air Resources Board will also be exempt from the requirements in §§ 770.15, 770.20, and 770.40(b) if they meet the requirements under § 770.18(d) and the

requirements of the California Air Resources Board remain as stringent as EPA's requirements. Products that have obtained approval for reduced testing from the California Air Resources Board will be granted approval to conduct less frequent testing than is specified in § 770.20 if they meet the requirements under § 770.18(c) and the requirements of the California Air Resources Board remain as stringent as EPA's requirements.

(f) Products that are represented by a quarterly test result that exceeds the applicable emission standard in this section or a quality control test that indicates that the product exceeds the applicable emission standard in this section lose their reduced testing approval and must reapply as specified under § 770.18(a).

(g) After the two-year period of the initial exemption, and every two years thereafter, in order to continue to qualify for the exemption from the testing and certification requirements, the panel producer must reapply to an EPA TSCA Title VI TPC or CARB and obtain at least two test results in accordance with paragraph (a)(3) of this section that comply with the emission standards in paragraph (d)(1) of this section.

(h) Any time there is an operational or process change such as a change in resin formulation, press cycle duration, temperature, or amount of resin used per panel, at least five quality control tests under § 770.20 and at least one test result in accordance with paragraph (a)(3) of this section that indicate compliance with the emission standards in paragraph (d)(1) of this section are required.

(i) A change in the resin system invalidates the exemption or reduced testing approval for any product type produced after such a change.

§ 770.20 Testing requirements.

(a) *General requirements.* (1) All panels must be tested in an unfinished condition, prior to the application of a finishing or topcoat, as soon as possible after their production but no later than 30 calendar days after production.

(2) Facilities that conduct the formaldehyde testing required by this section must follow the procedures and specifications, such as testing conditions and loading ratios, of the test method being used.

(3) All equipment used in the formaldehyde testing required by this section must be calibrated and otherwise maintained and used in accordance with the equipment manufacturer's instructions.

(b) *Quality control testing*—(1) *Allowable methods.* Quality control testing must be performed using any of the following methods, with a showing of correlation for each method pursuant to paragraph (d) of this section:

(i) ASTM D6007–02 (incorporated by reference, see § 770.99).

(ii) ASTM D5582–00 (incorporated by reference, see § 770.99).

(iii) BS EN 717–2:1995 (Gas Analysis Method) (incorporated by reference, see § 770.99).

(iv) DMC 2007 User's Manual (incorporated by reference, see § 770.99).

(v) DMC 2012 GP User's Manual (incorporated by reference, see § 770.99).

(vi) BS EN 120:1992 (Perforator Method) (incorporated by reference, see § 770.99).

(vii) JIS A 1460:2001(E) (24-hr Desiccator Method) (incorporated by reference, see § 770.99).

(2) *Frequency of testing.* (i) Particleboard and medium-density fiberboard must be tested at least once per shift (eight or twelve hours, plus or minus one hour of production) for each production line for each product type. Quality control tests must also be conducted whenever:

(A) A product type production ends, even if eight hours of production has not been reached;

(B) The resin formulation is changed so that the formaldehyde to urea ratio is increased;

(C) There is an increase by more than ten percent in the amount of formaldehyde resin used, by square foot or by panel;

(D) There is a decrease in the designated press time by more than 20%; or

(E) The quality control manager or quality control employee has reason to believe that the panel being produced may not meet the requirements of the applicable standards.

(ii) Particleboard and medium-density fiberboard panel producers are eligible for reduced quality control testing if they demonstrate consistent operations and low variability of test values.

(A) To qualify, panel producers must:

(*1*) Apply in writing to an EPA TSCA Title VI TPC; and

(*2*) Maintain a 30 panel running average.

(B) With respect to reduced quality control testing, EPA TSCA Title VI TPCs:

(*1*) May approve a reduction to one quality control test per 24-hour production period if the 30 panel running average remains two standard deviations below the designated QCL for the previous 60 consecutive calendar days or more;

(*2*) May approve a reduction to one quality control test per 48-hour production period if the 30 panel running average remains three standard deviations below the designated QCL for the previous 60 consecutive calendar days or more;

(*3*) Will approve a request for reduced quality control testing as long as the data submitted by the panel producer demonstrate compliance with the criteria and the EPA TSCA Title VI TPC does not otherwise have reason to believe that the data are inaccurate or the panel producer's production processes are inadequate to ensure continued compliance with the emission standards; and

(*4*) Will revoke approval for reduced quality control testing if testing or inspections indicate a panel producer no longer demonstrates consistent operations and low variability of test values.

(iii) Hardwood plywood must be tested as follows:

(A) At least one test per week per product type if the weekly hardwood plywood production at the panel producer is more than 100,000 but less than 200,000 square feet.

(B) At least two tests per week per product type if the weekly hardwood plywood production at the panel producer is 200,000 square feet or more, but less than 400,000 square feet.

(C) At least four tests per week per product type if the weekly hardwood plywood production at the panel producer is 400,000 square feet or more.

(D) If weekly production of hardwood plywood at the panel producer is 100,000 square feet or less, at least one test per 100,000 square feet for each product type produced; or, if less than 100,000 square feet of a particular product type is produced, one quality control test of that product type every month that it is produced.

(E) Quality control tests must also be conducted whenever:

(*1*) The resin formulation is changed so that the formaldehyde to urea ratio is increased;

(*2*) There is an increase by more than ten percent in the amount of formaldehyde resin used, by square foot or by panel;

(*3*) There is an increase by more than 20% in the adhesive application rate;

(*4*) There is a decrease in the designated press time by more than 20%; or

(*5*) The quality control manager or quality control employee has reason to believe that the panel being produced

may not meet the requirements of the applicable standard.

(iv) Composite wood products that have been approved by an EPA TSCA Title VI TPC or CARB for reduced testing under § 770.18(b) through (c) must be tested at least once per week per product type and, for particle board and medium-density fiberboard, per production line, for products produced that week, except that hardwood plywood panel producers who qualify for less frequent testing under paragraph (b)(2)(iii)(D) of this section may continue to perform quality control testing under that provision.

(3) *Results.* Any test result that exceeds the QCL established pursuant to § 770.7(c)(4)(i)(C) must be reported to the EPA TSCA Title VI TPC in writing within 72 hours. The panel producer must comply with § 770.22 with respect to any lot represented by a quality control sample that exceeds the QCL. Where multiple products are grouped in a single product type for testing, this includes all products in the group represented by the sample.

(c) *Quarterly testing.* Quarterly testing must be supervised by EPA TSCA Title VI TPCs and performed by TPC laboratories.

(1) *Allowable methods.* Quarterly testing must be performed using ASTM E1333–10 (incorporated by reference, see § 770.99) or, with a showing of equivalence pursuant to paragraph (d) of this section, ASTM D6007–02 (incorporated by reference, see § 770.99).

(2) *Sample selection.* (i) Samples must be randomly chosen by an EPA TSCA Title VI TPC.

(ii) Samples must be selected from each certified product type for quarterly testing purposes. For hardwood plywood samples, the samples must be randomly selected from products that represent the range of formaldehyde emissions of products produced by the panel producer.

(iii) Samples must not include the top or the bottom composite wood product of a bundle.

(3) *Sample handling.* Samples must be closely stacked or air-tight wrapped between the time of sample selection and the start of test conditioning. Samples must be labeled as such, signed by the EPA TSCA Title VI TPC, bundled air-tight, wrapped in polyethylene, protected by cover sheets, and promptly shipped to the TPC laboratory. Conditioning must begin as soon as possible, but no later than 30 calendar days after the samples were produced.

(4) *Results.* Any sample that exceeds the applicable formaldehyde emission standard in § 770.10 must be reported by the EPA TSCA Title VI TPC to the panel producer in writing and to EPA, in accordance with § 770.8, within 72 hours. The panel producer must comply with § 770.22 with respect to any lot represented by a sample result that exceeds the applicable formaldehyde emission standard. Where multiple products are grouped in a single product type for testing, this includes all products in the group represented by the sample.

(5) *Reduced testing frequency.* Composite wood products that have been approved by an EPA TSCA Title VI TPC or CARB for reduced testing under § 770.18(c) need only undergo quarterly testing every six months.

(d) *Equivalence or correlation.* Equivalence or correlation between ASTM E1333–10 (incorporated by reference, see § 770.99) and any other test method used for quarterly or quality control testing must be demonstrated by EPA TSCA Title VI TPCs or panel producers, respectively, at least once each year for each testing apparatus or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel. Once equivalence or correlation have been established for three consecutive years, equivalence or correlation must be demonstrated every two years or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel.

(1) *Equivalence between ASTM E1333–10 and ASTM D6007–02 when used by the TPC for quarterly testing.* Equivalence must be demonstrated for at least five comparison sample sets, which compare the results of the two methods. Equivalence must be demonstrated for each small chamber used and for the ranges of emissions of composite wood products tested by the TPC.

(i) *Samples.* (A) For the ASTM E1333–10 method (incorporated by reference, see § 770.99), each comparison sample must consist of the result of testing panels, using the applicable loading ratios specified in the ASTM E1333–10 method (incorporated by reference, see § 770.99), from similar panels of the same product type tested by the ASTM D6007–02 method (incorporated by reference, see § 770.99).

(B) For the ASTM D6007–02 method (incorporated by reference, see § 770.99), each comparison sample shall consist of testing specimens representing portions of panels similar to the panels tested in the ASTM E1333–10 method (incorporated by reference, see § 770.99) and matched to their respective ASTM E1333–10 method (incorporated by reference, see § 770.99) comparison sample result. The ratio of air flow to sample surface area specified in ASTM D6007–02 (incorporated by reference, see § 770.99) must be used.

(C) The five comparison sample—must consist of testing a minimum of five sample sets as measured by the ASTM E1333–10 method (incorporated by reference, see § 770.99).

(ii) *Average and standard deviation.* The arithmetic mean, *x*, and standard deviation, *S,* of the difference of all comparison sets must be calculated as follows:

$$\overline{X} = \sum_{i=1}^{n} D_i / n \qquad S = \sqrt{\sum_{i=1}^{n} (D_i - \overline{X})^2 / (n-1)}$$

Where $\bar{x}$ = arithmetic mean; S = standard deviation; n = number of sets; D_i = difference between the ASTM E1333–10 and ASTM D6007–02 method (incorporated by reference, see § 770.99) values for the *i*th set; and *i* ranges from 1 to *n.*

(iii) *Equivalence determination.* The ASTM D6007–02 method (incorporated by reference, see § 770.99) is considered equivalent to the ASTM E1333–10 method (incorporated by reference, see § 770.99) if the following condition is met:

$$\left|\overline{X}\right| + 0.88S \leq C$$

Where C is equal to 0.026.

(2) *Correlation between ASTM E1333–10 and any quality control test method.* Correlation must be demonstrated by

establishing an acceptable correlation coefficient (''r'' value).

(i) *Correlation.* The correlation must be based on a minimum sample size of five data pairs and a simple linear regression where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E1333–10 (incorporated by reference, see § 770.99) test value. Either composite wood products or formaldehyde emissions reference materials can be used to establish the correlation.

(ii) *Minimum acceptable correlation coefficients (''r'' values).* The minimum acceptable correlation coefficients are as follows, where ''n'' is equal to the number of data pairs, and ''r'' is the correlation coefficient:

Degrees of freedom (n-2)	''r'' value
3	0.878
4	0.811
5	0.754
6	0.707
7	0.666
8	0.632
9	0.602
10 or more	0.576

(iii) *Variation from previous results.* If data from an EPA TSCA Title VI TPC's quarterly test results and a panel producer's quality control test results do not fit the previously established correlation, the panel producer must have its TPC establish a new correlation and new QCLs.

(iv) *Failed quarterly tests.* If a panel producer fails two quarterly tests in a row for the same product type, the panel producer must have its TPC establish a new correlation curve.

(e) *Quality assurance and quality control requirements for panel producers.* Panel producers are responsible for product compliance with the applicable emission standards.

§ 770.21 Quality control manual, facilities, and personnel.

(a) *Quality control manual.* (1) Each panel producer must have a written quality control manual. The manual must contain, at a minimum, the following:

(i) A description of the organizational structure of the quality control department, including the names of the quality control manager and quality control employees;

(ii) A description of the sampling procedures to be followed;

(iii) A description of the method of handling samples, including a specific maximum time period for analyzing quality control samples;

(iv) A description of the frequency of quality control testing;

(v) A description of the procedures used to identify changes in formaldehyde emissions resulting from production changes (*e.g.,* increase in the percentage of resin, increase in formaldehyde/urea molar ratio in the resin, or decrease in press time);

(vi) A description of provisions for additional testing;

(vii) A description of recordkeeping procedures;

(viii) A description of labeling procedures;

(ix) The average percentage of resin and press time for each product type;

(x) A description of product types, and if applicable, a description of product variables covered under each product type;

(xi) Procedures for reduced quality control testing, if applicable; and

(xii) Procedures for handling non-complying lots, including a description of how the panel producer will ensure compliance with the notification requirements of § 770.22(d)(1).

(2) The quality control manual must be approved by an EPA TSCA Title VI TPC.

(b) *Quality control facilities.* Each panel producer must designate a quality control facility for conducting quality control formaldehyde testing.

(1) The quality control facility must be an EPA TSCA Title VI TPC, a contract laboratory, or a laboratory owned and operated by the panel producer.

(2) Each quality control facility must have quality control employees with adequate experience and/or training to conduct accurate chemical quantitative analytical tests. The quality control manager must identify each person conducting formaldehyde quality control testing to the EPA TSCA Title VI TPC.

(c) *Quality control manager.* Each panel producer must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emissions quality control. The quality control manager must:

(1) Have the authority to take actions necessary to ensure that applicable formaldehyde emission standards are being met on an ongoing basis;

(2) Be identified to the EPA TSCA Title VI TPC that will be overseeing the quality control testing. The panel producer must notify the EPA TSCA Title VI TPC in writing within ten calendar days of any change in the identity of the quality control manager and provide the EPA TSCA Title VI TPC with the new quality control manager's qualifications;

(3) Review and approve all reports of quality control testing conducted on the production of the panel producer;

(4) Ensure that the samples are collected, packaged, and shipped according to the procedures specified in the quality control manual; and

(5) Inform the EPA TSCA Title VI TPC in writing of any significant changes in production that could affect formaldehyde emissions within 72 hours of making those changes.

§ 770.22 Non-complying lots.

(a) Non-complying lots are not certified composite wood products and they may not be sold, supplied or offered for sale in the United States except in accordance with this section.

(b) Non-complying lots must be isolated from certified lots.

(c) Non-complying lots must either be disposed of or retested and certified using the same test method, if each panel is treated with a scavenger or handled by other means of reducing formaldehyde emissions, such as aging. Tests must be performed as follows:

(1) *Quality control tests.* (i) At least one test panel must be selected from each of three separate bundles. The panels must be selected so that they are representative of the entire non-complying lot and they are not the top or bottom panel of a bundle. The panels may be selected from properly stored samples set aside by the panel producer for retest in the event of a failure.

(ii) All samples must test at or below the level that indicates that the product is in compliance with the applicable emission standards in § 770.10.

(2) *Quarterly tests.* (i) At least one test panel must be randomly selected so that it is representative of the entire non-complying lot and is not the top or bottom panel of a bundle. The panel may be selected from properly stored samples set aside by the panel producer for retest in the event of a failure.

(ii) The sample must test at or below the applicable emission standards in § 770.10.

(d) If composite wood products belonging to a non-complying lot have been shipped to a fabricator, importer, distributor, or retailer before the test results are received, the panel producer must:

(1) Ensure that the composite wood products are not distributed further by notifying, within 72 hours of the time that the panel producer is made aware of the failing test result, the fabricators, importers, distributors, and retailers that received the composite wood products.

The notification must include the following:

(i) Panel producer name, contact information, and date of notice;

(ii) A description of the composite wood products that belong to the non-complying lot that is sufficient to allow the fabricator, importer, distributor, or retailer to identify the products;

(iii) Whether the failed test result was of a quarterly test, a quality control test, or a retest of composite wood products belonging to a non-complying lot;

(iv) A statement that composite wood products belonging to the non-complying lot must be isolated from other composite wood products and cannot be further distributed in commerce; and

(v) A description of the steps the panel producer intends to take to either recall the composite wood products belonging to the non-complying lot or to treat and retest the products and certify the lot.

(2) Do one of the following:

(i) Recall the composite wood products belonging to the non-complying lot and either treat and retest products belonging to the non-complying lot or dispose of them; or

(ii) Treat and retest composite wood products belonging to the non-complying lot while they remain in possession of a fabricator, importer, distributor, or retailer.

(e) Information on the disposition of non-complying lots, including product type and amount of composite wood products affected, lot numbers, mitigation measures used, results of retesting, and final disposition, must be provided to the EPA TSCA Title VI TPC within seven calendar days of final disposition.

(f) Fabricators, importers, distributors, or retailers who are notified that they have received composite wood products belonging to a non-complying lot and who have further distributed the composite wood products are responsible for notifying the purchasers of the composite wood products in accordance with paragraph (d)(1) of this section.

§ 770.24 Samples for testing.

(a) Composite wood products may be shipped into and transported across the United States for quality control or quarterly tests. TPCs that ship composite panels into or across the United States solely for quality control or quarterly tests are not considered importers or distributors or importers for the purposes of § 770.7(c)(3)(i).

(1) Such panels must not be sold, offered for sale or supplied to any entity other than a TPC laboratory before testing in accordance with § 770.17, § 770.18, or § 770.20.

(2) If test results for such products demonstrate compliance with the emission standards in this subpart, the panels may be relabeled in accordance with § 770.45 and sold, offered for sale, or supplied.

(b) [Reserved]

§ 770.30 Importers, fabricators, distributors, and retailers.

(a) Importers, fabricators, distributors, and retailers must take reasonable precautions to ensure that the composite wood products they sell, supply, offer for sale, or hold for sale, whether in the form of panels, component parts, or finished goods, comply with the emission standards and other requirements of this subpart.

(b) Importers must demonstrate that they have taken reasonable precautions by maintaining, for three years, bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or were produced before December 12, 2017 and by ensuring the following records are made available to EPA within 30 calendar days of request:

(1) Records identifying the panel producer and the date the composite wood products were produced; and

(2) Records identifying the supplier, if different, and the date the composite wood products, component parts, or finished goods were purchased.

(c) Fabricators, distributors, and retailers must demonstrate that they have taken reasonable precautions by obtaining bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or that the composite wood products were produced before December 12, 2017.

(d) On and after December 12, 2018, importers of articles that are regulated composite wood products, or articles that contain regulated composite wood products, must comply with the import certification regulations for ''Chemical Substances in Bulk and As Part of Mixtures and Articles,'' as found at 19 CFR 12.118 through 12.127.

(e) Records required by this section must be maintained in accordance with § 770.40(d).

§ 770.40 Reporting and recordkeeping.

(a) Panel producers must maintain the following records for a period of three years, except that records demonstrating initial eligibility for reduced testing or third-party certification exemption under § 770.17 or § 770.18 must be kept for as long as the panel producer is producing composite wood products with reduced testing or under a third-party certification exemption. The following records must also be made available to the panel producers' EPA TSCA Title VI TPCs. Panel producers must make the records described in paragraph (a)(1) of this section available to direct purchasers of their composite wood products. This information may not be withheld from direct purchasers as confidential business information.

(1) Records of all quarterly emissions testing. These records must identify the EPA TSCA Title VI TPC conducting or overseeing the testing. These records must also include the date, the product type tested, the lot number that the tested material represents, the test method used, and the test results.

(2) Records of all ongoing quality control testing. These records must identify the EPA TSCA Title VI TPC conducting or overseeing the testing and the facility actually performing the testing. These records must also include the date, the product type tested, the lot number that the tested material represents, the test method used, and the test results.

(3) Production records, including a description of the composite wood product(s), the date of manufacture, lot numbers, and tracking information allowing each product to be traced to a specific lot produced.

(4) Records of changes in production, including changes of more than ten percent in the resin use percentage, changes in resin composition that result in a higher ratio of formaldehyde to other resin components, and changes in the process, such as changes in press time by more than 20%.

(5) Records demonstrating initial and continued eligibility for the reduced testing provisions in §§ 770.17 and 770.18, if applicable. These records must include:

(i) Approval for reduced testing from an EPA TSCA Title VI TPC or CARB;

(ii) Amount of resin use reported by volume and weight;

(iii) Production volume reported as square feet per product type;

(iv) Resin trade name, resin manufacturer contact information (name, address, phone number, and email), and resin supplier contact information (name, address, phone number, and email); and

(v) Any changes in the formulation of the resin.

(6) Purchaser information for each composite wood product, if applicable, including the name, contact person if

available, address, telephone number, email address if available, purchase order or invoice number, and amount purchased.

(7) Transporter information for each composite wood product, if applicable, including name, contact person, address, telephone number, email address if available, and shipping invoice number.

(8) Information on the disposition of non-complying lots, including product type and amount of composite wood products affected, lot numbers, purchasers who received product belonging to non-complying lots (if any), copies of purchaser notifications used (if any), mitigation measures used, results of retesting, and final disposition.

(9) Representative copies of labels used.

(b) Panel producers must provide their EPA TSCA Title VI TPC with monthly product data reports for each production facility, production line, and product type, maintain copies of the reports for a minimum of three years from the date that they are produced. Monthly product data reports must contain a data sheet for each specific product type with test and production information, and a quality control graph containing the following:

(1) QCL;

(2) Shipping QCL (if applicable);

(3) Results of quality control tests; and

(4) Retest values.

(c) Laminated product producers whose products are exempt from the definition of hardwood plywood must keep records demonstrating eligibility for the exemption. These records must be kept for a minimum of three years from the date they are produced and must include:

(1) Resin trade name, resin manufacturer contact information (name, address, phone number, and email), resin supplier contact information (name, address, phone number, and email), and resin purchase records;

(2) Panel producer contact information and panel purchase records;

(3) For panels produced in-house, records demonstrating that the panels have been certified by an EPA TSCA Title VI TPC; and

(4) For resins produced in-house, records demonstrating the production of phenol-formaldehyde resins or resins formulated with no added formaldehyde as part of the resin cross-linking structure.

(d) Importers, fabricators, distributors, and retailers must maintain the records described in § 770.30 for a minimum of three years from the import date or the date of the purchases or shipments described therein.

§ 770.45 Labeling.

(a) Panels or bundles of panels that are sold, supplied, or offered for sale in the United States must be labeled with the panel producer's name, the lot number, the number of the EPA TSCA Title VI TPC, and a statement that the products are TSCA Title VI certified. If a composite wood panel is not individually labeled, the panel producer, importer, distributor, fabricator, or retailer must have a method (*e.g.,* color-coded edge marking) sufficient to identify the supplier of the panel and linking the information on the label to the products. This information must be made available to potential customers upon request. The label may be applied as a stamp, tag, or sticker.

(1) A panel producer number may be used instead of a name to protect identity, so long as the identity of the panel producer can be determined at the request of EPA.

(2) Only panels or bundles of panels manufactured in accordance with § 770.17 may also be labeled that they were made with no-added formaldehyde-based resins in addition to the other information required by this section.

(3) Only panels or bundles of panels manufactured in accordance with § 770.18 may also be labeled that they were made with ultra low-emitting formaldehyde resins in addition to the other information required by this section.

(b) Panels imported into or transported across the United States for quarterly or quality control testing purposes in accordance with § 770.20 must be labeled ''For TSCA Title VI testing only, not for sale in the United States.'' The panels may be re-labeled if test results are below the applicable emission standards in this subpart.

(c) Fabricators of finished goods containing composite wood products must label every finished good they produce or every box or bundle containing finished goods. If a finished good (including component parts sold separately to end users) is not individually labeled, the importer, distributor, or retailer must retain a copy of the label, be able to identify the products associated with that label, and make the label information available to potential customers upon request.

(1) The label may be applied as a stamp, tag, or sticker.

(2) The label must include, at a minimum, in legible English text, the fabricator's name, the date the finished good was produced (in month/year format), and a statement that the finished goods are TSCA Title VI compliant.

(3) Finished goods made from panels manufactured in accordance with § 770.17 and/or § 770.18 may also be labeled that they were made with no-added formaldehyde-based resins, or ultra low-emitting formaldehyde resins in addition to the other information required by this section. They may be labeled as being made with a combination of compliant composite wood, no-added formaldehyde-based resins, and ultra low-emitting formaldehyde resins, if this is accurate.

(4) Fabricators may substitute the name of a responsible downstream fabricator, importer, distributor, or retailer for their name on the label if they obtain and maintain written consent from the downstream entity.

(d) Importers, distributors, and retailers must leave intact labels on finished goods, including component parts sold separately to end users.

(e) Finished goods, including component parts sold separately to end users, containing only a *de minimis* amount of regulated composite wood product are excepted from the labeling requirements. A finished good, including component parts sold directly to consumers, contains a *de minimis* amount of regulated composite wood product if its regulated composite wood product content does not exceed 144 square inches, based on the surface area of its largest face. The exception does not apply to finished goods or component parts that are designed to be used in combination or in multiples to create larger surfaces, finished goods, or component parts.

(f) Composite wood products and finished goods made entirely of composite wood products manufactured before the manufactured-by date must not be labeled as TSCA Title VI compliant.

Subpart D—Incorporation by Reference

§ 770.99 Incorporation by reference.

The materials listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the OPPT Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. In addition, these materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials may also be obtained from the sources listed in this section.

(a) *CPA, AITC, and HPVA material.* Copies of these materials may be obtained from the specific publisher, as noted below, or from the American National Standards Institute, 1899 L Street NW., 11th Floor, Washington, DC 20036, or by calling (202) 293–8020, or at *http://ansi.org/.* Note that ANSI/AITC A190.1–2002 is published by the American Institute of Timber Construction; ANSI A135.4–2012, ANSI A135.5–2012, ANSI A135.6–2012, ANSI A135.7–2012, ANSI A208.1–2009, and ANSI A208.2–2009 are published by the Composite Panel Association; and ANSI ANSI/HPVA–HP–1–2009 is published by the Hardwood Plywood Veneer Association.

(1) ANSI A135.4–2012, Basic Hardboard, Approved June 8, 2012, IBR approved for § 770.3.

(2) ANSI A135.5–2012, Prefinished Hardboard Paneling, Approved March 29, 2012, IBR approved for § 770.3.

(3) ANSI A135.6–2012, Engineered Wood Siding, Approved June 5, 2012, IBR approved for § 770.3.

(4) ANSI A135.7–2012, Engineered Wood Trim, Approved July 17, 2012, IBR approved for § 770.3.

(5) ANSI A208.1–2009, Particleboard, Approved February 2, 2009, IBR approved for § 770.3.

(6) ANSI A208.2–2009, Medium Density Fiberboard (MDF) for Interior Applications, Approved February 2, 2009, IBR approved for § 770.3.

(7) ANSI/AITC A190.1–2002, American National Standard for Wood Products—Structural Glued Laminated Timber, Approved October 10, 2002, IBR approved for § 770.1(c).

(8) ANSI/HPVA HP–1–2009, American National Standard for Hardwood and Decorative Plywood, Approved January 26, 2010, IBR approved for § 770.3.

(b) *ASTM material.* Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at *http://www.astm.org.*

(1) ASTM D5055–05, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists, Approved October 1, 2005, IBR approved for § 770.1(c).

(2) ASTM D5456–06, Standard Specification for Evaluation of Structural Composite Lumber Products, Approved March 1, 2006, IBR approved for § 770.1(c).

(3) ASTM D5582–00 (Reapproved 2006), Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator, October 1, 2006, IBR approved for § 770.20(b).

(4) ASTM D6007–02, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small Scale Chamber, Approved April 10, 2002, IBR approved for §§ 770.3, 770.7(a) through (c), 770.15(c), 770.17(a), 770.18(a) and 770.20(b) through (d).

(5) ASTM E1333–10, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, Approved May 1, 2010, IBR approved for §§ 770.3, 770.7(a) through (c), 770.10(b), 770.15(c), 770.17(a), 770.18(a) and 770.20(c) through (d).

(c) *CEN materials.* Copies of these materials are not directly available from the European Committee for Standardization, but from one of CEN's National Members, Affiliates, or Partner Standardization Bodies. To purchase a standard, go to CEN's Web site, *http://www.cen.eu,* and select ''Products'' for more detailed information.

(1) BS EN 120:1992, Wood based panels—Determination of formaldehyde content—Extraction method called the perforator method, incorporating Amendment No. 1, English Version, copyright BSI 1997, IBR approved for § 770.20(b).

(2) BS EN 717–2:1995, Wood-based panels—Determination of formaldehyde release—Part 2: Formaldehyde release by the gas analysis method, incorporating Corrigendum No. 1, English Version, copyright BSI 9 December 2002, IBR approved for § 770.20(b).

(d) *Georgia Pacific material.* Copies of this material may be obtained from Georgia-Pacific Chemicals LLC, 133 Peachtree Street, Atlanta, GA 30303, or by calling (877) 377–2737, or at *http://www.gp-dmc.com/default.aspx.*

(1) The Dynamic Microchamber computer integrated formaldehyde test system, User Manual, revised March 2007 (DMC 2007 User's Manual) IBR approved for § 770.20(b).

(2) The GP Dynamic Microchamber Computer-integrated formaldehyde test system, User Manual, copyright 2012 (DMC 2012 GP User's Manual), IBR approved for § 770.20(b).

(e) *ISO material.* Copies of these materials may be obtained from the International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211, Geneve 20, Switzerland, or by calling +41–22–749–01–11, or at *http://www.iso.org.*

(1) ISO/IEC 17011:2004(E), Conformity assessments—General requirements for accreditation bodies accrediting conformity assessments bodies, First edition, Corrected version, 2005–02–15, IBR approved for §§ 770.3 and 770.7(a) through (b).

(2) ISO/IEC 17020:2012(E), Conformity assessment–Requirements for the operation of various bodies performing inspection, Second edition, 2012–03–01 IBR approved for §§ 770.3 and 770.7(a) through (c).

(3) ISO/IEC 17025:2005(E), General requirements for the competence of testing and calibration laboratories, Second edition, 2005–05–15, IBR approved for §§ 770.3 and 770.7(a) through (c).

(4) ISO/IEC 17065:2012(E), Conformity assessment—Requirements for bodies certifying products, processes and services, First edition, 2012–09–15, IBR approved for §§ 770.3 and 770.7(a) and (c).

(f) *Japanese Standards Association.* Copies of this material may be obtained from Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, or by calling +81–3–3583–8000, or at *http://www.jsa.or.jp/.*

(1) JIS A 1460:2001(E), Building boards Determination of formaldehyde emission—Desiccator method, First English edition, published 2003–07 IBR approved for § 770.20(b).

(2) [Reserved]

(g) *NIST material.* Copies of these materials may be obtained from the National Institute of Standards and Technology (NIST) by calling (800) 553–6847 or from the U.S. Government Printing Office (GPO). To purchase a NIST publication you must have the order number. Order numbers may be obtained from the Public Inquiries Unit at (301) 975–NIST. Mailing address: Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070. If you have a GPO stock number, you can purchase printed copies of NIST publications from GPO.

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(1) PS 1–07, Structural Plywood, May 2007, IBR approved for §§ 770.1(c) and 770.3.

(2) PS 2–04, Performance Standard for Wood-Based Structural-Use Panels, December 2004, IBR approved for §§ 770.1(c) and 770.3.

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Environmental Protection Agency

40 CFR Part 80

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2016–0004; FRL–9955–84–OAR]

RIN 2060–AS72

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the year 2017. Relying on statutory authority that is available when projected cellulosic biofuel production volumes are less than the applicable volume specified in the statute, the EPA is setting volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory applicable volumes, but which are nevertheless significantly higher than past requirements. The final rule also establishes the four percentage standards applicable to obligated parties, namely producers and importers of gasoline and diesel, based on the corresponding volume requirements. The final standards are expected to continue driving the market to overcome constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of renewable fuels. In this action, we are also establishing the applicable volume of biomass-based diesel for 2018.

DATES: This final rule is effective on February 10, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0004. 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: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final action. This table lists the types of entities that EPA is now aware could potentially be regulated by this final action. Other types of entities not listed in the table could also be regulated. To determine whether your entity would be regulated by this final action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this final action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States toward ''greater energy independence and security, to increase the production of clean renewable fuels.'' Today, nearly all of the approximately 142 billion gallons of gasoline used for transportation purposes contains 10 percent ethanol (E10), and a substantial portion of diesel fuel contains biodiesel.

Renewable fuels represent an opportunity for the U.S. to move away from fossil fuels towards a set of lower lifecycle GHG transportation fuels, and the RFS program provides incentives for these lower lifecycle GHG fuels to grow and compete in the market. While renewable fuels include non-advanced (conventional) corn starch ethanol, which is the predominant renewable fuel in use to date, Congress envisioned the majority of growth from 2014 forward to come from advanced biofuels, as the conventional volumes remain constant in the statutory volume tables starting in 2015 while the advanced volumes continue to grow.[2]

The statute includes annual volume targets, and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that refiners and importers must meet every year. In this action, we are establishing the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2017. We are also establishing the applicable volume of biomass-based diesel for 2018.

The standards we are setting are designed to achieve the Congressional intent of increasing renewable fuel use over time in order to reduce lifecycle GHG emissions of transportation fuels and increase energy security, while at the same time accounting for the real-world challenges that have slowed progress toward these goals. Those challenges have made the volume targets established by Congress for 2017 beyond reach for all fuel categories other than biomass-based diesel (BBD), for which the statute specifies only a minimum requirement of 1.0 billion gallons. In setting these standards for 2017, we have used the cellulosic waiver authority provision provided by Congress to establish volume requirements that will be lower than the statutory targets for fuels other than biomass-based diesel, but nevertheless represent significant growth from past years.

The 2017 volume requirements for advanced biofuel and total renewable fuel are higher than the levels we proposed in the NPRM, reflecting our assessment of updated information and a review of comments received. We are also finalizing the proposed volume requirement for BBD for 2018. This BBD volume requirement will continue to provide support for the BBD industry, and we expect that larger volumes of this fuel type are likely to be used to comply with the advanced biofuel requirement. The final volume requirements are shown in Table I–1 below. These final volumes, when considered together with the volumes established over the past several years of the RFS program, indicate that the RFS program is working to deliver steady, ambitious growth in the total amount of renewable fuel produced and used in the United States, consistent with Congressional intent.

TABLE I–1—PROPOSED AND FINAL VOLUME REQUIREMENTS [a]

	2017		2018	
	Proposed	Final	Proposed	Final
Cellulosic biofuel (million gallons)	312	311	n/a	n/a
Biomass-based diesel (billion gallons)	[b] 2.0	[b] 2.0	2.1	2.1
Advanced biofuel (billion gallons)	4.0	4.28	n/a	n/a
Renewable fuel (billion gallons)	18.8	19.28	n/a	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.
[b] The 2017 BBD volume requirement was established in the 2014–2016 final rule (80 FR 77420, December 14, 2015).

[1] 75 FR 14670, March 26, 2010.

[2] In this document we follow the common practice of using the term ''conventional'' renewable fuel to mean any renewable fuel that is not an advanced biofuel.

Despite significant increases in renewable fuel use in the United States, real-world constraints, such as the slower than expected development of the cellulosic biofuel industry and constraints in the marketplace related to supply of certain biofuels to consumers, have made the timeline laid out by Congress for the growth in renewable fuel use (other than for BBD) impossible to achieve. These challenges continue, and are largely the same for 2017 as they were for 2016. However, a careful review of the comments we received in response to the May 31, 2016 Notice of Proposed Rulemaking (NPRM) and other information that has become available since May has led us to conclude that volume reductions for 2017 need not be as great as we had proposed. In light of the lower reductions necessary, in this final rule we rely exclusively on the cellulosic waiver authority to provide reductions in both advanced biofuel and total renewable fuel volumes. That is, we have determined that it is not necessary to provide an additional increment of volume reduction for total renewable fuels through use of the general waiver authority based on a finding of inadequate domestic supply, as we had done in the final rule establishing annual standards for 2014–2016 (''Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017,'' (hereinafter referred to as the ''2014–2016 final rule''),[3] and as we also proposed to do in establishing standards for 2017.[4]

We believe that the RFS program can and will drive renewable fuel use, and we have considered the ability of the market to respond to the standards we set when we assessed the amount of renewable fuel that can be reasonably attained in 2017. Therefore, while this final rule applies the tools Congress provided to make adjustments to the statutory volume targets in recognition of the constraints that exist today, we believe the standards we are setting in this action will drive growth in renewable fuels, particularly advanced biofuels, which achieve substantial lifecycle GHG emissions. In our view, while Congress recognized that supply challenges may exist as evidenced by the waiver provisions, it did not intend growth in the renewable fuels market to be stopped by those challenges, including those associated with the ''E10 blendwall.''[5] The fact that Congress chose to mandate increasing and substantial amounts of renewable fuel clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies and overcome constraints in the market. The standards we are setting in this action will provide those incentives.

The standards we are setting in this final rule are part of a collection of actions, in both the government and private sectors, to increase the use of renewable fuels. In addition to ongoing efforts to evaluate new pathways for RIN generation for advanced biofuels, we have recently proposed regulatory provisions that we believe will enhance the ability of the market to increase not only the production of advanced and cellulosic biofuels, but also the use of higher-level ethanol blends such as E15 and E85.[6] DOE and USDA are continuing to provide funds for the development of new technologies and expansion of infrastructure for higher ethanol blends, and the ethanol industry has also made efforts to expand the use of higher ethanol blends through its Prime the Pump program. These actions are expected to continue to help clear hurdles to support the ongoing growth in the use of renewable fuels in future years.

A. Purpose of This Action

The national volume targets of renewable fuel that are intended to be achieved under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The statutory volumes for 2017 are shown in Table I.A–1. The cellulosic biofuel and BBD categories are nested within the advanced biofuel category, which is itself nested within the total renewable fuel category. This means, for example, that each gallon of cellulosic biofuel or BBD that is used to satisfy the individual volume requirements for those fuel types can also be used to satisfy the requirements for advanced biofuel and total renewable fuel.

TABLE I.A–1—APPLICABLE 2017 VOLUMES SPECIFIED IN THE CLEAN AIR ACT

[Billion gallons] [a]

Cellulosic biofuel	5.5
Biomass-based diesel	≥1.0
Advanced biofuel	9.0
Renewable fuel	24.0

[a] All values are ethanol-equivalent on an energy content basis, except values for BBD which are given in actual gallons.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. The percentage standards are calculated to ensure use in transportation fuel of the national ''applicable volumes'' of the four types of biofuel (cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel) that are set forth in the statute or established by EPA in accordance with the Act's requirements. The percentage standards are used by obligated parties (generally, producers and importers of gasoline and diesel fuel) to calculate their individual compliance obligations. Each of the four percentage standards is applied to the volume of non-renewable gasoline and diesel that each obligated party produces or imports during the specified calendar year to determine their individual volume obligations with respect to the four renewable fuel types. The individual volume obligations determine the number of RINs of each renewable fuel type that each obligated party must acquire and retire to demonstrate compliance.

EPA is establishing the annual applicable volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2017, and for BBD for 2018.[7] Table I.A–2 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the percentage standards in this final rule.

[3] 80 FR 77420, December 14, 2015.

[4] 81 FR 34778, May 31, 2016.

[5] The ''E10 blendwall'' represents the volume of ethanol that can be consumed domestically if all gasoline contains 10% ethanol and there are no higher-level ethanol blends consumed such as E15 or E85.

[6] See the recently proposed Renewables Enhancement and Growth Support (REGS) Rule (81 FR 80828, November 16, 2016). More information about this proposed rule can be found at *https://www.epa.gov/renewable-fuel-standard-program/proposed-renewables-enhancement-and-growth-support-regs-rule.*

[7] The 2017 BBD volume requirement was established in the 2014–2016 final rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

Applicable volumes	Clean air act reference	Criteria provided in statute for determination of applicable volume
Cellulosic biofuel	211(o)(7)(D)(i)	Required volume must be lesser of volume specified in CAA 211(o)(2)(B)(i)(III) or EPA's projected volume.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Biomass-based diesel [8]	211(o)(2)(B)(ii) and (v)	Required volume for years after 2012 must be at least 1.0 billion gallons, and must be based on a review of implementation of the program, coordination with other federal agencies, and an analysis of specified factors.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Advanced biofuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Total renewable fuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.

As shown in Table I.A–2, the statutory authorities allowing EPA to modify or set the applicable volumes differ for the four categories of renewable fuel. Under the statute, EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected production volume. In Section III of this final rule, we present our analysis of cellulosic biofuel production and the final applicable volume for 2017. This analysis is based on information provided by the Department of Energy's Energy Information Administration (EIA), an evaluation of producers' production plans and progress to date following discussions with cellulosic biofuel producers, and is informed by comments we received in response to the NPRM.

With regard to BBD, Congress chose to set aside a portion of the advanced biofuel standard for BBD, and CAA section 211(o)(2)(B) specifies the applicable volumes of BBD to be used in the RFS program only through year 2012. For subsequent years the statute sets a minimum volume of 1 billion gallons, and directs EPA, in coordination with the U.S. Departments of Agriculture (USDA) and Energy (DOE), to determine the required volume after review of implementation of the renewable fuels program and consideration of a number of factors. The BBD volume requirement must be established 14 months before the year in which it will apply. In the 2014–2016 final rule we established the BBD volume for 2017. In Section VI of this preamble we discuss our assessment of statutory and other relevant factors and our final volume requirement for BBD for 2018, which has been developed in coordination with USDA and DOE. We are increasing the required volume of BBD so as to provide continued support to that important contributor to the pool of advanced biofuel while at the same time setting the volume requirement in a manner anticipated to provide continued incentive for the development of other types of advanced biofuel.

Regarding advanced biofuel and total renewable fuel, Congress provided several mechanisms through which those volumes could be reduced if necessary. If we reduce the applicable volume of cellulosic biofuel below the volume specified in CAA section 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the ''cellulosic waiver authority.'' We may also reduce the applicable volumes of any of the four renewable fuel types using the ''general waiver authority'' provided in CAA section 211(o)(7)(A) if EPA, in consultation with USDA and DOE, finds that implementation of the statutory volumes would severely harm the economy or environment of a State, region, or the United States, or if there is inadequate domestic supply. Sections II, IV, and V of this final rule describe our use of the cellulosic waiver authority alone to reduce volumes of advanced biofuel and total renewable fuel, and our assessment that the resulting volumes are reasonably attainable. As described in the NPRM, and consistent with the views that we expressed in the 2014–2016 final rule, we continue to believe that reductions in the statutory targets for 2017 are necessary. However, in light of our review of updated information and consideration of comments, we are making those reductions under the cellulosic waiver authority alone and are not finalizing an additional

[8] Section 211(o)(7)(E) also authorizes EPA in consultation with other federal agencies to issue a temporary waiver of applicable volumes of BBD where there is a significant feedstock disruption or other market circumstance that would make the price of BBD fuel increase significantly.

increment of reduction for total renewable fuel based on a finding of inadequate domestic supply under the general waiver authority as we had proposed. Despite the reductions we are finalizing today, we continue to be mindful that the primary objective of the statute is to increase renewable fuel use over time. While progress has taken longer than Congress anticipated, we note that today's rule provides for 15 billion gallons of conventional renewable fuel, the implied level envisioned under the statute for 2017, while also providing for a substantial increase in the required volume of advanced biofuel over past volume requirements.

B. Summary of Major Provisions in This Action

This section briefly summarizes the major provisions of this final rule. We are establishing applicable volume requirements and associated percentage standards for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2017, as well as the percentage standard for BBD for 2017, and the applicable volume requirement for BBD for 2018.

1. Approach to Setting Volume Requirements

The approach we have taken in this final rule is essentially the same as that presented in the NPRM and in the 2014–2016 final rule with regard to establishing the cellulosic biofuel volume requirement, and the use of the cellulosic waiver authority to reduce advanced biofuel and total renewable fuel. However, it differs in that we have not found it necessary to also use the general waiver authority to provide an additional increment of reduction with respect to total renewable fuel. While in the NPRM we proposed to determine the maximum reasonably achievable supply of total renewable fuel, consistent with the general waiver authority's ''inadequate domestic supply'' criterion, in this final rule we have instead identified the total renewable fuel volume that results from use of the cellulosic waiver authority, and have determined that this volume of total renewable fuel is reasonably attainable. In this assessment, we took into account the same constraints in the supply of renewable fuel we noted in the NPRM, but have come to a different result with respect to necessary volume reductions in light of updated information and consideration of comments.

Section II provides a general description of our approach to setting volume requirements in today's rule, including a review of the statutory waiver authorities and our consideration of carryover RINs. Section III provides our assessment of the 2017 cellulosic biofuel volume based on a projection of production that reflects a neutral aim at accuracy. Sections IV and V describe our assessment of reasonably attainable volumes of advanced biofuel and total renewable fuel, respectively. Finally, Section VI provides our determination regarding the 2018 BBD volume requirement, and reflects an analysis of a set of factors stipulated in CAA section 211(o)(2)(B)(ii).

2. Cellulosic Biofuel

In the past several years the cellulosic biofuel industry has continued to make progress towards increased commercial scale production. Cellulosic biofuel production reached record levels in 2015, driven largely by compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas, and is expected to exceed these volumes in 2016. Cellulosic ethanol, while produced in much smaller quantities than CNG/LNG derived from biogas, was produced consistently on a commercial scale for the first time in 2015. Cellulosic ethanol production levels increased from existing facilities in 2016, and significant work continues to be done to enable the production of cellulosic ethanol at new facilities in 2017 and beyond. Available data suggest that the production levels for both cellulosic CNG/LNG and cellulosic ethanol in 2016 will exceed by a significant margin the levels produced in 2015. In this rule we are establishing a cellulosic biofuel volume requirement of 311 million ethanol-equivalent gallons for 2017 based on the information we have received regarding individual facilities' capacities, production start dates and biofuel production plans, information received in public comments, input from other government agencies, and EPA's own engineering judgment.

As part of estimating the volume of cellulosic biofuel that will be made available in the U.S. in 2017, we considered all potential production sources by company and facility. This included facilities still in the commissioning or start-up phases, as well as facilities already producing some volume of cellulosic biofuel.[9] From this universe of potential cellulosic biofuel sources, we identified the subset that is expected to produce commercial volumes of qualifying cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel by the end of 2017. To arrive at projected volumes, we collected relevant information on each facility. We then developed projected production ranges based on factors such as the status of the technology being used, progress towards construction and production goals, facility registration status, production volumes achieved, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel Renewable Identification Numbers (RINs). We also used this information to group these companies based on production history and to select a value within the aggregated projected production ranges that we believe best represents the most likely production volume from each group of companies in 2017. Further discussion of these factors and the way they were used to determine our final cellulosic biofuel projection for 2017 can be found in Section III.

3. Advanced Biofuel

The conditions that compelled us to reduce the 2016 volume requirement for advanced biofuel below the statutory target remain relevant in 2017. As for 2016, we investigated the ability of volumes of non-cellulosic advanced biofuels to backfill unavailable volumes of cellulosic biofuel in 2017, through domestic production or import. We took into account the substantial GHG emissions reduction required of advanced biofuels, the various constraints on supply of advanced biofuels, the ability of the standards we set to bring about market changes in the time available, and the potential impacts associated with diverting some feedstocks from current use to the production of biofuel. Based on these considerations and review of the comments received in response to the NPRM and other information that has become available, we have determined that a portion of the shortfall in cellulosic biofuel may appropriately be backfilled with advanced biofuel. We are exercising our cellulosic waiver authority to reduce the statutory applicable volume of advanced biofuel to a final volume requirement of 4.28 billion gallons for 2017. This is somewhat higher than the proposed level of 4.0 billion gallons. The applicable volume for advanced biofuel that we are establishing for 2017 will result in significant volume growth over the volume requirement for 2016, and will require the use of more non-

[9] Facilities primarily focused on research and development (R&D) were not the focus of our assessment, as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have produced.

cellulosic advanced biofuel (3.97 billion gallons) than would have been required under the statutory targets (3.50 billion gallons).

4. Total Renewable Fuel

Following our determination of the appropriate volume reduction for advanced biofuel for 2017 using the cellulosic waiver authority, we applied the same volume reduction to the statutory target for total renewable fuel, resulting in a volume requirement of 19.28 billion gallons. We then evaluated this total renewable fuel volume to determine if it is reasonably attainable given assessments of attainable volumes of individual fuel types, including biodiesel, renewable diesel, ethanol (in the form of E10 or higher ethanol blends such as E15 or E85, taking into account demand for E0), and other renewable fuels. Based on comments received in response to the NPRM and other information that has become available, we have determined that a total renewable fuel volume of 19.28 billion gallons is reasonably attainable in 2017. There is, therefore, no need to use the general waiver authority to further reduce the total renewable fuel volume requirement due to a finding of inadequate domestic supply.[10]

5. Biomass-Based Diesel

In EISA, Congress specified increasing applicable volumes of BBD through 2012. Beyond 2012 Congress stipulated that EPA, in coordination with other agencies, was to establish the BBD volume taking into consideration implementation of the program to date and various specified factors, providing that the required volume for BBD could not be less than 1.0 billion gallons. For 2013, EPA established an applicable volume of 1.28 billion gallons. For 2014 and 2015 we established the BBD volume requirement to reflect the actual volume for each of these years of 1.63 and 1.73 billion gallons.[11] For 2016 and 2017, we set the BBD volume requirements at 1.9 and 2.0 billion gallons respectively.

Given current and recent market conditions, the advanced biofuel volume requirement is driving the use of biodiesel and renewable diesel volumes over and above volumes required through the separate BBD standard, and we expect this to continue. Nevertheless, we continue to believe for 2018 that it is appropriate to set increasing BBD applicable volumes to provide a floor to support continued investment to enable increased production and use of BBD. In doing so we also believe in the importance of maintaining opportunities within the advanced biofuel requirement for growth in other types of advanced biofuel, such as renewable diesel co-processed with petroleum, renewable gasoline blend stocks, and renewable heating oil, as well as others that are under development.

Thus, based on a review of the implementation of the program to date and all the factors required under the statute, and in coordination with USDA and DOE, we are finalizing an increase in the applicable volume of BBD by 100 million gallons, to 2.1 billion gallons for 2018. We believe that this increase will support the overall goals of the program while also maintaining the incentive for development and growth in production of other advanced biofuels. Establishing the volumes at this level will encourage BBD producers to manufacture higher volumes of fuel that will contribute to the advanced biofuel and total renewable fuel requirements, while also leaving considerable opportunity within the advanced biofuel mandate for investment in and growth in production of other types of advanced biofuel with comparable or potentially superior environmental or other attributes.

6. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each producer and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations. The percentage standards are set so that if each obligated party meets the standards, and if EIA projections of gasoline and diesel use for the coming year prove to be accurate, then the amount of renewable fuel, cellulosic biofuel, BBD, and advanced biofuel actually used will meet the volume requirements used to derive the percentage standards, required on a nationwide basis.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The volume of transportation gasoline and diesel used to calculate the final percentage standards was provided by the Energy Information Administration (EIA). The final percentage standards for 2017 are shown in Table I.B.6–1. Detailed calculations can be found in Section VII, including the projected gasoline and diesel volumes used.

TABLE I.B.6–1—FINAL 2017 PERCENTAGE STANDARDS

Cellulosic biofuel	0.173%
Biomass-based diesel	1.67%
Advanced biofuel	2.38%
Renewable fuel	10.70%

7. Assessment of Aggregate Compliance

By November 30 of each year we are required to assess the status of the aggregate compliance approach to land-use restrictions under the definition of renewable biomass for both the U.S. and Canada. In today's action we are providing the final announcements for these administrative actions.

As part of the RFS regulations, EPA established an aggregate compliance approach for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land. This compliance approach relieved such producers (and importers of such fuel) of the individual recordkeeping and reporting requirements otherwise required of producers and importers to verify that such feedstocks used in the production of renewable fuel meet the definition of renewable biomass. EPA determined that 402 million acres of U.S. agricultural land was available in 2007 (the year of EISA enactment) for production of crops and crop residue that would meet the definition of renewable biomass, and determined that as long as this total number of acres is not exceeded, it is unlikely that new land has been devoted to crop production based on historical trends and economic considerations. We indicated that we would conduct an annual evaluation of total U.S. acreage that is cropland, pastureland, or conservation reserve program land, and that if the value exceeds 402 million acres, producers using domestically grown crops or crop residue to produce renewable fuel would be subject to individual recordkeeping and reporting to verify that their feedstocks meet the definition of renewable biomass. As described in Section VIII.A, based on data provided by the USDA and using the methodology in place since 2014,

[10] The general waiver authority can also be used under a determination that the RFS volumes would cause ''severe economic or environmental harm.'' As described in Section II.A.2 and in more detail in the response to comments document accompanying this rule, EPA does not believe that the record supports a finding of severe economic or environmental harm with respect to the volume requirements we are finalizing today.

[11] The 2015 BBD standard was based on actual data for the first 9 months of 2015 and on projections for the latter part of the year for which data on actual use was not available at the time.

we have estimated that U.S. agricultural land totaled approximately 380 million acres in 2016 and thus did not exceed the 2007 baseline acreage. This assessment means that the aggregate compliance provision can continue to be used in the U.S. for calendar year 2017.

On September 29, 2011, EPA approved the use of a similar aggregate compliance approach for planted crops and crop residue grown in Canada. The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and non-forested on that date (and is therefore RFS2 qualifying land). As described in Section VIII.B, based on data provided by Canada, we have estimated that Canadian agricultural land totaled approximately 118.4 million acres in 2016 and thus did not exceed the 2007 baseline acreage. This assessment means that the aggregate compliance provision can continue to be used in Canada for calendar year 2017.

II. Authority and Need For Waiver of Statutory Applicable Volumes

The statute provides the EPA with the authority to reduce volume requirements below the applicable volume targets specified in the statute under specific circumstances. This section discusses those authorities and our use of the cellulosic waiver authority alone to set 2017 volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets.

A. Statutory Authorities for Reducing Volume Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022, and for biomass-based diesel through 2012, and authorized EPA to set volume requirements for subsequent years in coordination with USDA and DOE, and after consideration of specified factors. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set volume requirements at a lower level than reflected in the statutory volume targets, and thus provided waiver provisions in CAA section 211(o)(7).

1. Cellulosic Waiver Authority

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, that EPA must reduce the applicable volume of cellulosic biofuel required to the projected production volume for that calendar year. In making this projection, EPA must take a ''neutral aim at accuracy.'' *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volumes for each year since 2010. As described in Section III.D, the projected volume of cellulosic biofuel production for 2017 is less than the 5.5 billion gallon volume target in the statute. Therefore, for 2017, we are setting the cellulosic biofuel volume requirement at a level lower than the statutory applicable volume, in accordance with this provision.

Section 211(o)(7)(D)(i) also provides that ''[f]or any calendar year in which the Administrator makes . . . a reduction [in cellulosic biofuel volumes], the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels . . . by the same or a lesser volume.'' Using this authority, the reductions in total renewable fuel and advanced biofuel can be less than or equal to, but no more than, the amount of reduction in the cellulosic biofuel volume. EPA used this authority to reduce applicable volumes of advanced biofuel in 2014–16, and to reduce the total renewable fuel volumes in those years by an equal amount. We refer to authority in Section 211(o)(7)(D)(i) to waive volumes of advanced and total renewable fuel as the ''cellulosic waiver authority.''

The cellulosic waiver authority was discussed by the United States Court of Appeals for the District of Columbia Circuit, in the context of its consideration of a judicial challenge to the rule establishing the 2013 annual RFS standards. As the court explained,

> The Clean Air Act provides that if EPA reduces the cellulosic biofuel requirement, as it did here, then it 'may also reduce' the advanced biofuel and total renewable fuel quotas 'by the same or a lesser volume.' 42 U.S.C. 7545(o)(7)(D)(i). There is no requirement to reduce these latter quotas, nor does the statute prescribe any factors that EPA must consider in making its decision. *See id.* In the absence of any express or implied statutory directive to consider particular factors, EPA reasonably concluded that it enjoys broad discretion regarding whether and in what circumstances to reduce the advanced biofuel and total renewable fuel volumes under the cellulosic waiver provision. *Monroe* v. *EPA,* 750 F.3d 909, 915 (D.C. Cir. 2014).

Some stakeholders have commented that EPA may only exercise the cellulosic waiver authority to reduce total and advanced volumes in circumstances described in CAA section 211(o)(7)(A) (that is, where there is inadequate domestic supply or severe harm to the environment or economy), or that it must in using the cellulosic waiver authority consider the factors specified in section 211(o)(2)(B)(ii) that are required considerations when EPA sets applicable volumes for years in which the statute does not do so. Contrary to these comments, the Court found in the *Monroe* case that the statute does not prescribe any factors that EPA must consider in making is decision; EPA has broad discretion under 211(o)(7)(D)(i) to determine when and under what circumstances to reduce the advanced and total renewable fuel volumes when it reduces the statutory applicable volume of cellulosic biofuel.

When using the cellulosic waiver authority, we believe that there would be substantial justification to exercise our discretion to lower volumes of total and advanced biofuels in circumstances where there are questions regarding the sufficiency of production or import of potentially qualifying renewable fuels, and where there is evidence of constraints that would limit the ability of those biofuels to be used for purposes specified in the Act (*i.e.,* in transportation fuel, heating oil, or jet fuel). In addition, we believe that it is appropriate in exercising the cellulosic waiver authority for EPA to consider the Congressional objectives reflected in the volumes tables in the statute, and the environmental objectives that generally favor the use of advanced biofuels over non-advanced biofuels. For example, in light of the larger GHG emissions reductions required for advanced biofuels as compared to conventional biofuel, and the Congressional objective to dramatically increase their use in the time period between 2015 and 2022, we believe that it is generally appropriate for reasonably attainable volumes of advanced biofuel that are sourced in a manner expected to provide significant GHG reduction benefits to backfill for shortages in cellulosic biofuel. On the other hand, we do not believe it would be appropriate for the gap in the availability of cellulosic biofuel in 2017 to be filled or partially filled with non-advanced biofuel, taking into consideration both the substantially lower greenhouse gas emissions reductions required for non-advanced

biofuel[12] and the Congressional intent reflected in the statutory tables that use of these biofuels in this time period would be limited.[13] These considerations are consistent with EPA's past interpretation of the cellulosic waiver authority as envisioning equivalent reductions in the applicable volumes of advanced biofuels and total renewable fuels.[14] *See* 74 FR 24914; 78 FR 49810.

We believe, as we did in setting the volumes in the past, that the circumstances justifying use of our cellulosic waiver authority and thus a reduction in statutory volumes are currently present, and we are again using our cellulosic waiver authority under 211(o)(7)(D)(i) to reduce volume requirements for advanced biofuel and total renewable fuel. Congress envisioned that there would be 5.5 billion gallons of cellulosic biofuel in 2017, while our production projection, described in detail in Section III, is for 311 million gallons. Under 211(o)(7)(D)(i), EPA must lower the required cellulosic volume to the projected production volumes. See also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2012). Doing so also provides EPA with authority to lower advanced and total renewable fuel volumes by the same or a lesser amount.

We have determined, as described in Section IV, that the applicable volume for advanced biofuels specified in the statute for 2017 cannot be achieved and, consistent with the principles described above, we are exercising our cellulosic waiver authority to lower the applicable volume of advanced biofuel to a level that is both reasonably attainable and appropriate, and to provide an equivalent reduction in the applicable volume of total renewable fuel. In addition, we have determined that there is adequate supply to satisfy the total renewable fuel volume derived through applying an equal volume reduction as for advanced biofuel. Therefore, no further reductions of the total renewable fuel volume requirement are necessary to address concerns of inadequate supply. The resulting volume requirements provide the benefits associated with the use of reasonably attainable and appropriate volumes of advanced biofuels to partially backfill for missing volumes of cellulosic biofuel in 2017, while also providing for an implied volume requirement for conventional biofuel equal to that envisioned by Congress for 2017.

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volume specified in the Act in whole or in part based on petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on her own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that (1) implementation of the requirement would severely harm the economy or the environment of a State, a region or the United States, or (2) there is an inadequate domestic supply. Because the general waiver provision provides EPA the discretion to waive the statutory applicable volume ''in whole or in part,'' we interpret this section as granting EPA authority to fully or partially waive any of the four applicable volume requirements in appropriate circumstances. For the years 2014–2016, EPA determined that there was an inadequate domestic supply of total renewable fuel, and used the general waiver authority to reduce the total renewable fuel volumes further than the reductions obtained using the cellulosic waiver authority. In the notice of proposed rulemaking for this rule, EPA proposed to use the general wavier authority in a similar way, and for the same reason, in establishing the 2017 total renewable fuel volume requirement.

Based on further evaluation of the availability of renewable fuel in the market, in the interim between the NPRM and this final rule, and review of public comment, EPA has determined that it is not necessary to use the general waiver authority. That is, we have determined that use of the cellulosic waiver authority alone will be sufficient to yield a volume requirement that is consistent with available supply.[15]

3. General Comments Related to Waiver Authorities

Many commenters suggested that EPA should only use the cellulosic waiver authority to reduce volumes of total renewable fuel in 2017. While we do not believe this would have been possible under the circumstances described in the proposal, in light of EPA's re-evaluation of available supplies, as discussed in Sections IV and V, we are today following the approach suggested by these commenters in using the cellulosic waiver authority exclusively to reduce volumes of both advanced biofuel and total renewable fuel.

Some commenters said that EPA should not reduce the volume requirements for advanced biofuel and total renewable fuel at all and should instead set standards for 2017 based on the statutory targets. In most cases, these commenters based their positions on the availability of carryover RINs and an expectation that ''letting the market work'' would be sufficient to overcome all constraints related the production and distribution of fuels that can be used to satisfy these standards. As described in Section II.B below, we continue to believe that, in light of the expected volume of carryover RINs, it would be inappropriate for 2017 to intentionally draw down the bank of carryover RINs for the purposes of increasing the volume requirements above levels that can be satisfied with physical volume. As for ''letting the market work,'' we believe that this view is dismissive of the market constraints discussed in the NPRM, Table II.E. 1–1 of the 2014–2016 final rule and in Sections IV.B and V.B of this final rule. The market is not unlimited in its ability to respond to the standards EPA sets. While setting the standards at the statutory targets would undoubtedly produce a significant increase in RIN prices, doing so in light of the combined actions of all constraints shown in Table II.E.1–1 of the 2014–2016 final rule and discussed in Sections IV.B. and V.B. of this rule would nevertheless create a

[12] Non-advanced biofuel must meet the 20% reduction in lifecycle GHG emissions described in CAA section 211(o)(2)(A)(i), unless they qualify for an exemption under 40 CFR 80.1403.

[13] Since the advanced biofuel volume requirement is nested within the total renewable fuel volume requirement, the statutory implied volume for conventional renewable fuel in the statutory tables can be discerned by subtracting the applicable volume of advanced biofuel from that of total renewable fuel. Performing this calculation with respect to the tables in CAA section 211(o)(2)(B) indicates a Congressional expectation that in the time period 2015–2022, advanced biofuel volumes would grow from 5.5 to 21 billion gallons, while the implied volume for conventional renewable fuel would remain constant at 15 billion gallons.

[14] Our consistent view has been that the provision is best interpreted and implemented to provide for equal reductions in advanced biofuel and total renewable fuel. We believe that this approach is consistent with the statutory language and best effectuates the objectives of the statute, in that it allows for EPA to determine an appropriate volume of advanced biofuel providing meaningful GHG emissions reductions to backfill missing cellulosic volumes, while also resulting in an implied volume for conventional renewable fuel of no greater than 15 billion gallons as envisioned in the statutory time period for 2015–2022.

[15] Some commenters noted that in addition to the authority to reduce applicable volumes under the general waiver authority on the basis of an ''inadequate domestic supply'' that EPA possesses the ability to use the general waiver authority where it finds that the RFS volumes would cause ''severe economic or environmental harm in a State, region, or the United States.'' As described in more detail in the response to comments document accompanying this rule, EPA does not believe that the record supports a finding of severe economic or environmental harm with respect to the volume requirements we are finalizing today.

shortfall in supply in 2017 that would likely lead to a complete draw-down in the bank of carryover RINs, noncompliance, and/or additional petitions for a waiver of the standards. As described in Sections IV and V, we are authorized to use the cellulosic waiver authority in 2017 to reduce volumes of advanced and total renewable fuel, and believe it is appropriate to do so for the reasons noted in those sections.

B. Treatment of Carryover RINs

Consistent with our approach in the 2014–2016 final rule, we have also considered the availability and role of carryover RINs in our decision to exercise our cellulosic waiver authority in setting the advanced and total volume requirements for 2017.[16] Although the statute requires a credit program and specifies that the credits shall be valid for a 12-month time period, neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising its cellulosic waiver authority.[17] As noted in the context of the rule establishing the 2014–16 RFS standards, we believe that a bank of carryover RINs is extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends.[18] Carryover RINs provide flexibility in the face of a variety of circumstances that could limit the availability of RINs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel.[19] On the other hand, carryover RINs can be used for compliance purposes, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[20]

In the 2017 NPRM, EPA estimated that the likely volume of the carryover RIN bank for 2017 would be approximately 1.72 billion carryover RINs (including all D codes). We proposed that in light of this relatively limited volume and the important functions provided by the RIN bank, that we would not set the volume requirements for 2017 in a manner that would intentionally lead to a drawdown in the bank of carryover RINs. In their comments on the 2017 NPRM, parties generally expressed two opposing points of view. Commenters representing obligated parties supported EPA's proposed decision to not assume a drawdown in the bank of carryover RINs in determining the appropriate level of volume requirements. These commenters reiterated the importance of maintaining the carryover RIN bank in order to provide obligated parties with necessary compliance flexibilities, better market trading liquidity, and a cushion against future program uncertainty. Commenters representing renewable fuel producers, however, contended that carryover RINs represent actual supply and should be accounted for when establishing the annual volume standards and, in particular, in any determination under the general waiver authority that there is an ''inadequate domestic supply.'' They expressed concern that obligated parties could use carryover RINs as an alternative to RINs generated for renewable fuel produced in 2017, leading to less demand for their product and inadequate return on investment.[21]

1. Updated Projection of Carryover RIN Volume

In the NPRM, EPA estimated that the carryover RIN bank available in 2017 would be approximately 1.72 billion carryover RINs. Since that time, obligated parties have submitted their compliance demonstrations for the 2014 compliance year and, based on that information, we now estimate that there will at most be 1.54 billion carryover RINs available for possible use in complying with the standards for 2017, a decrease of nearly 200 million RINs from the previous estimate.[22] This is approximately 8 percent of the final 2017 total renewable fuel volume standard and less than half of the 20 percent limit permitted by the regulations to be carried over for use in complying with the 2017 standards. However, there remains considerable uncertainty surrounding this number since compliance demonstrations still need to be made for the 2015 and 2016 RFS standards, and it is unclear at this time whether some portion of the 1.54 billion carryover RINs we estimate will be available for the 2017 compliance demonstrations will be used for compliance prior to 2017. In addition, we note that there have been enforcement actions in past years that have resulted in the retirement of RINs that were fraudulently generated and were therefore invalid, and parties that relied on those invalid RINs for compliance were required to acquire valid substitutes to true up their past compliance demonstrations. Future enforcement actions could have similar results, and require that obligated parties settle past enforcement-related obligations in addition to the annual standards, thereby potentially creating demand for RINs greater than can be accommodated through actual renewable fuel blending in 2017. Collectively, the result of satisfying RFS obligations in 2015 and 2016 and settling enforcement-related accounts could be an effective reduction in the size of the collective bank of carryover RINs to a level below 1.54 billion RINs. Thus, we believe there is considerable uncertainty that a RIN bank as large as 1.54 billion RINs will be available in 2017.

2. EPA's Decision

EPA has decided to maintain the proposed approach, and not set the volume requirements in the final rule with the intention or expectation of drawing down the current bank of carryover RINs. In finalizing this approach, we carefully considered the many comments received, including on the role of carryover RINs under our waiver authorities and the policy implications of our decision. While we have not assumed an intentional

[16] The discussion of the role of carryover RINs as they relate to the cellulosic volume standard for 2017 can be found in Section III.D.

[17] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid to show compliance for 12 months as of the date of generation. EPA implemented this requirement though the use of RINs, which can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although use of these carryover RINs is limited to 20% of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with a newer vintage RIN that is then held for use in the next year. For example, if the volume of the RIN bank is unchanged from 2016 to 2017, then all of the vintage 2016 carryover RINs must be used for compliance in 2017, or they will expire. However, the same volume of 2017 RINs can then be ''banked'' for use in the next year.

[18] See 80 FR 77482–77487 (December 14, 2015).

[19] See id., and 72 FR 23900 (May 1, 2007).

[20] See 79 FR 49794 (August 15, 2013).

[21] A full description of comments received, and our detailed responses to them, is available in the Response to Comments document in the docket.

[22] The calculations performed to estimate the number of carryover RINs available in 2017 can be found in the memorandum, ''2017 Carryover RIN Bank Calculations,'' available in the docket.

drawdown in the overall bank of carryover RINs owned by obligated parties collectively in establishing the volume requirements for 2017, we understand that some obligated parties may choose to sell or use all or part of their individual banks of carryover RINs. To the extent that they do so, other obligated parties would be in a position to bank carryover RINs by using available renewable fuel or purchasing RINs representing such fuel, with the expected net result being no effective change in the size of the overall bank of carryover RINs that is owned collectively by obligated parties.

In response to those parties who argued that carryover RINs must be considered part of the ''supply'' when EPA uses the general waiver authority on the basis of a finding of ''inadequate domestic supply,'' we note that we are not using the general waiver authority in this final action, so these arguments are irrelevant. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volume objectives for advanced and total renewable fuels, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under the cellulosic waiver authority, and that the statute does not specify the extent to which EPA should require a drawdown in the bank of carryover RINs when it exercises this authority.

An adequate RIN bank serves to make the RIN market liquid and to avoid the possible need for adjustments to the standards. Just as the economy as a whole functions best when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program functions best when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be no RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could lead to the need for a new waiver of the standards, undermining the market certainty so critical to the long term success of the RFS program. Furthermore, many obligated parties lack the ability to separate one or more types of RINs through blending. With a functioning liquid RIN market this is not a problem because we expect that these obligated parties will be able to comply by securing these RINs on the open market. However, a significant drawdown of the carryover RIN bank leading to a scarcity of RINs may stop the market from functioning in an efficient manner, even where the market overall could satisfy the standards. For all of these reasons, the collective carryover RIN bank provides a needed programmatic buffer that both facilitates individual compliance and provides for smooth overall functioning of the program.[23] With volume requirements increasing annually, and the size of the carryover RIN bank shrinking through use of carryover RINs in both 2013 and 2014, we believe it is prudent not to intentionally draw down the RIN bank for 2017 that we have determined will not likely be larger than 1.54 billion carryover RINs, and which could in fact be smaller.

For the reasons noted above, and consistent with the approach we took in the 2014–2016 final rule, we have determined that under current circumstances, an intentional drawdown of the carryover RIN bank should not be assumed in establishing the 2017 volume requirements. The current bank of carryover RINs will provide an important and necessary programmatic buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. Therefore, we are not setting renewable fuel volume requirements at levels that would envision the drawdown in the bank of carryover RINs. However, we note that we may or may not take a similar approach in future years; we will assess the situation on a case-by-case basis going forward, and take into account the size of the carryover RIN bank in the future and any lessons learned from implementing past rules.

III. Cellulosic Biofuel Volume for 2017

In the past several years the cellulosic biofuel industry has continued to make progress towards increased commercial-scale production. Cellulosic biofuel production reached record levels in 2015, driven largely by compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas.[24] Cellulosic ethanol, while produced in much smaller quantities than CNG/LNG derived from biogas, was also produced consistently in 2015. Plans for multiple commercial scale facilities capable of producing drop-in hydrocarbon fuels from cellulosic biomass were also announced. This section describes our assessment of the volume of cellulosic biofuel that we project will be produced or imported into the United States in 2017, and some of the uncertainties associated with those volumes.

In order to project the volume of cellulosic biofuel production in 2017 we considered the Energy Information Administration's projections of cellulosic biofuel production[25] along with data reported to EPA through the EPA Moderated Transaction System (EMTS) and information we collected regarding individual facilities that have produced or have the potential to produce qualifying volumes for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2017. In this final rule we have updated the projected facility start-up dates, facility capacities, production volumes, and other relevant information with the most recent information available. However, we are using the methodology discussed in the proposed rule to project the available supply of cellulosic biofuel for 2017. As described in a memorandum to the docket, the use of essentially the same methodology to generate the applicable standards for 2016 resulted in volumes that the market is currently on track to meet, taking into account anticipated seasonal variation in cellulosic biofuel supply based on data from previous years.[26]

New cellulosic biofuel production facilities projected to be brought online in the United States over the next few years would significantly increase the production capacity of the cellulosic industry. Operational experience gained at the first few commercial scale cellulosic biofuel production facilities could also lead to increasing production of cellulosic biofuel from existing production facilities. The following section discusses the companies the EPA reviewed in the process of projecting qualifying cellulosic biofuel

[23] Here we use the term ''buffer'' as shorthand reference to all of the benefits that are provided by a sufficient bank of carryover RINs.

[24] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills, however the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated MSW digesters, and the cellulosic components of biomass processed in other waste digesters.

[25] ''EIA projections of transportation fuel for 2017,'' docket EPA–HQ–OAR–2016–0004. We note that EIA projections do not include renewable fuel oil, imports of cellulosic biofuel from foreign facilities, or CNG/LNG used as transportation fuel in their estimate of cellulosic biofuel production.

[26] ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

production in the United States in 2017. Information on these companies forms the basis for our projection of 311 million ethanol-equivalent gallons of cellulosic biofuel produced for use as transportation fuel, heating oil, or jet fuel in the United States in 2017.

A. Statutory Requirements

The volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The volume of cellulosic biofuel specified in the statute for 2017 is 5.5 billion gallons. The statute provides that if EPA determines, based on EIA's estimate, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[27]

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume, and we are required to make cellulosic waiver credits available. Our consideration of the 2017 volume requirements for advanced biofuel and total renewable fuel is presented in Sections IV and V of this rule.

B. Cellulosic Biofuel Industry Assessment

In order to project cellulosic biofuel production for 2017, we have tracked the progress of several dozen potential cellulosic biofuel production facilities. As we have done in previous years, we have focused on facilities with the potential to produce commercial-scale volumes of cellulosic biofuel rather than small R&D or pilot-scale facilities. Larger commercial-scale facilities are much more likely to generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standards for 2017. The volume of cellulosic biofuel produced from R&D and pilot-scale facilities is quite small in relation to that expected from the commercial-scale facilities. R&D and demonstration-scale facilities have also generally not generated RINs for the fuel they have produced in the past. Their focus is on developing and demonstrating the technology, not producing commercial volumes. RIN generation from R&D and pilot-scale facilities in previous years has not contributed significantly to the overall number of cellulosic RINs generated.[28]

From this list of commercial-scale facilities we used information from EMTS, publically available information (including press releases and news reports), and information provided by representatives of potential cellulosic biofuel producers, to make a determination of which facilities are most likely to produce cellulosic biofuel and generate cellulosic biofuel RINs in 2017. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2017. Both in our discussions with representatives of individual companies[29] and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

Our approach for projecting the available volume of cellulosic biofuel in 2017 is discussed in more detail in Section III.D below. The approach is the same as the approach adopted in establishing the required volume of cellulosic biofuel in 2016.[30] The remainder of this Section discusses the companies and facilities EPA expects to be in a position to produce commercial-scale volumes of cellulosic biofuel by the end of 2017. This information, together with the reported cellulosic biofuel RIN generation in previous years in EMTS and EIA's projection of liquid cellulosic biofuel production in 2017 forms the basis for our volume requirement for cellulosic biofuel for 2017.

1. Potential Domestic Producers

There are a number of companies and facilities[31] located in the United States that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale, or are anticipated to be in a position to do so at some time during 2017. The financial incentive provided by cellulosic biofuel RINs,[32] combined with the facts that to date nearly all cellulosic biofuel produced in the United States has been used domestically[33] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption using approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for any fuel produced by commercial scale facilities. In order to generate RINs, each of these facilities must be registered under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the companies and facilities have already successfully completed facility registration, and many have successfully generated RINs. A brief description of each of the companies (or group of companies for cellulosic CNG/LNG producers) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2017 can be found in a memorandum to the docket for this final rule.[34] These descriptions are based on a review of publicly available information and in many cases on information provided to EPA in conversations with company representatives. General information on each of these companies or group of companies considered in our projection of the potentially available volume of

[27] The United States Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA* 706 F.3d 474. 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an ''outcome-neutral methodology'' aimed at providing a prediction of ''what will actually happen.''

[28] While a few small R&D and pilot scale facilities have registered as cellulosic RIN generators, total production from each of these facilities from 2010 through September 2016 has been less than 50,000 RINs.

[29] In determining appropriate volumes for CNG/LNG producers we generally did not contact individual producers but rather relied primarily on discussions with industry associations, and information on likely production facilities that are already registered under the RFS program. In some cases where further information was needed we did speak with individual companies.

[30] See 80 FR 77420, 77499 (December 14, 2015).

[31] The volume projection from CNG/LNG producers does not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

[32] According to data from Argus, the price for 2016 cellulosic biofuel RINs averaged $1.84 in 2016 (through September 2016). Alternatively, obligated parties can obtain a RIN value equivalent to a cellulosic biofuel RIN by purchasing an advanced (or biomass-based diesel) RIN and a cellulosic waiver credit. The price for a 2016 cellulosic waiver credit is $1.33.

[33] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

[34] ''Cellulosic Biofuel Producer Company Descriptions (October 2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

cellulosic biofuel in 2017 is summarized in Table III.B.3–1 below.

2. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the United States, there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2017. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used and other regulatory requirements are satisfied. These companies would therefore be eligible to register these facilities under the RFS program and generate RINs for any qualifying fuel imported into the United States. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the United States, demand for the cellulosic biofuels they produce is expected to be high in their own local markets.

EPA is charged with projecting the volume of cellulosic biofuel that will be produced or imported into the United States. For the purposes of this final rule we have considered all of the registered foreign facilities under the RFS program to be potential sources of cellulosic biofuel in 2017. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the United States, cellulosic biofuel imports from facilities not currently registered to generate cellulosic biofuel RINs are highly unlikely in 2017. We have therefore, for purposes of our 2017 cellulosic biofuel projection evaluated in detail only the potential for foreign cellulosic biofuel production from facilities that are currently registered. Two foreign facilities that have registered as cellulosic biofuel producers have already generated cellulosic biofuel RINs for fuel exported to the United States; projected volumes from each of these facilities are included in our projection of available volumes for 2017. Two additional foreign facilities have registered as a cellulosic biofuel producer, but have not yet generated any cellulosic RINs. EPA contacted representatives from these facilities to inquire about their intentions to export cellulosic biofuel to the United States in 2017. In one case, company representatives indicated they intended to export cellulosic biofuel to the United States, and EPA believes that there is sufficient reason to believe imports of cellulosic biofuel from this company are likely. EPA has included potential volumes from this facility in our 2017 volume production projection (see Table III.B.3–1 below).

3. Summary of Volume Projections for Individual Companies

The information we have gathered on cellulosic biofuel producers forms the basis for our projected volumes of cellulosic biofuel production for each facility in 2017. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities. Each of these facilities is discussed further in a memorandum to the docket.[35]

TABLE III.B.3–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL BY 2017

Company name	Location	Feedstock	Fuel	Facility capacity (MGY)[36]	Construction start date	First production[37]
CNG/LNG Producers[38].	Various (US and Canada).	Biogas	CNG/LNG	Various	N/A	August 2014.
DuPont	Nevada, IA	Corn Stover	Ethanol	30	November 2012	End 2016.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	Fall 2016.
Ensyn	Renfrew, ON, Canada.	Wood Waste	Heating Oil	3	N/A	2014.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse.	Ethanol	21	Mid 2012	September 2014.
Poet	Emmetsburg, IA	Corn Stover	Ethanol	24	March 2012	4Q 2015.
QCCP	Galva, IA	Corn Kernel Fiber	Ethanol	4	Late 2013	October 2014.

C. Projection From the Energy Information Administration

Section 211(o)(3)(A) of the Clean Air Act requires EIA to ''. . . provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.'' EIA provided these estimates to EPA on October 19, 2016.[39] With regard to cellulosic biofuel, the EIA estimated that the available volume in 2017 would be 10 million gallons.

In their letter, EIA did not identify the facilities on which their estimate of cellulosic biofuel production was based. EIA did, however, indicate in their letter that they did not include estimates for cellulosic biofuel produced from biogas from landfills, municipal wastewater treatment facilities, separated MSW digesters, or agricultural digesters or those producing renewable heating oil, which represent approximately 96% of our projected cellulosic biofuel volume for 2017. They also did not include projections for facilities located outside of the United States that we project will export cellulosic biofuel into the United

[35] ''Cellulosic Biofuel Producer Company Descriptions (October 2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[36] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[37] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[38] For more information on these facilities see ''October 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[39] ''EIA projections of transportation fuel for 2017,'' docket EPA–HQ–OAR–2016–0004.

States in 2017. When limiting the scope of our projection to the companies assessed by EIA, we note that while our volume projections are not identical, they are very similar. EPA projects approximately 11 million gallons of liquid cellulosic biofuel will be produced domestically in 2017 (when excluding heating oil, as EIA did in their estimate of cellulosic biofuel production). EIA did not provide detail on the basis of their projections, so we cannot say precisely why EPA and EIA's projections differ. We further note that if we used EIA's projections for domestic liquid cellulosic biofuel production without modification in place of our own assessment of these facilities the impact on the cellulosic biofuel standard overall for 2017 would be less than 1%.

D. Cellulosic Biofuel Volume for 2017

For our 2017 cellulosic biofuel projection, we have used the same methodology used in the final rule establishing the cellulosic biofuel volume standard for 2016.[40] We believe this methodology produces a production projection that is consistent with EPA's charge to project volumes with a ''neutral aim at accuracy,'' and that cellulosic RIN generation data in 2015 and 2016 demonstrate that the use of this methodology has produced reasonable projections in these years.[41] We also received comments on our projection methodology, some of which are discussed below, with the remainder discussed in the response to comment document. Some commenters objected to the use of the same methodology used to establish the cellulosic biofuel volume for 2015 and 2016, arguing that this methodology has consistently over-estimated cellulosic RIN generation.[42] In this final rule we considered modifying several of the individual components of our production projection methodology (such as the start-up date, ramp-up period, expected production volume with the projected ranges, etc.), but ultimately decided to use the same methodology as proposed, as we believe this methodology resulted in reasonably accurate projection of cellulosic biofuel RIN generation in the final three months of 2015, and will likely result in a reasonably accurate projection for 2016 based on the available data that is currently available.[43] While this methodology overestimated portions of the cellulosic biofuel pool (such as the production of liquid cellulosic biofuels from new facilities), it also underestimated production for other portions of the cellulosic biofuel pool (production of CNG/LNG derived from biogas). Modifying individual components of the past methodology may seem justified based on a narrow consideration of each factor, but we do not believe that there is currently sufficient information to support these changes. Adjusting each individual component of the methodology each year based on the most recent information would result in an increasingly complex and unpredictable methodology, and would not necessarily project overall cellulosic biofuel production more accurately. This is especially true in an industry at the early stages of commercialization. We do not believe it would be reasonable to establish a methodology where the success or failure of a small group of companies, and in some cases a single company, would have a dramatic impact on the methodology used to project volumes from other companies the following year, especially where the methodology overall has been demonstrably successful. Therefore, for this year we have decided to use the same methodology that worked successfully in 2015 and 2016. We will continue to evaluate this methodology on an annual basis, and will adjust the methodology if it ceases to provide reasonably accurate projections in future years.

To project cellulosic biofuel production in 2017 we separated the list of potential producers of cellulosic biofuel into four groups according to whether they are producing liquid cellulosic biofuel or CNG/LNG from biogas, and whether or not the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation (See Table III.D–1 through Table III.D–3). We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data are available (October 2015—September 2016). The low end of the range for companies that have not yet begun commercial-scale production (or in the case of CNG/LNG producers have not yet generated RINs for fuel sold as transportation fuel in the United States) is zero.

To calculate the high end of the projected production range for each group of companies we considered each company individually. To determine the high end of the range of expected production volumes for companies producing liquid cellulosic biofuel we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and fuel off-take agreements. As a starting point, EPA calculated a production volume for these facilities using the expected start-up date, facility capacity, and a benchmark of a six-month straight-line ramp-up period representing an optimistic ramp-up scenario.[44] Generally we used this calculated production volume as the high end of the potential production range for each company. The only exceptions were cases where companies provided us with production projections (or projections of the volume of fuel they expected to export to the United States in the case of foreign producers) that were lower than the volumes we calculated as the high end of the range for that particular company. In these cases, the projected production volume (or import volume) provided by the company was used as the high end of the potential production range rather than the volume calculated by EPA. For CNG/LNG producers, the high end of the range was generally equal RIN production projections for 2017 provided to EPA by the renewable natural gas industry.[45] The high end of the ranges for all of the individual companies within each group were added together to calculate the high end of the projected production range for that group.

[40] See 80 FR 77499 for additional detail.

[41] ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[42] As support for these claims, commenters reviewed EPA's projections of cellulosic biofuel production going back to 2010. We note that we used a substantially different methodology to project volumes for 2015 and 2016 than we used in previous years, and we therefore do not believe that overestimates of cellulosic biofuel production in years prior to 2015 are relevant in assessing the reasonableness of the current methodology.

[43] ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[44] We did not assume a six-month straight-line ramp-up period in determining the high end of the projected production range for CNG/LNG producers. This is because these facilities generally have a history of CNG/LNG production prior to producing RINs, and therefore do not face many of the start-up and scale-up challenges that impact new facilities. For further information on the methodology used to project cellulosic RIN generation from CNG/LNG producers see ''October 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[45] For additional detail on the methods used to project cellulosic biofuel production for CNG/LNG producers see ''October 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

TABLE III.D–1—2017 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range [a]	High end of the range [a]
DuPont	0	7
Edeniq	0	6
GranBio	0	2
Poet	0	18
Aggregate Range	0	33

[a] Rounded to the nearest million gallons.

TABLE III.D–2—2017 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

(Million gallons)

	Low end of the range	high end of the range [a]
Ensyn	[b] X	3
Quad County Corn Processors	[b] X	4
Aggregate Range	3.5	7

[a] Rounded to the nearest million gallons.
[b] The low end of the range for each individual company is based on actual production volumes and is therefore withheld to protect information claimed to be confidential business information.

TABLE III.D–3—2017 PRODUCTION RANGES FOR CNG/LNG PRODUCED FROM BIOGAS

[Million gallons]

	Low end of the range [a]	High end of the range [a]
CNG/LNG Producers (New Facilities)	0	178
CNG/LNG Producers (Currently generating RINs)	174	221

[a] Rounded to the nearest million gallons.

EPA received comments from biofuels producers stating that production projections we receive from companies should be used as the basis for the mean value of any projected production range. They argue that EPA should defer to the technical expertise of the cellulosic biofuel manufacturers who provide these projections, and that it is inappropriate to use these projections as the high end of a projected range, with the low end of the projected range based on previous production data. EPA understands that the volume projections provided by companies included in our projection are intended to represent the companies' expectations for production, rather than the high end of a potential production range. We also acknowledge the technical expertise of these companies and the significant amount of investment that has gone into the development of these biofuel production processes as they have progressed from R&D through demonstration and pilot scale in preparation for the first commercial scale facilities. While acknowledging these facts, we do not believe it would be appropriate to ignore the history of the cellulosic biofuel industry. Each year since 2010, EPA has gathered information, including volume production projections, from companies with the potential to produce cellulosic biofuel. Each of these companies supported these projections with successful pilot and demonstration scale facilities as well as other supporting documentation. In the majority of these cases, due to a variety of circumstances, the companies were unable to meet their own volume projections, and in some cases were unable to produce any RIN-generating cellulosic biofuel.

We believe our methodology reasonably projects the range of potential production volumes for each company. A brief overview of each of the companies we believe will produce cellulosic biofuel and make it commercially available in 2017 can be found in a memorandum to the docket.[46] In the case of cellulosic biofuel produced from CNG/LNG we have discussed these facilities as a group rather than individually. EPA believes it is appropriate to discuss these facilities as a group since they are utilizing proven production technologies and the uncertainties and challenges they face relate primarily to linking their production to ultimate use as transportation fuel that is eligible to generate RINs under the RFS program.[47]

After defining likely production ranges for each group of companies we projected a likely production volume from each group of companies for 2017. We used the same percentile values to project a production volume within the established ranges for 2017 as we did in the final rule establishing the cellulosic biofuel standards for 2014–2016; the 50th and 25th percentiles respectively for liquid cellulosic biofuel producers with and without a history of consistent cellulosic biofuel production and RIN generation, and the 75th and 50th percentiles respectively for producers of CNG/LNG from biogas with and without

[46] ''Cellulosic Biofuel Producer Company Descriptions (October 2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[47] For individual company information see ''October 2016 Cellulosic Biofuel Individual Company Projections for 2017 (CBI)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

a history of consistent commercial-scale production and RIN generation. As discussed in the final rule establishing the 2014–2016 cellulosic biofuel standards, we believe these percentages appropriately reflect the uncertainties associated with each of these groups of companies.[48] We further believe that the progress to date in 2015 and 2016 supports the use of these percentile values.[49] We also note that these percentile values are used to project a likely production volume within the projected range for each group of companies. In most cases, especially for companies that have not yet consistently produced cellulosic RINs, the high end of these projected ranges are not necessarily the nameplate capacities of the facilities, as the projected start-up dates and ramp-up periods have been taken into consideration in developing the likely production ranges for each company. This means that our percentile values are not directly comparable to the ''utilization rates'' calculated or projected by some commenters, which calculate a percentage using the facility capacity rather than the high end of the ranges in the tables below. After calculating a likely production volume for each group of companies in 2017, the volumes from each group are added together to determine the total projected production volume of cellulosic biofuel in 2017.

TABLE III.D–4—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2017

[Million gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; Producers without Consistent Commercial Scale Production	0	33	25th	8
Liquid Cellulosic Biofuel Producer; Producers with Consistent Commercial Scale Production	4	7	50th	5
CNG/LNG Producers; New Facilities	0	178	50th	89
CNG/LNG Producers; Consistent Production	174	221	75th	209
Total	N/A	N/A	N/A	311

[a] Volumes rounded to the nearest million gallons.

EPA received comments requesting that we assess each potential cellulosic biofuel production facility individually, in a way that reflects the circumstances of each facility, rather than grouping facilities together. We continue to believe that grouping the potential cellulosic biofuel producers using the criteria of whether or not they have achieved consistent commercial-scale production is appropriate for the purposes of projecting a likely production volume. While each of these groupings contains a diverse set of companies with their own production technologies and challenges, we believe there is sufficient commonality in the challenges related to the funding, construction, commissioning, and start-up of commercial-scale cellulosic biofuel facilities to justify aggregating these company projections into a single group for the purposes of projecting the most likely production volume of cellulosic biofuel. The challenges new production facilities face are also significantly different than those of facilities ramping up production volumes to the facility capacity and maintaining consistent production. Finally, we believe that the level of uncertainty associated with production volumes from any individual facility is sufficiently high that assessing facilities individually, rather grouping them together as done in this final rule, would not necessarily result in more accurate volume projections.

Several commenters claimed that EPA had underestimated the potential production of cellulosic RINs from cellulosic CNG/LNG in 2017. Some commenters noted the large quantity of biogas that is currently produced at landfills, or the development of new digesters designed to produce CNG/LNG from biogas to support their claims. Others stated that because biogas collection from landfills or production in digesters was an established technology EPA should not discount projections from these producers, but rather should assume these volumes can be produced. While we acknowledge that these factors reduce the uncertainty related to cellulosic biofuel production for CNG/LNG derived from biogas, they do not eliminate the uncertainties associated with these fuels. RINs can only be generated for CNG/LNG derived from biogas if the RIN generator can verify (in accordance with the regulations) that an equivalent volume of CNG/LNG was used as transportation fuel. The limited demand for CNG/LNG as transportation fuel is a significant source of uncertainty related to the generation of cellulosic RINs for CNG/LNG for biogas. We believe that the percentile values used in the proposed rule to project cellulosic RIN generation for CNG/LNG from biogas (75th percentile for facilities that have previously generated RINs and 50th percentile for new facilities) is appropriate, and that this is supported by the RIN generation data for cellulosic RINs from CNG/LNG in 2015 and 2016.[50] We also note that in comments on the proposed rule a group of organizations representing CNG/LNG producers supported this methodology as doing a ''reasonable job at projecting production with a neutral aim at accuracy.''[51]

EPA also received comments claiming that the proposed cellulosic biofuel volumes were unreasonably high. These commenters generally claimed that in light of the inability of cellulosic biofuel companies to achieve their projected production volumes, start-up dates, and ramp-up schedules in previous years EPA should instead rely solely on historical production data to project volumes for future years. They suggested that EPA should project future production volumes based on available cellulosic RIN generation data

[48] For a further discussion of the percentile values used to projected likely production from each group of companies see 80 FR 77499.

[49] ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[50] ''Assessment of the Accuracy of Cellulosic Biofuel Production Projections in 2015 and 2016'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[51] See comments from David Cox, General Counsel, Coalition for Renewable Natural Gas et al. EPA–HQ–OAR–2016–0004–1732.

from previous months. EPA believes this would be inconsistent with our charge to project available cellulosic biofuel volume by taking a neutral aim at accuracy. Adopting such an approach would effectively mean ignoring the potential for facilities that have not generated RINs in the past to contribute volumes in the future. It would also ignore the potential for facilities that have begun producing RINs to increase their fuel production rates. This would be inconsistent with our expectations for an industry that has shown substantial growth over the last several years, and is anticipated to continue to grow in 2017. Most importantly, the significant year-over-year increases in the supply of cellulosic biofuel in recent years demonstrates that this suggested method is inappropriately conservative.[52] We recognize that in the past we have both overestimated and underestimated cellulosic RIN generation but we do not believe that our current methodology is fundamentally biased to either an overestimate or an underestimate of total cellulosic RIN production.

Some commenters suggested that after projecting the cellulosic biofuel production volume for 2017, EPA should add to this number the number of available carryover RIN generated in previous years available for use in 2017. These commenters argued that these RINs should be viewed as part of the available supply of cellulosic biofuel, and that a failure to include these RINs in our projection of available volume could have negative impacts on the price of cellulosic RINs and ultimately the cellulosic biofuel industry. EPA does not believe it would be appropriate to add an estimate of carryover RINs available for use in 2017 to our projection of cellulosic biofuel production in 2017 for the purposes of establishing the 2017 cellulosic biofuel standard. Because the compliance deadlines for 2015 and 2016 occur after the finalization of this rule it is impossible to know precisely the number of carryover RINs that will be available for use in 2017. While the compliance data for 2014 indicate that there are likely to be approximately 12 million cellulosic biofuel carryover RINs from that year,[53] and cellulosic RIN generation in 2015 exceeded the standard by 17 million RINs,[54] it is possible that cellulosic RIN generation in 2016 may fall short of the standard, and that many of these RINs may be used to off-set that shortfall. While it is uncertain to what extend RINs representing past production could lawfully be included in the projection of future cellulosic biofuel production required under 211(o)(7)(D), EPA has not seen any evidence that the existence of RINs generated in previous years that may be used towards satisfying cellulosic biofuel obligations in future years has had a negative impact on cellulosic RIN prices.[55] This suggests that any cellulosic biofuel RINs in excess of the standard are being used by obligated parties in much the same way as other types of carryover RINs; aiding market liquidity and reducing the price volatility and potential impacts of short-term supply disruptions. While we do not believe it would be appropriate to add an estimate of available cellulosic carryover RINs for use in 2017 to the projected production volume, EPA remains committed to the success of the cellulosic biofuels industry and will continue to carefully monitor the market for both cellulosic biofuels and cellulosic biofuel RINs, and will re-evaluate this issue in future years.

We believe our range of projected production volumes for each company (or group of companies for cellulosic CNG/LNG producers) represents the range of potential production volumes for each company, and that projecting overall production in 2017 in the manner described above results in a neutral estimate (neither biased to produce a projection that is unreasonably high or low) of likely cellulosic biofuel production in 2017 (311 million gallons). A brief overview of individual companies we believe will produce cellulosic biofuel and make it commercially available in 2017 can be found in a memorandum to the docket.[56] In the case of cellulosic biofuel produced from CNG/LNG we have discussed the production potential from these facilities as a group rather than individually.[57]

IV. Advanced Biofuel Volume for 2017

The national volume targets for advanced biofuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(II). Congress set annual renewable fuel volume targets that envisioned growth at a pace that far exceeded historical growth and prioritized that growth as occurring principally in advanced biofuels (contrary to historical growth patterns where most growth was in conventional renewable fuel, namely corn-ethanol). Congressional intent is evident in the fact that the portion of the total renewable fuel volume target that is not required to be advanced biofuel is 15 billion gallons in the statutory volume tables for all years after 2014, while the advanced volumes continue to grow through 2022 to a total of 21 billion gallons, for a total of 36 billion gallons in 2022.

We have evaluated the capabilities of the market and have concluded that the 9.0 billion gallons specified in the statute for advanced biofuel cannot be reached in 2017. This is primarily due to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 95% or more, and again in 2017 will fall far short of the statutory target of 5.5 billion gallons. In addition, although in earlier years of the RFS program we determined that the available supply of non-cellulosic advanced biofuel and other considerations justified our retaining the statutory advanced biofuel target

[52] Total RIN generation in July–September of 2014 (likely the last 3 months for which EPA would have data available to use in a rule establishing annual volume for 2015) was 11 million ethanol-equivalent gallons, indicating an annual standard of 44 million ethanol-equivalent gallons for 2015 if this was the only information considered in establishing the standard. Actual cellulosic RIN supply in 2015 (RINs generated less those retired for reasons other than compliance) was 141 million ethanol-equivalent gallons. Similarly, total RIN generation in July–September of 2015 was 39.2 million ethanol-equivalent gallons, indicating an annual standard of 157 million ethanol-equivalent gallons for 2016 if this was the only information considered in establishing the standard. Actual cellulosic RIN supply for 2016 (RINs generated less those retired for reasons other than compliance) has already surpassed 127 million RINs and in the first 9 months of the year and is expected to meet the 2016 standard of 230 million ethanol-equivalent gallons.

[53] Annual compliance data can be found on EPA's Web site at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/annual-compliance-data-obligated-parties-and.*

[54] According to EPA's EMTS Web site (*https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2015-renewable-fuel-standard-data*) net cellulosic RIN generation was approximately 140 million RINs in 2015, while the cellulosic biofuel volume requirement for 2015 was 123 million gallons.

[55] According to data from Argus, the average 2016 cellulosic biofuel RIN price has been $1.84 through September 2016. We believe this price is reasonable, as is it is somewhat below the ''theoretical maximum'' cellulosic RIN price of $2.19 (the cellulosic waiver price plus the average price of all non-cellulosic advanced RINs) and significantly above the ''theoretical minimum'' cellulosic RIN price of $0.86 (the average price of all non-cellulosic advanced RINs; we consider this the ''theoretical minimum'' price for a cellulosic biofuel RINs as excess cellulosic biofuel RINs can be used to satisfy an obligated party's advanced biofuel obligation).

[56] ''Cellulosic Biofuel Producer Company Descriptions (October 2016)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[57] For individual company information see ''October 2016 Cellulosic Biofuel Individual Company Projections for 2017 (CBI)'', memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

notwithstanding the shortfall in cellulosic biofuel production, several factors preclude such a determination for 2017, including:

- The more ambitious statutory target for 2017
- The fact that a greater proportion of that target was intended to be satisfied by cellulosic biofuels [58]
- The continued slow pace of growth in cellulosic biofuel production
- Limited volumes of advanced biofuels that we believe are appropriate to backfill for missing volumes of cellulosic biofuel

As a result, we are exercising the authority granted by the statute to reduce the applicable volume of advanced biofuel using the cellulosic waiver authority. The final volume requirement for advanced biofuel recognizes the ability of the market to respond to the standards we set while staying within the limits of reasonable feasibility, providing for a partial backfilling of missing cellulosic biofuel volumes with volumes of advanced biofuel we have determined are appropriate to require for this purpose. The net impact of this volume requirement is that the required volume of advanced biofuel for 2017 will be significantly greater than volumes required or used in the past, but below the statutory target.

To help inform today's action, we investigated whether the market is on track to meet the 2016 advanced biofuel volume requirement of 3.61 billion gallons. As described in a memorandum to the docket, supply through the end of September coupled with a review of seasonal variations in supply for previous years indicate that the 2016 standards are indeed attainable.[59] For comparison, we have also reviewed RINs available for compliance in previous years, along with the effective volume requirements in those years.[60]

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

As described in Section II.A, when making reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority, the statute limits those reductions to no more than the reduction in cellulosic biofuel. As described in Section III.D, we are finalizing a 2017 volume requirement for cellulosic biofuel of 311 million gallons, representing a reduction of 5,189 million gallons from the statutory target of 5,500 million gallons. As a result, 5,171 million gallons is the maximum volume reduction for advanced biofuel and total renewable fuel that is permissible using the cellulosic waiver authority.[61] If we were to use the cellulosic waiver authority to this maximum extent, the resulting 2017 volumes would be 3.83 and 18.83 billion gallons for advanced biofuel and total renewable fuel, respectively.

TABLE IV.A–1—LOWEST PERMISSIBLE VOLUME REQUIREMENTS USING ONLY THE CELLULOSIC WAIVER AUTHORITY

[Million gallons]

	Advanced biofuel	Total renewable fuel
Statutory target	9,000	24,000
Maximum reduction permitted under the cellulosic waiver authority	5,189	5,189
Lowest 2017 volume requirement permitted using only the cellulosic waiver authority	3,811	18,811

We are authorized under the cellulosic waiver authority to reduce the advanced and total renewable fuel volumes ''by the same or a lesser'' amount as the reduction in the cellulosic biofuel volume. Thus, we are not required to use the authority to its maximum extent. And, as discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority, since Congress did not specify the circumstances under which it may or should be used nor the factors to consider in determining appropriate volume reductions. We believe that advanced biofuel should be permitted to compensate for a portion of the shortfall in cellulosic biofuel, thereby promoting the larger RFS goals of reducing GHG emissions and enhancing energy security. To that end, we have investigated the volume of advanced biofuel that is reasonably attainable and appropriate to require in 2017, and have determined that such volumes are higher than the lowest permissible volumes shown in the table above.

B. Determination of Reasonably Attainable and Appropriate Volumes

In the NPRM we proposed to use only the cellulosic waiver authority to reduce volumes of advanced biofuel, and to use both the cellulosic and general waiver authorities to reduce volumes of total renewable fuel. As noted above, and described in more detail in this section and in Section V, we have determined that use of the general waiver authority is not necessary for any renewable fuel category in 2017. However, in response to the NPRM, some commenters misstated our obligations under the cellulosic waiver authority and our intent with respect to its use in setting the volume requirement for advanced biofuel. For instance, some stakeholders expressed concern that EPA had not proposed to set the advanced biofuel volume requirement at the maximum achievable level, but rather at a level that was ''reasonable.'' Many of these stakeholders suggested that it would be most consistent with the statutory goals if we were to set the volume requirement for advanced biofuel equal to the maximum achievable volume.

In the NPRM, as well as in the 2014–2016 final rule, we made a clear distinction between our approach in setting volumes under the cellulosic waiver authority versus our approach in setting volumes under the general waiver authority. The prerequisite for the general waiver authority as EPA has exercised it to date is a finding that there is an ''inadequate domestic supply'' of renewable fuel. In using this authority in the 2014–2016 final rule we noted that our objective was to waive volumes to the point where the inadequacy of supply is removed.

[58] For example, while the statutory tables indicate that 61.1% of the 2017 advanced biofuel target would be satisfied by cellulosic biofuel, the corresponding value for 2013 was only 36.4%.

[59] ''Comparison of 2016 availability of RINs and 2016 standards,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[60] ''Comparison of availability of RINs and standards for previous years,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[61] If we determined it necessary to provide further reductions to address inadequate domestic supply or severe economic or environmental harm, such further reductions would be possible using the general waiver authority.

Therefore, we set volume requirements at the level we determined to be the maximum achievable. When using the cellulosic waiver authority, in contrast, we are only required to ensure that any reduction is no larger than that provided for cellulosic biofuel. The statute does not specify other prerequisites for its use, nor any criteria or factors that EPA should consider in determining whether, and to what extent, to use the authority. Thus, under the cellulosic waiver authority, Congress provided EPA with broad discretion to lower advanced biofuel and total renewable fuel applicable volumes in instances where it lowers the cellulosic biofuel requirement, as in today's rule. In exercising this broad discretion in the context of the 2014–2016 final rule, our intent was to require the use of ''reasonably attainable'' volumes to partially backfill for missing cellulosic biofuel volumes. We explained that we were not required, and did not intend, to necessarily require the use of the ''maximum'' volumes of advanced biofuel, and that our assessment of ''reasonably attainable'' volumes was similar to, but not intended to be as exacting, as our assessment of ''maximum achievable'' supplies when using the general waiver authority based on a finding of inadequate domestic supply.

In using the cellulosic waiver authority to set the 2017 advanced biofuel volume requirement, we have been mindful of the fact that the statute concentrates all of the very substantial growth in the statutory targets for renewable fuel on advanced biofuel for years after 2014, and that advanced biofuels are required to provide significantly greater lifecycle GHG reductions (at least 50%) in comparison to non-advanced renewable fuel (20%, or no reduction if grandfathered under § 80.1403). In addition, we generally believe that greater use of renewable fuel enhances energy security. These considerations, taken alone, would support the commenters' suggestion that when using the cellulosic waiver authority we should require maximum achievable levels of advanced biofuel to backfill to the greatest extent possible for missing volumes of cellulosic biofuel. However, we note, first, that our assessments contain some uncertainty. To the extent we may over-estimate supply in setting the advanced biofuel volume requirement, we can create a situation where compliance costs dramatically escalate and/or obligated parties are either unable to comply or compliance requires a substantial drawdown in the collective bank of carryover RINs. While our assessment of ''maximum achievable'' volumes for the 2014–2016 final rule reflected our view of what is achievable, if proven to be correct such negative implications will not materialize. Nevertheless, we believe that it is appropriate given the broad discretion afforded under the cellulosic waiver authority to allow an additional cushion to ensure that the standards can be met, and we describe this less exacting approach as one designed to identify ''reasonably attainable'' volumes based on supply considerations. In the 2014–2016 final rule we set the advanced biofuel volume requirement so as to require all reasonably attainable volumes of advanced biofuel, and we proposed a similar approach for 2017.

However, some commenters suggested that EPA should take into consideration the fact that higher advanced biofuel volume requirements could create an incentive for switching advanced biofuel feedstocks from existing uses to biofuel production, and that in light of such market reactions we should set the advanced biofuel volume requirement at less than the reasonably attainable level. We agree with these commenters that we have the broad discretion when using the cellulosic waiver authority to take into consideration such implications. We believe that in the short-term, every increment in the advanced biofuel standard should not necessarily be expected to result in a corresponding incremental increase in the volume of advanced biofuel feedstocks produced on a global scale, since increasing demand for such feedstocks for advanced biofuel production could potentially be filled through diversion of feedstocks from other non-biofuel markets. There is significant uncertainty related to the GHG emission benefits associated with fuels produced in this way. Moreover, rapidly increasing the required volumes of advanced biofuels without giving the market adequate time to adjust by increasing supplies could also result in diversion of advanced biofuels from foreign countries to the U.S. without increasing total global supply, contribute to shortages and/or reallocation of raw materials in other sectors, disrupt markets, and/or increase prices.[62] We believe that we are authorized to take these factors into account in exercising our discretion under the cellulosic waiver authority. Although we are not able to quantify these factors at this time, we believe that they would be a likely consequence of setting the 2017 volume requirement for advanced biofuel at the highest possible level, and that they justify our taking a more measured approach in determining the volume of advanced biofuel that should backfill for missing cellulosic biofuel volumes in 2017.[63] These considerations are described in more detail in the following section describing our assessment of advanced biodiesel and renewable diesel volumes. Our final approach results in a volume requirement that provides for significant growth in the production and use of advanced biofuels above all historic levels, is within the range of what is reasonably attainable from a supply perspective and is also appropriate, taking other considerations into account.

Having determined the reasonably attainable and appropriate volume reduction for advanced biofuel, we used the cellulosic waiver authority to provide an equivalent reduction in total renewable fuel. That step is described in more detail in Section V.A, together with our assessment that no further increment of reduction is required for total renewable fuel in 2017 on the basis of supply considerations.

1. Imported Sugarcane Ethanol

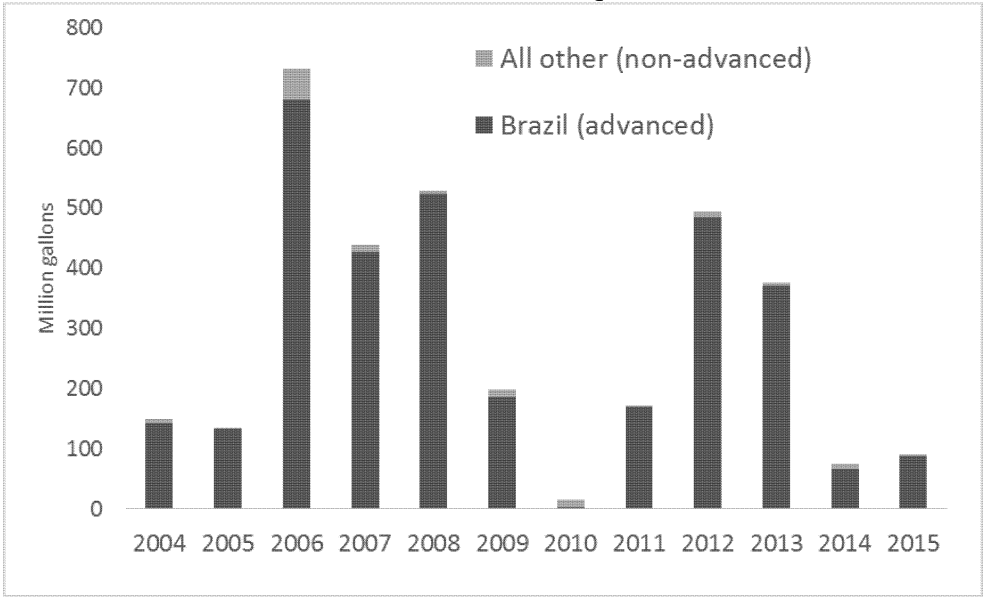
In the NPRM, we noted that the predominant source of advanced biofuel other than cellulosic biofuel and BBD was imported sugarcane ethanol, and we proposed that the volume of imported sugarcane ethanol for purposes of determining the reasonably attainable volume of advanced biofuel for 2017 would be 200 million gallons. This is the same volume that we used in setting the 2016 standards, and we said that the information currently available to us did not suggest that the circumstances would be significantly different for 2017 than they are for 2016. We also pointed to the high variability in ethanol import volumes in the past (including of Brazilian sugarcane ethanol, the predominant form of imported ethanol), the fact that imports of Brazilian sugarcane ethanol in 2014 and 2015 reached only 64 and 89 million gallons, respectively, increasing gasoline consumption in Brazil, and variability in Brazilian production of sugar.

[62] For example, see comments from Action Aid USA & The Hunger Project (EPA–HQ–OAR–2016–0004–1817), American Cleaning Institute (EPA–HQ–OAR–2016–0004–1735) and Union of Concerned Scientists (EPA–HQ–OAR–2016–0004–1672).

[63] We have also considered comments raising additional factors that stakeholders deemed relevant in setting the advanced biofuel standard, as described in the response to comments document. We believe the volume requirement established today reflects an appropriate balancing of these often competing considerations.

In response to the NPRM, stakeholders representing some refiners and conventional ethanol interests said that our estimate of 200 million gallons was too high given recent import levels. We agree that 200 million gallons is considerably higher than actual imports of Brazilian sugarcane ethanol in 2014 and 2015, of 64 and 89 million gallons, respectively, but it is far lower than the historic maximum of 680 million gallons of Brazilian sugarcane ethanol imports in 2006 or the more recent high volume of 486 million gallons imported in 2012.

Figure IV.B.1-1
Historical Ethanol Imports[a]



Source: "U.S. Imports of Fuel Ethanol from EIA," docket EPA-HQ-OAR-2016-0004.

[a] Imports from Brazil include those that are transmitted through the CBI and CAFTA, and are produced from sugarcane. Imports from other countries are typically not produced from sugarcane and do not qualify as advanced biofuel.

In proposing to use 200 million gallons in assessing reasonably attainable supply of advanced biofuel in 2017, we attempted to balance indications of lower potential imports from more recent data with indications that higher volumes were possible based on older data, as depicted in the figure above.

Stakeholders who represent advanced biofuel interests generally believed that our assumption of 200 million gallons of imported sugarcane ethanol for 2017 was too low. Some commenters cited projections from other sources that were considerably higher than 200 million gallons, and even pointed to the historical maximum of 681 million gallons for sugarcane ethanol imported in 2006 as evidence that volumes larger than 200 million gallons are possible. We generally believe that this information is of limited probative value in determining the volume of sugarcane ethanol that should be assumed in the context of determining reasonably attainable volumes of advanced biofuel for 2017. Sources providing projections for 2017 and beyond have not accurately predicted current and past import levels, highlighting the uncertainty in such projections.[64] As for the historical maximum of 681 million gallons in 2006, there is no basis for believing that the economic and market circumstances which led to that import volume would be repeated in 2017, more than a decade later, when more recent years have shown far more modest import levels.

The Brazilian Sugarcane Industry Association (UNICA) said that it was not appropriate for EPA to use actual import data from 2010–2015 as the basis for estimating the potential import volume in 2017. While these years reflects the period when the RFS2 program has been in place, UNICA argued that the low import volumes in 2014 and 2015 resulted from the fact that EPA had not established applicable RFS percentage standards until the end of 2015. However, UNICA also noted that weather, harvests, and world prices also affect ethanol exports from Brazil. As discussed in the 2014–2016 final rule, total ethanol exports from Brazil in 2014 and 2015 were at their lowest levels since 2004, suggesting the possibility that unusual factors were at work in these two years to minimize exports from Brazil. For instance, Brazil increased the ethanol concentration requirement in its gasoline in early 2015 and indications from available data suggest that total gasoline consumption will continue rising in 2016.[65] [66] Given the high variability of ethanol imports in the past and the difficulty in precisely identifying the reasons for that variability, there is no way to know whether the lack of applicable standards in 2014 and 2015 was the primary

[64] For instance, the FAPRI–MU report ''U.S. Baseline Briefing Book,'' (March 2016) indicates that ethanol imports in 2015 reached 167 mill gal, nearly double the actual imports of 89 mill gal according to data from EMTS. Also, the FAPRI–ISU report ''2012 World Agricultural Outlook'' projected that the U.S. would be a net ethanol exporter in 2013–2015, when in fact it was a net importer.

[65] See discussion at 80 FR 77477.

[66] ''Gasoline Demand in Brazil: An empirical analysis,'' Thaís Machado de Matos Vilela, Pontifical Catholic University of Rio de Janeiro, Figure 2.

reason for low import levels, or a less significant contributing factor.

Since release of the NPRM, some data on imports in 2016 have become available. Imports of sugarcane ethanol in 2016 through September have reached 34 million gallons, with essentially all of this volume occurring since June.[67] Historically, ethanol imports have been higher in the summer and early fall than at other times of the year, so it is possible that the monthly average that has occurred in June–September could continue through the end of the year. If so, then total sugarcane ethanol imports for 2016 could reach 76 million gallons, similar to the levels imported in 2014 and 2015. Nevertheless, the low observed 2016 volume indicates that an increase in the advanced biofuel standard does not necessarily result in an increase in imports of sugarcane ethanol, and also implies that even California's Low Carbon Fuel Standard (LCFS) has not spurred demand for the large volumes of advanced ethanol imports that UNICA predicted.[68]

As they did in response to the 2014–2016 proposed standards, UNICA again commented on the proposed 2017 standards that potential ethanol exports from Brazil to the U.S. are driven primarily by a combination of Brazilian ethanol production capacity and opportunities created by the RFS program itself. The RIN value of advanced biofuels is undoubtedly a factor in the volume of ethanol that Brazil exports to the U.S., and the RIN value is a function of the level of the advanced biofuel standard. However, recent data on imports of sugarcane ethanol into the U.S. suggest that it would be inappropriate to increase the volume used in the determination of the applicable volume requirement for advanced biofuel above 200 million gallons.

UNICA went on to say that sugarcane mills have significant flexibility in the amount of sugar versus ethanol that they produce, and that the amount of ethanol required to be blended into gasoline is likewise flexible based on opportunities for ethanol exports. We continue to believe that UNICA has underestimated the uncertainty associated with other market factors, including the E10 blendwall in the U.S., ongoing growth in gasoline demand in Brazil, and competing world demand for sugar, and has overstated the flexibility and speed with which Brazil can change the relative production of sugar versus ethanol and the required ethanol content of gasoline.

Based on these facts, we continue to believe that recent low import levels and high variability in longer-term historical imports are significant and must be taken into account in the context of determining reasonably attainable volumes of advanced biofuel for 2017. However, we do not agree with commenters who argued for deviating from the 200 million gallons of sugarcane ethanol that we proposed using in the determination of the 2017 advanced biofuel volume requirement. We believe that this level reflects a reasonable intermediate point between the lower levels imported recently and the considerably higher levels that have been achieved in earlier years. Regardless of this assumed level used only in deriving the advanced biofuel volume requirement, we note that actual imports of sugarcane ethanol could be higher or lower than 200 million gallons as shown in the scenarios for how the market could respond in Section V.C below.

Aside from the specific assessment of sugarcane ethanol imports, one stakeholder said that the inclusion of any imported renewable fuels in the determination of applicable standards was inconsistent with Congressional intent to increase domestic energy security. However, the statute does not discriminate between domestically-produced and imported biofuels, and an increased diversity of fuels, including those imported from a variety of countries, helps contribute to the stability of the energy supply.

2. Biodiesel and Renewable Diesel

With regard to biodiesel and renewable diesel, there are many different factors that could potentially constrain the *total* volume of these fuels that can be used as transportation fuel or heating oil in the United States. These constraints could include such factors as the availability of qualifying biodiesel and renewable diesel feedstocks, limitations on the market's ability to distribute biodiesel, and limitations related to diesel engine manufacturers recommendations for biodiesel use in the engines they produce. Each of these factors, and the degree to which they may constrain the total supply of biodiesel and renewable diesel in 2017, is discussed in detail in Section V.B.2. Of these potential constraints, however, the primary constraint considered in our determination of the reasonably attainable and appropriate volume of *advanced* biodiesel and renewable diesel considered in the context of deriving the advanced biofuel standard for 2017 is the availability of advanced biodiesel and renewable diesel feedstock.[69] This is because most registered biodiesel and renewable diesel production facilities are capable of producing either advanced or non-advanced biofuels depending on a number of economic and regulatory factors, and the combined production capacity of the registered biodiesel and renewable diesel facilities exceeds the volume of these fuels we project can be supplied in 2017.[70] Since the reasonably attainable and appropriate volume of *advanced* biodiesel and renewable diesel for 2017 projected in the context of deriving the advanced biofuel standard (determined primarily by an assessment of advanced biodiesel and renewable feedstocks) is less than the maximum reasonably achievable volume of all biodiesel and renewable diesel in 2017, other potential constraints (such as limitations on the market's ability to distribute and use biodiesel and renewable diesel) are not expected to limit the supply of *advanced* biodiesel and renewable diesel. This section will therefore focus on the availability of qualifying feedstocks, while other potential constraints related to the distribution and use of biodiesel and renewable diesel are discussed in Section V.B.2.

Before considering availability of qualifying feedstocks that could be used to produce advanced biodiesel and renewable diesel, it is helpful to review the supply of biodiesel and renewable

[67] Data from the International Trade Commission, from which EIA derives their reported values of imports of ethanol. See ''2016 imports of ethanol from Brazil through September,'' docket EPA–HQ–OAR–2016–0004.

[68] For instance, UNICA said that ''. . . sugarcane ethanol should continue to be a major renewable fuel source in California.''

[69] Throughout this section we refer to advanced biodiesel and renewable diesel as well as advanced biodiesel and renewable diesel feedstocks. In this context, advanced biodiesel and renewable diesel refers to any biodiesel or renewable diesel for which RINs can be generated that satisfy an obligated party's advanced biofuel obligation (*i.e.,* D4 or D5 RINs). An advanced biodiesel or renewable feedstock refers to any of the biodiesel, renewable diesel, jet fuel, and heating oil feedstocks listed in Table 1 to § 80.1426 that can be used to produce fuel that qualifies for D4 or D5 RINs. These feedstocks include soy bean oil; oil from annual cover crops; oil from algae grown photosynthetically; biogenic waste oils/fats/greases; non-food grade corn oil; camelina sativa oil; and canola/rapeseed oil (See pathways F, G, and H of Table 1 to § 80.1426).

[70] See Section V.B.2.ii for a discussion of the current production capacity for biodiesel and renewable diesel. While some biodiesel facilities are limited to certain types of feedstocks (typically virgin vegetable oils) we note that some virgin vegetable oils qualify as advanced biofuels, while others can only be used to produce non-advanced renewable fuel (fuel that qualifies to produce D6 RINs) when used at facilities that qualify for an exemption from the 20% lifecycle greenhouse gas reduction requirements under 40 CFR 80.1403.

diesel to the United States in recent years. While historic supply data and trends alone are insufficient to project the volumes of biodiesel and renewable diesel that are reasonably attainable and appropriate in future years, historic data can serve as a useful frame of reference in considering future volumes. Past experience suggests that a high percentage of the supply of biodiesel and renewable diesel to the United States qualifies as advanced biofuel.[71] In previous years biodiesel and renewable diesel produced in the United States has been almost exclusively advanced biofuel.[72] Imports of advanced biodiesel have increased in recent years and will likely continue in 2017, as discussed in Section V.B.2.iii. Setting the 2017 advanced biofuel volume requirement so as to require that a high percentage of the projected total supply of biodiesel and renewable diesel would be advanced biofuel would not only be consistent with our experience in previous years, but would also be consistent with the goal of seeking to increase volumes of fuels with higher potential GHG reductions.

TABLE IV.B.2–1—ADVANCED (D4 AND D5) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016

[million gallons] [a]

	2011	2012	2013	2014	2015	2016 [b]
Domestic Biodiesel (Annual Change)	967 (N/A)	1,014 (+47)	1,376 (+362)	1,303 (−73)	1,253 (−50)	N/A
Domestic Renewable Diesel (Annual Change)	58 (N/A)	11 (−47)	92 (+81)	155 (+63)	175 (+20)	N/A
Imported Biodiesel(Annual Change)	44 (N/A)	40 (−4)	156 (+116)	130 (−26)	261 (+131)	N/A
Imported Renewable Diesel [b] (Annual Change)	0 (N/A)	28 (+28)	145 (+117)	129 (−16)	121 (−8)	N/A
Exported Biodiesel [c] (Annual Change)	48 (N/A)	102 (+54)	125 (+23)	134 (+9)	133 (−1)	N/A
Total (Annual Change)	1021 (N/A)	991 (−30)	1,644 (+653)	1,583 (−61)	1,677 (+94)	2,100 (+423)

[a] All data for 2011–2015 from EMTS. EPA reviewed all advanced biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the supply in each year.

[b] Volumes for 2016 are those determined reasonably attainable in the final rule deriving the 2016 standards. This projection was for all advanced biodiesel and renewable diesel and did not differentiate between domestically produced and imported fuels or between biodiesel and renewable diesel.

[c] In calculating the supply of advanced biodiesel and renewable diesel we have assumed all exported biodiesel must retire 1.5 RINs per gallon consistent with 80.1130. No parties reported exports of advanced renewable diesel from 2011–2015.

TABLE IV.B.2—2 SUPPLY OF CONVENTIONAL (D6) BIODIESEL AND RENEWABLE DIESEL FROM 2011 TO 2016

[million gallons] [a]

	2011	2012	2013	2014	2015	2016 [b]
Domestic Biodiesel (Annual Change)	0 (N/A)	0 (+0)	6 (+6)	1 (−5)	0 (+0)	N/A
Domestic Renewable Diesel (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	N/A
Imported Biodiesel (Annual Change)	0 (N/A)	0 (+0)	31 (+31)	52 (+21)	74 (+22)	N/A
Imported Renewable Diesel [b] (Annual Change)	0 (N/A)	0 (+0)	53 (+53)	0 (−53)	106 (+106)	N/A
Exported Biodiesel [c] (Annual Change)	0 (N/A)	0 (+0)	0 (+0)	0 (+0)	0 (+0)	N/A
Total (Annual Change)	0 (N/A)	0 (+0)	90 (+90)	53 (−37)	180 (+127)	400 (+220)

[a] All data for 2011–2015 from EMTS. EPA reviewed all conventional biodiesel and renewable diesel RINs retired for reasons other than demonstrating compliance with the RFS standards and subtracted these RINs from the RIN generation totals for each category in the table above to calculate the supply in each year.

[b] Volumes for 2016 are those used in deriving the total renewable fuel standard in the final rule deriving the 2016 standards. This projection was for all conventional biodiesel and renewable diesel and did not differentiate between domestically produced and imported fuels or between biodiesel and renewable diesel.

[c] In calculating the supply of conventional biodiesel and renewable diesel we have assumed all exported biodiesel must retire 1.5 RINs per gallon consistent with 80.1130. No parties reported exports of renewable diesel from 2011–2015.

Since 2011 the year-over-year increases in the volume of advanced biodiesel and renewable diesel in the United States have varied greatly, from a low of negative 61 million gallons from 2011 to 2012 to a high of 653 million gallons from 2012 to 2013. These changes in supply were likely influenced by a number of factors such as the cost of biodiesel feedstocks and petroleum diesel, the status of the biodiesel blenders tax credit, growth in marketing of biodiesel at high volume truck stops and centrally fueled fleet locations, demand for biodiesel and renewable diesel in other countries, and the volumes of renewable fuels (particularly advanced biofuels) required by the RFS. This historical information does not indicate that the maximum previously observed increase of 653 million gallons of advanced biodiesel and renewable diesel is reasonably attainable and appropriate from 2016 to 2017, nor does it indicate that the low growth rates observed in other years represent the limit of

[71] From 2011 through 2015 over 95% of all biodiesel and renewable diesel supplied to the United States (including domestically-produced and imported biodiesel and renewable diesel) qualified as advanced biodiesel and renewable diesel (6,836 million gallons of the 7,159 million gallons) according to EMTS data.

[72] From 2011 through 2015 over 99.8% of all the domestically produced biodiesel and renewable diesel supplied to the United States qualified as advanced biodiesel and renewable diesel (6,538 million gallons of the 6,545 million gallons) according to EMTS data.

potential growth in 2017. Rather, these data illustrate both the magnitude of the increases in advanced biodiesel and renewable diesel in previous years and the significant variability in these increases.

We also acknowledge that the volume of conventional (D6) biodiesel and renewable diesel use in the United States has increased in recent years, and that these fuels are likely to continue to contribute to the supply of renewable fuel in the United States in 2017.[73] If there are constraints on the total volume of all forms of biodiesel and renewable diesel related to the ability of the market to distribute and/or consume biodiesel and renewable diesel, as we believe will likely be the case in 2017, setting the RFS standards in such a way that the projected volume of *advanced* biodiesel and renewable diesel was equal to the projected volume of *total* biodiesel and renewable diesel (including both advanced and conventional fuels) would require all of the reasonably attainable volume of biodiesel and renewable diesel to qualify as an advanced biofuel (See Section V.B.2 for more detail on these constraints). This would assume that the standards we set could effectively close the market for *conventional* biodiesel and renewable diesel, as constraints related to the distribution and use of additional volumes of biodiesel and renewable diesel would be expected to make the use of conventional fuels in addition to the advanced volumes unlikely.[74] If effective, establishing the RFS volumes in this way could significantly disrupt the supply chains established to supply the United States with conventional biodiesel and renewable diesel. However, it is also possible that the conventional forms of these fuels would continue to be imported in 2017 despite our action in setting the advanced biofuel standard, consistent with past practice and established contracts and supply chains, and that the result, due to constraints related to distribution and/or consumption of all forms of biodiesel and renewable diesel, would be an inability to satisfy the advanced biofuel volume requirement through the production and use of advanced biofuels (as opposed to use of carryover RINs).

Although there is uncertainty regarding EPA's ability to effectively constrain the entry into commerce in the U.S. of conventional biodiesel and renewable diesel through setting a higher advanced biofuel standard, we believe our decision for 2017 is reasonably made on the basis of an analysis of feedstock availability. The primary difference between conventional and advanced forms of biodiesel and renewable diesel is the type of feedstock used for production. EPA received several comments on our proposed rule related to the availability of qualifying advanced biodiesel and renewable diesel feedstocks. Some of these comments argued that the expected increase of qualifying advanced feedstocks was less than the proposed increase of 200 million gallons of advanced biodiesel and renewable diesel from 2016 to 2017 (from 2.1 billion gallons to 2.3 billion gallons). These parties generally argued that because the available supply of qualifying advanced feedstocks would not increase in line with the proposed volume requirements, the proposed standards would likely result in feedstock substitution, with an increased use of qualifying advanced feedstocks for biodiesel and renewable diesel production, while the parties previously using these feedstocks for food, feed, or industrial purposes would turn to alternative feedstocks. These commenters generally speculated that as biodiesel and renewable diesel producers sought out more qualifying advanced feedstocks, other parties would likely turn to greater use of palm oil as a substitute. Alternatively, other parties argued that there were sufficient qualifying advanced feedstocks to achieve significantly higher volumes of advanced biodiesel and renewable diesel than the volumes in EPA's proposed rule. They requested that in light of the availability of these feedstocks EPA should finalize increases from both the proposed advanced biofuel standard for 2017 and the proposed biomass-based diesel standard for 2018. Commenters arguing for either lower or higher advanced biofuel standards in 2017 on the basis of the availability of qualifying advanced feedstocks both included feedstock assessments to support their claims. These assessments are discussed briefly below. More detail on EPA's evaluation of each of these assessments can be found in Section 2.4.5 of the RTC document.

Commenters claiming that qualifying feedstocks would not increase sufficiently to meet the proposed increase in advanced biodiesel and renewable diesel from 2016 to 2017 generally relied on a study by Nelson and Searle.[75] This study builds upon a 2015 study by Brorsen[76] of available feedstocks capable of being utilized to produce biodiesel. The Nelson and Searle study focused on the production and recovery of feedstocks in the United States that can be used to produce advanced biodiesel, after accounting for demand from other sectors (*e.g.,* food, feed, industrial, etc.). It concluded that feedstocks for advanced biofuels (*e.g.,* soy oil, canola oil, yellow grease etc.) were expected to increase so that biodiesel fuel could increase by 23 million gallons in 2017, and increase at an annual average rate of 31.5 million gallons through 2022.[77] The study's strength is its transparent methodology in accounting for the different types of feedstocks that can be utilized to produce advanced biofuels.

The Nelson and Searle study is a fairly conservative view of the increased availability of advanced biodiesel/renewable diesel feedstocks from planted crops in the United States in the next few years. For the following reasons we believe it likely under-estimates the total availability of advanced feedstocks for biodiesel and renewable diesel production in 2017. USDA's most recent World Agricultural Supply and Demand Estimates (WASDE) has larger increases in vegetable oils in the U.S. than the Nelson and Searle study (see discussion below).[78] The Nelson and Searle study did not consider the availability of feedstocks for advanced biodiesel and renewable diesel production in countries other than the United States. It also assumed no significant increases in distillers corn oil or the recovery of additional waste oils such as yellow grease or brown grease.[79]

[73] As shown in Table IV.B.2–2, there was no qualifying conventional biodiesel and renewable diesel used in the United States in 2011 and 2012, and the volume of these fuels rose to 90 million gallons, 53 million gallons, and 180 million gallons from 2013–2015.

[74] We also note that the potential constraints related to the distribution and use of biodiesel may lead to an increasing demand for renewable diesel, which faces fewer potential constraints related to distribution and use than biodiesel. Much of the renewable diesel produced globally would qualify as conventional, rather than advanced biofuel, and we therefore expect that conventional renewable diesel will continue to be an important source of renewable fuel used in the United States in 2017.

[75] Nelson, B. and Searle, S., "*Projected availability of fats, oils, and greases in the U.S.*", 2016, ICCT Working Paper. EPA–HQ–OAR–2016–0004–1800.

[76] Brorsen, W., "*Projections of U.S. Production of Biodiesel Feedstock*", 2015, EPA–HQ–OAR–2015–0111.

[77] Producing one gallon of biodiesel or renewable diesel requires approximately one gallon of feedstock.

[78] USDA, *World Agricultural Supply and Demand Estimates,* September 2016, p. 10.

[79] The study also did not account for the potential decline in soybean oil use in food, as a result of a June 2015 FDA determination requiring the elimination by 2018 of all partially hydrogenated oil in food use (See the determination on the RFS

Continued

Commenters arguing that there is sufficient available feedstock for much higher volumes of advanced biodiesel and renewable diesel generally cited studies conducted by LMC International.[80] [81] The 2016 LMC International study is an update to a previous study that LMC International undertook for the previous RFS Annual Rule (2014–2016). Both of the LMC International studies sought to quantify the global availability of feedstocks for advanced biodiesel and renewable diesel production, after accounting for demand for these feedstocks in other markets. The most recent LMC International study concluded that the global availability of feedstocks for use in advanced biodiesel and renewable diesel production is expected to grow from 8.6 billion gallons in 2017 to 9.2 billion gallons in 2018 and 9.8 billion gallons in 2020. While they do not provide an estimate of feedstock availability broken down by qualifying oils and fats in 2016, they do state that the global supply of advanced feedstock is expected to ''rise steadily'' over the forecast period. In part, this is due to an upward revision of the projected level of soy oil production worldwide since their 2015 study. This would suggest an annual increase in advanced feedstock availability of up to 600 million gallons per year. The most recent LMC International study does not attempt to determine how much of the increase in this feedstock, or the resulting biodiesel or renewable diesel, could be expected to be used in the United States versus other international markets, however they do note that approximately one third of the existing feedstock is produced in North America.

Both of the LMC International studies may overestimate feedstock availability. For example, when estimating availability, the studies consider the theoretical maximum amount of oil that could be extracted from an oil seed, or ''oil in seed'', versus the amount of oil actually expected to be extracted/produced. Some amount of the soybean supply is not crushed, and is fed directly to livestock, and in other instances the soybean is crushed, and oil is extracted, but it is added as a necessary element to feed and thus doesn't enter the oil market. These unaccounted for alternate practices contribute to oil supply estimates that are in some cases significantly higher than USDA estimates. For example, the most recent LMC International estimate of global soybean oil supply is more than 25 percent greater than that projected by USDA–WASDE in 2016/2017.[82]

NBB also submitted a study that contained updated results from the World Agricultural Economic and Environmental Services model (WAEES model).[83] Rather than project the availability of advanced biodiesel and renewable diesel feedstocks in 2017, this study instead looked at the likely impacts of meeting a ''market reality'' scenario with an advanced biofuel standard of 4.75 billion gallons in 2017 and 2018 and biomass-based diesel standards of 2.0 and 2.50 billion gallons in 2017 and 2018, respectively. In the ''market reality'' scenario, the WAEES model projected that approximately 2.3 billion gallons of biodiesel and 0.6 billion gallons of renewable diesel would be used to satisfy the RFS standards for 2017 assumed in this scenario.[84] The study concludes that these higher standards could be met with a rise in biodiesel costs from $3.02 in 2016 to $3.34 in 2017 and $3.58 in 2018.

These WAEES model results, however, are significantly impacted by a number of fairly optimistic assumptions. Each individual assumption may be justifiable, but when compiled together the results of the study imply an outlook for biodiesel/renewable diesel feedstocks that is more favorable than is likely. For example, WAEES assumes the U.S. biodiesel blenders tax credit is in place for 2017 and 2018; that foreign countries do not meet their renewable fuel mandates thus freeing up biodiesel supplies for the United States market;[85] that biodiesel consumption in 2015 was higher than the volumes reported in EMTS; and that much higher volumes of ethanol are used in higher level ethanol blends than EPA believes is possible.[86] Also, in contrast to the Nelson and Searle study, the WAEES model predicts that corn oil extraction rates from distillers' grains increase, resulting in an increase in the supply of corn oil available for biodiesel production in the United States. Using different assumptions, such as higher demand for biodiesel in the rest of the world, would result in higher cost impacts, and less availability of feedstocks to produce biodiesel for meeting the high potential standards evaluated by the WAEES model. The combined impact of the key assumptions including the renewal of the biodiesel blenders tax credit, higher ethanol than EPA believes is possible etc., are significant. This means that achieving these volumes is likely to be more difficult than the results from the WAEES model indicate.

In assessing the expected increase in the availability of feedstocks that can be used to produce advanced biodiesel and renewable diesel from 2016 to 2017, EPA has looked to a number of different sources. We believe the most reliable source for projecting the expected increase in vegetable oils in the United States is USDA's WASDE. The September 2016 WASDE report projects that the production of vegetable oils in the United States will increase by 0.33 million metric tons from 2016 to 2017.[87] This quantity of vegetable oils could be used to produce approximately 94

Web site at *http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm449162.htm*). To the extent that soy oil continues to be phased down for food purposes, this will free up some supply of soy oil for biodiesel. Any reduction in soybean oil used for food purposes, however, would be expected to lead to an increased use of other vegetable oils for food purposes. These alternative oils, then, would not be available as potential feedstocks for renewable fuel.

[80] LMC International, ''*Current and Future Supply of Biodiesel Feedstocks*'', 2016, EPA–HQ–OAR–2016–0004–2904 (Attachment 14).

[81] LMC International, ''*Current and Future Supply of Biodiesel Feedstocks*'', 2015, EPA–HQ–OAR–2016–0004–2904 (Attachment 14).

[82] USDA, *World Agricultural Supply and Demand Estimates,* August 2016. *http://usda.mannlib.cornell.edu/usda/waob/wasde//2010s/2016/wasde-08-12-2016.pdf*

[83] Kruse, J., ''Implications of Higher Biodiesel Volume Obligations for Global Agriculture and Biofuels'', 2016, World Agricultural Economic and Environmental Services (WAEES), EPA–HQ–OAR–2016–0004–2904 (Attachment 13).

[84] This study assumes that all of the biodiesel is advanced biodiesel, but notes that the volume of renewable diesel includes both advanced and conventional renewable diesel.

[85] Many foreign countries have their own biodiesel mandates. Most countries have increasing stringency in their levels of required biodiesel, although past performance does not equate to future results and some past mandates have not been satisfied. See an assessment entitled, ''Biomass-Based Diesel Mandates and Trade Trends around the World'' (available at *http://www.biofuelsdigest.com/bdigest/2016/08/31/biomass-based-diesel-mandates-and-trade-trends-around-the-world/*), for an overview of the status of biomass-based diesel mandates outside of the United States.

[86] The WAEES model projects 621 million gallons of ethanol will be used in mid to high level ethanol blends in 2016/2017 and 600 million gallons of ethanol will be used in mid to high level ethanol blends in 2017/2018. These volumes are significantly higher than those we project can be consumed in Section V.B.1 of this rule.

[87] The September WASDE was the most recent published WASDE report available to EPA at the time the advanced biodiesel and renewable diesel feedstock assessment was conducted. It is available online at: *http://www.usda.gov/oce/commodity/wasde/latest.pdf.* The WASDE projects the supply of agricultural commodities by agricultural marketing year, rather than calendar year. The agricultural marketing year runs from October 1 through September 30. We have therefore used the WASDE projections from 2015/2016 to represent available feedstocks in 2016, and the projections from 2016/2017 to represent available feedstocks in 2017.

million gallons of advanced biodiesel or renewable diesel.[88]

In addition to virgin vegetable oils, we also expect increasing volumes of distillers corn oil to be available for use in 2017. In assessing the likely increase in the availability of distillers corn oil from 2016 to 2017, the authors of the WAEES model considered the impacts of an increasing adoption rate of distillers corn oil extraction technologies, as well as increased corn oil extraction rates enabled by advances in this technology. They project that the availability of distillers corn oil will increase by approximately 83 million gallons from 2016 to 2017.[89] We believe that this is a reasonable projection of the increased production of distillers corn oil from 2016 to 2017. While the vast majority of the increase in advanced biodiesel and renewable diesel feedstocks produced in the United States from 2016 to 2017 is expected to come from virgin vegetable oils and distillers corn oil, increases in the supply of other sources of advanced biodiesel and renewable diesel feedstocks, such as biogenic waste oils, fats, and greases, may also occur. These increases, however, are expected to be modest. In total, we expect that increases in feedstocks produced in the United States are sufficient to produce approximately 200 million more gallons of advanced biodiesel and renewable diesel in 2017 relative to 2016. We note that this is consistent with the results from the LMC model, mentioned above, which projected a global increase of 600 million gallons of advanced biodiesel and renewable diesel feedstocks and notes that historically approximately one third of the total quantity of these feedstocks has been produced in North America.

In addition to the expected increase in advanced feedstocks produced in the United States, we have also considered the expected increase in the imports of advanced biodiesel and renewable diesel produced in other countries. We believe this is appropriate in light of the significant expected increase in advanced biodiesel and renewable diesel feedstocks in countries other than the United States (estimated at approximately 400 million gallons using the global results from the LMC model together with our estimate of the increase in the domestic production of these feedstocks discussed above), and the increasing volumes of imported advanced biodiesel and renewable diesel in recent years. While there has been significant variation in the volume of advanced biodiesel and renewable diesel imports in previous years, the general trend has been for increasing volumes of imports. From 2011 through 2015, the average annual rate of increase in the imported volume of advanced biodiesel and renewable diesel has been approximately 85 million gallons per year.[90] From 2012 through 2015 the average annual rate of increase for these fuels was approximately 105 million gallons per year.[91]

We therefore believe it is reasonable to expect the imports of advanced biodiesel and renewable diesel to increase by approximately 100 million gallons from 2016 to 2017. We believe that this volume of imported advanced biodiesel and renewable diesel will continue to provide the appropriate market demand signal for advanced biodiesel and renewable diesel, without resulting in the potential negative impacts of large scale feedstock switching discussed above. We note that we do not believe that the supply of imported advanced biodiesel and renewable diesel necessarily could or should increase by 100 million gallons per year for years beyond 2017. There are several factors, such as expected slowing growth rates in the production of advanced biodiesel and renewable diesel feedstocks and increasing demand for advanced biodiesel and renewable diesel in other countries, which indicate that this rate of growth in imported volumes of advanced biodiesel and renewable diesel will likely slow in futures years. Nevertheless, we believe an increase of 100 million gallons of imported advanced biodiesel and renewable diesel is reasonable to assume from 2016 to 2017.

After a careful consideration of the assessments of available feedstocks, along with comments we received on the proposed 2017 volume standards and a review of the historic supply of advanced biodiesel and renewable diesel to the United States in previous years, EPA has determined that 2.4 billion gallons of advanced biodiesel and renewable diesel is reasonably attainable and appropriate for use in our determination of the advanced biofuel standard for 2017. This volume, which is 300 million gallons higher than the volume of advanced biodiesel and renewable diesel projected in deriving the advanced biofuel standard in 2016, reflects EPA's assessment of the expected increase in advanced feedstocks available for the production of advanced biodiesel and renewable diesel for the U.S. market from 2016 to 2017. We believe that in not considering potential increases in the volume of distillers corn oil or waste feedstocks that can be recovered, and by focusing solely on feedstock availability in the United States, the Nelson and Seale study significantly under-estimated the likely increase in available feedstocks from 2016 to 2017. Conversely, while the LMC model may be a relatively reasonable assessment of the growth in global availability (with the exception of the optimistic assumptions noted above), it would be unreasonable to assume that all of this feedstock can or should be used for biodiesel and renewable diesel production for use in the United States.

While we are projecting that 2.4 billion gallons of advanced biodiesel and renewable diesel will be available to the United States in 2017 for the purposes of deriving the advanced biofuel standard, we do not believe that this is the maximum volume that could be supplied. It is possible that if EPA were to set a higher advanced biofuel standard that prices for biodiesel and renewable diesel (and the associated RINs) would rise to levels that would result in a greater supply of advanced biodiesel and renewable diesel to the United States. These increases, however, would likely not be the result of additional production of advanced biodiesel and renewable diesel production enabled by an increase in the production of advanced feedstocks. Advanced biodiesel and renewable diesel feedstocks include both waste oils, fats and greases and oils from planted crops. In recent years the demand for waste oils, fats, and greases for biodiesel production has been significant, especially as mandated volumes of renewable fuels in the United States and around the world have increased. While we believe an increase in supply of waste oils, fats, and greases is possible in 2017 based in part on the studies cited above, we

[88] To calculate this volume we have used a conversion of 7.7 pounds of feedstock per gallon of biodiesel. This is based on the expected conversion of soy oil (*http://extension.missouri.edu/p/G1990*), which is the largest source of feedstock used to produce advanced biodiesel and renewable diesel. We believe that it is also a reasonable conversion factor to use for all virgin vegetable oils.

[89] Kruse, J., ''Implications of Higher Biodiesel Volume Obligations for Global Agriculture and Biofuels'', 2016, World Agricultural Economic and Environmental Services (WAEES), EPA–HQ–OAR–2016–0004–2904 (Attachment 13).

[90] This number is calculated using the information in Table IV.B.2–1 above. The total imports of advanced biodiesel and renewable diesel was 44 million gallons in 2011, rising to 382 million gallons in 2015.

[91] This number is calculated using the information in Table IV.B.2–1 above. The total imports of advanced biodiesel and renewable diesel was 68 million gallons in 2012, rising to 382 million gallons in 2015.

believe this increase is limited as much of these oils, fats, and greases are already being recovered and used in biodiesel and renewable diesel production or for other purposes. Many of the planted crops that supply vegetable oil for advanced biodiesel and renewable diesel production are primarily grown as livestock feed with the oil as a co-product or by-product, rather than specifically as biodiesel and renewable diesel feedstocks.[92] This is true for soy beans and corn, which are the two largest sources of feedstock from planted crops used for biodiesel production in the United States.[93] This means that the planted acres of these crops are unlikely to respond to additional demand for vegetable oils for biodiesel and renewable diesel production in the near term, as the oils produced are not the primary source of revenue for these crops.

Given the limited ability of the markets to provide additional feedstocks in response to a higher advanced biofuel standard in 2017, we believe that the primary impact of setting a standard involving more than a 300 million gallon increase over the 2016 standard could be a decreased use of advanced biodiesel and renewable diesel in other countries (as this supply is shifted to the United States) as well as significant feedstock substitution as the food, feed, and industrial oil markets switch to non-advanced feedstocks to free up greater volumes of advanced feedstocks for advanced biodiesel and renewable diesel production.[94] Increasing the short-term supply of advanced biodiesel and renewable diesel to the United States in this manner (simply shifting the end use of advanced feedstocks and biodiesel and renewable diesel produced from these feedstocks and displacing conventional biodiesel and renewable diesel with advanced biodiesel and renewable diesel) may not advance the GHG goals of the RFS program. In a worst case scenario, higher standards could cause supply disruptions to a number of markets as biodiesel and renewable diesel producers seek additional supplies of advanced feedstocks and the parties that previously used these feedstocks, both within and outside of the fuels marketplace, seek out alternative feedstocks. This could result in significant cost increases, for both biodiesel and renewable diesel as well as other products produced from renewable oils, while failing to meaningfully reduce overall GHG emissions or increase U.S. energy security. Nevertheless, while the growth in the availability of advanced feedstocks may be slowing both in the U.S. and abroad, as indicated by some studies,[95] we believe that a volume of 2.4 billion gallons of advanced biodiesel and renewable diesel (300 million gallons more than our projection of the available volume of these fuels in 2016) is both reasonably attainable and appropriate in 2017.

The 300 million gallon annual increase we are using for 2017 is a little less than the increase in advanced biodiesel and renewable diesel we assumed in deriving the 2016 advanced biofuel standard would occur from 2015 to 2016 (approximately 370 million gallons). We believe that this is reasonable because the circumstances we are facing in this action are different from those we were facing in the 2014–2016 final rule. The 2016 standards followed two years where standards had not been set by the statutory deadlines. Relatively modest increases in the supply of advanced biodiesel and renewable diesel occurred in 2014 and 2015. This meant that there was greater opportunity in 2016 to take advantage of market changes that had not been fully utilized in the preceding two years.

EPA also received comments on the equivalence value EPA used to convert the volume of advanced biodiesel and renewable diesel into a projected number of RINs for the purpose of deriving the proposed advanced biofuel standard. Biodiesel has an equivalence value of 1.5, while renewable diesel generally has an equivalence value of 1.7.[96] In the proposed rule EPA assumed an equivalence value of 1.5, consistent with the past rules, using the simplifying assumption that the vast majority of volume was biodiesel. Commenters noted, however, that using an equivalence value of 1.5 did not properly account for the significant volumes of renewable diesel that is expected to be supplied to the United States in 2017. EPA agrees with these comments. In this final rule we have used an equivalence value of 1.55 to convert the projected volume of advanced biodiesel and renewable diesel to a volume of RINs for the purpose of deriving the advanced biofuel standard. We have similarly used this higher equivalence value (1.55) to convert the projected volume of total biodiesel and renewable diesel (both advanced and conventional) to a volume of RINs for the purpose of deriving the total renewable fuel standard for 2017. This higher equivalence value is generally consistent with the volume weighted average equivalence value for the volume of advanced biodiesel and renewable diesel supplied to the United States in recent years.[97] Note that this higher equivalence value does not impact the volume of biodiesel and renewable diesel, but does increase the number of RINs that is expected to be generated for this volume of biodiesel and renewable diesel, which impacts both the advanced and total renewable fuel standards.

We note that the reasonably attainable and appropriate volume of advanced biodiesel and renewable diesel projected for the purpose of deriving the advanced biofuel volume requirement cannot itself be viewed as a volume requirement. This volume is merely the basis on which we have determined the volume requirements for advanced biofuel and total renewable fuel. As discussed in more detail in Section V.C below, there are many ways that the market could respond to the percentage standards we establish, including use of advanced biodiesel and renewable diesel volumes higher or lower than those projected in this section.

[92] For example, corn oil is a co-product of corn grown primarily for feed or ethanol production, while soy and canola oil are primarily grown as livestock feed. For further discussion on this issue see the LMC International study, submitted as part of the NBB comments (EPA–HQ–OAR–2016–0004–2904, Attachment 14).

[93] According to EIA data 4,906 million pounds of soy bean oil and 1,044 million pounds of corn oil were used to produce biodiesel in the United States in 2015. Other significant sources of feedstock were yellow grease (1,232 million pounds), canola oil (745 million pounds), white grease (588 million pounds), tallow (429 million pounds), and poultry fat (190 million pounds). Numbers from EIA's February 2016 Monthly Biodiesel Production Report. Available at *http://www.eia.gov/biofuels/biodiesel/production/archive/2015/2015_12/biodiesel.pdf.*

[94] Given the constraints in the use of total biodiesel and renewable diesel in the U.S. described in Section V, increasing the use of advanced biodiesel and renewable diesel in the U.S. in 2017 could be expected to also lead to a decrease in the use of conventional biodiesel and renewable diesel. Any energy security benefits gained from additional volumes of advanced biodiesel and renewable diesel would be expected to be off-set by the corresponding lower consumption of conventional biodiesel and renewable diesel.

[95] See the results of the LMC International study, which projects that the availability of advanced feedstocks for biodiesel and renewable diesel production will increase by 600 million gallons from 2017 to 2018 (8.6 billion gallons to 9.2 billion gallons), but these increases will be only 300 million gallons per year from 2018–2020 (9.2 to 9.8 billion gallons over two years).

[96] This means that biodiesel producers generally generate 1.5 RINs for every gallon of biodiesel they produce, while renewable diesel producers generally generate 1.7 RINs for every gallon of renewable diesel they produce.

[97] ''Converting volumes to RINs for biodiesel & renewable diesel,'' docket EPA–HQ–OAR–2016–0004.

3. Other Advanced Biofuel

In addition to cellulosic biofuel, imported sugarcane ethanol, and advanced biodiesel and renewable diesel, there are other advanced biofuels that can be counted in the determination of reasonably attainable and appropriate volumes of advanced biofuel for 2017. These other advanced biofuels include biogas, naphtha, heating oil, butanol, and jet fuel. However, the supply of these fuels has been relatively low in the last several years.

TABLE IV.B.3–1—HISTORICAL SUPPLY OF OTHER ADVANCED BIOFUELS

[Million ethanol-equivalent gallons]

	Biogas	Heating oil	Naphtha	Renewable diesel [a]	Total
2013	26	0	3	64	93
2014	20	0	18	15	53
2015	0	1	24	8	33

[a] Some renewable diesel generates D5 rather than D4 RINs as a result of being produced through coprocessing with petroleum or being produced from the non-cellulosic portions of separated food waste or annual cover crops.

The downward trend over time in biogas as advanced biofuel with a D code of 5 is due to the re-categorization in 2014 of landfill biogas from advanced (D code 5) to cellulosic (D code 3).[98] The average of the remaining sources over all three years is 44 million gallons. Based on historical supply and the expectation that growth in the advanced biofuel standard will continue to provide incentives for growth in the supply of these other advanced biofuels, we proposed using 50 million gallons in the context of determining the advanced biofuel volume requirement.

While some stakeholders suggested that volumes higher than 50 million gallons were possible in 2017, they relied primarily on opportunities for other biofuels to qualify as advanced under the existing regulations, including jet fuel, liquefied petroleum gas (LPG), and liquefied natural gas (as distinct from compressed natural gas). We agree that such opportunities exist, and believe that they could help the total volume of other advanced biofuels to reach 50 million gallons in 2017. However, since they have been produced in only de minimis amounts in the past, we do not have a basis for projecting substantial volumes from these sources in 2017. We have taken into consideration that the market supplied 67 million gallons of non-biogas advanced biofuel in 2013, demonstrating that it is capable of achieving supply of more than 50 million gallons. However, overall supply of other advanced biofuel decreased in 2014 and 2015, albeit during years when the RFS standards were not in place to drive increased production and use. Since it is not possible to discern the precise cause of the reduced volumes achieved in 2014 and 2015, we do not believe it would be reasonable to ignore these data points. We believe it is most reasonable to assume reasonably attainable volumes somewhat lower than the historic maximum, but higher than the low volumes seen in 2014 and 2015 that likely reflect in part the absence of a driving RFS standard. In light of these considerations, we believe it is reasonable to assume reasonably attainable and appropriate volumes of 50 million gallons of other advanced biofuel in 2017.

Some stakeholders suggested that we should ignore supply from other advanced biofuel sources altogether, citing the low volumes supplied in the past. We disagree. Some volumes are clearly attainable, and we do not believe it would be appropriate to ignore them. Therefore, for the purposes of determining the final advanced biofuel volume requirement, we have used 50 million gallons of other advanced biofuel.

4. Total Advanced Biofuel

The combination of all sources of advanced biofuel described in the previous sections leads us to believe that 4.28 billion gallons of advanced biofuel is reasonably attainable and appropriate to require in 2017, and that it is not necessary to reduce the advanced biofuel statutory target by the full amount permitted under the cellulosic waiver authority. This is the advanced biofuel volume requirement that we are establishing for 2017.

TABLE IV.B.4–1—VOLUMES USED TO DETERMINE THE FINAL ADVANCED BIOFUEL VOLUME REQUIREMENT FOR 2017

[Million ethanol-equivalent gallons except as noted]

	311
Advanced biodiesel and renewable diesel (ethanol-equivalent volume/physical volume)	3,720/2,400
Imported sugarcane ethanol	200
Other non-ethanol advanced	50
Total advanced biofuel	4,281

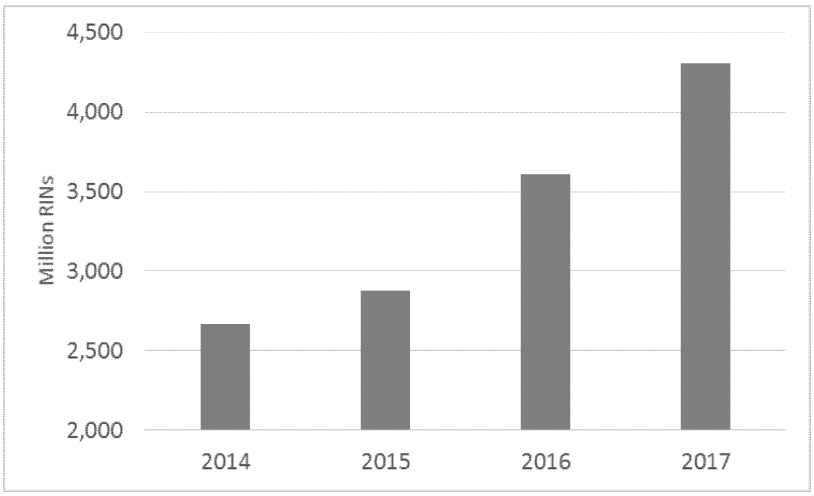
The final volume requirement for advanced biofuel for 2017 is an increase of about 300 million gallons from the proposed volume of 4.0 billion gallons, primarily reflecting our updated assessment of biodiesel and renewable diesel.

The volume of advanced biofuel that we are establishing for 2017 will require increases from current levels that are substantial yet reasonably attainable and appropriate, taking into account the constraints on supply discussed previously, our judgment regarding the ability of the standards we set to result in marketplace changes, feedstock availability, and the various

[98] 79 FR 42128, July 18, 2014.

uncertainties we have described. Figure IV.B.4–1 shows that the advanced biofuel volume requirement for 2017 will be significantly higher than the volume requirements for advanced biofuel in previous years.

Figure IV.B.4-1
Growth in Advanced Biofuel Volume Requirements



In response to the NPRM, stakeholders were strongly divided on whether the proposed 2017 advanced biofuel volume of 4.0 billion gallons was too high or too low. Parties representing advanced biofuel production, including biodiesel and sugarcane ethanol, expressed concern that 4.0 billion gallons would not provide enough incentive for the market to grow. However, the final volume of 4.28 billion gallons is about 700 million gallons higher than the 2016 volume requirement, providing significant opportunities for growth as discussed in more detail in Section V.C

Among commenters who suggested an alternative, higher volume for the 2017 advanced biofuel volume requirement, most based it primarily on a higher assumed level of BBD of between 2.5 and 2.9 billion gallons. As discussed in Section IV.B.2, after consideration of stakeholder comments, we do not believe that BBD volumes this high are reasonably attainable or appropriate in 2017. One stakeholder also believed that the methodology that we developed for determination of cellulosic biofuel underestimated potential 2017 volumes, and suggested that an additional 100 million gallons of cellulosic biofuel was possible. As discussed in Section III.D, we continue to believe that our methodology for cellulosic biofuel appropriately accounts for uncertainty in projections for that emerging industry, and that while an additional 100 million gallons of cellulosic biofuel could be considered possible, it is unlikely and thus should not be included in volumes used as the basis for the 2017 standards.

Parties representing the refining industry generally believed that the proposed volume of 4.0 billion gallons for advanced biofuel was too high. They suggested an alternative 2017 advanced biofuel volume requirement of 3.2 billion gallons, considerably below the 2016 volume requirement of 3.61 billion gallons. Although there are many problems with the assumptions these commenters used to justify their suggestion, we note first that, as described in Section I.B.1, available evidence indicates that the 2016 standard for advanced biofuel is on track to be met. Since available evidence indicates that the 2016 advanced biofuel standard is likely to be met, we see no reason to expect that at least the same volumes cannot be attained in 2017.

These stakeholders also assumed that imports of sugarcane ethanol and other advanced biofuel would be zero in 2017. Making such an assumption would be inconsistent with all past experience and there is no basis to assume that imports cannot contribute at least some volume in 2017.

The suggested advanced biofuel volume requirement of 3.2 billion gallons also assumes that cellulosic biofuel will only reach 200 million gallons instead of the 312 million gallons that we proposed. As described in Section III.D, we do not believe that using only historic cellulosic production volumes is appropriate when making projections for the future; the statute directs EPA to set the cellulosic volume at the ''projected volume . . . of production,'' rather than on the basis of past production alone.

Finally, these stakeholders' suggestion of 3.2 billion gallons of advanced biofuel assumes that the supply of BBD will not exceed the applicable BBD standard, which is 2.0 billion gallons for 2017. There is no basis for this assumption in setting the advanced biofuel volume requirement. The total supply of BBD has consistently exceeded the applicable BBD standard in the past, and is expected to do so again in 2016. Moreover, actual supply of BBD in 2016 is likely to exceed 2.0 billion gallons as shown in a memorandum to the docket.[99] As described in the NPRM and in the 2014–2016 final rule, the advanced biofuel standard creates a significant incentive for supply of BBD at levels higher than the BBD standard. Commenters supporting 3.2 billion gallons of advanced biofuel for 2017 gave no compelling reason why BBD cannot reach levels higher than 2.0 billion gallons.

As noted before, the volumes actually used to satisfy the advanced biofuel volume requirements may be different than those shown in Table IV.B.4–1 above. The volumes of individual types of renewable fuel that we have used in this analysis represent our best estimate of volumes that are reasonably

[99] ''Comparison of 2016 availability of RINs and 2016 standards,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

attainable by a market that is responsive to the RFS standards. However, given the uncertainty in these estimates, the volumes of individual types of advanced biofuel may be higher or lower than those shown above.

V. Total Renewable Fuel Volume for 2017

The national volume targets of total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2)(B)(i)(I). For 2017 the statute stipulates that the volume of total renewable fuel should be 24 billion gallons. Since we have determined that the statutory volume target for cellulosic biofuel must be reduced to reflect the projected production volume of that fuel type in 2017, we are authorized under CAA section 211(o)(7)(D)(i) to reduce the advanced biofuel and total renewable fuel targets by the same or a lesser amount. We also have the authority to reduce any volume target under the general waiver authority under specific conditions as described in Section II.A.2. Although in the NPRM we had proposed to use a combination of the cellulosic waiver authority and the general waiver authority to reduce the statutory volume target for total renewable fuel for 2017, we have determined, based on comments received in response to the NPRM and a review of updated information, that 2017 supply is adequate to meet a total renewable fuel volume requirement of 19.28 billion gallons resulting from the use of the cellulosic waiver authority alone. The use of the general waiver authority for 2017 to further reduce the total renewable fuel standard is therefore not necessary. As a result, the implied volume for conventional (non-advanced) renewable fuel will be 15.0 billion gallons.

Today's standards are significantly higher than have been achieved in the past and will drive significant growth in renewable fuel use beyond what would occur in the absence of the requirements. The final volume requirements for both advanced biofuel and total renewable fuel recognize the ability of the market to respond to the standards we set, thereby accomplishing the goals of the statute to increase renewable fuel use.

We investigated whether the market is on track to meet the 2016 total renewable fuel volume requirement of 18.11 billion gallons, which EPA projected to be the maximum achievable volume for that year in the context of our use of the general waiver authority. As described in a memorandum to the docket, supply through the end of September coupled with a projection based on consideration of seasonal variations in supply for previous years indicate that compliance with the 2016 standards is indeed within reach.[100] We believe these results support the assessment conducted for purposes of establishing the 2016 total renewable fuel standard. For this final rule, we have taken a similar approach to assessing the adequacy of supply of total renewable fuel that differs in some particulars as described below.

A. Volumetric Limitation on Use of the Cellulosic Waiver Authority

In Section IV.B we explained our use of the cellulosic waiver authority to reduce the statutory volume target for advanced biofuel to a level that we have determined is reasonably attainable and appropriate given a consideration of factors related to the likely constraints on imports, distribution and use, and global GHG impacts of incremental growth in advanced biodiesel and renewable diesel. This did not require a reduction as large as the reduction in the statutory volume target for cellulosic biofuel, and so this reduction was within the authority provided by CAA section 211(o)(7)(D)(i).

As discussed in Section II.A.1, we believe that the cellulosic waiver provision is best interpreted to require equal reductions in advanced biofuel and total renewable fuel. We have consistently articulated this interpretation.[101] Having determined that we should establish the advanced biofuel volume at a level requiring a reduction of 4,719 million gallons from the statutory target, applying an equal reduction to the statutory target for total renewable fuel yields the results shown below.

TABLE V.A–1—APPLYING EQUAL VOLUME REDUCTIONS TO TOTAL RENEWABLE FUEL AS FOR ADVANCED BIOFUEL UNDER CELLULOSIC WAIVER AUTHORITY

[Million gallons]

	Advanced biofuel	Total renewable fuel
Statutory target	9,000	24,000
Reduction under the cellulosic waiver authority	4,719	4,719
Resulting volume	4,281	19,281

If we were to determine that there is an inadequate domestic supply to satisfy the total renewable fuel volume resulting from use of the cellulosic waiver authority alone, we could use the general waiver authority, described in Section II.A.2, to provide further reductions. Indeed, we proposed such an approach. However, we have re-evaluated the situation in light of new data and consideration of comments, and as described below we have determined that there will be adequate supply to meet a total renewable fuel volume requirement of 19.28 billion gallons in 2017.[102] As a result of this assessment, we have determined that further reductions in the total renewable fuel applicable volume using the general wavier authority are not necessary.

B. Assessing Adequacy of Supply

As noted above, the applicable volume of total renewable fuel was derived by applying the same volume reduction to the statutory volume target for total renewable fuel as was determined to be appropriate for advanced biofuel, using the cellulosic waiver authority. This section describes our assessment that there is adequate

[100] "Comparison of 2016 availability of RINs and 2016 standards," memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[101] For instance, see discussion in the final rule setting the 2013 standards: 78 FR 49809–49810, August 15, 2013.

[102] Stakeholder comments most directly impacting our assessment of the adequacy of supply of total renewable fuel were directed at distribution issues associated with biodiesel and renewable diesel. See Section V.B.2 for further discussion.

supply to meet an applicable volume requirement of 19.28 billion gallons. The objective of our assessment is different than our analysis in the NPRM, where we sought to identify the maximum reasonably achievable volume of total renewable fuel based on the sum of estimates of each type of renewable fuel, such as total ethanol, biodiesel and renewable diesel, biogas, and other non-ethanol renewable fuels. In this final rule, in contrast, we instead are evaluating those sources to determine if in the aggregate it appears that there is adequate supply to meet the total renewable fuel volume shown in Table V.A–1. Based on our conclusion that there is sufficient supply as discussed below, it is unnecessary to address any inadequate domestic supply through use of the general waiver authority.

Despite the different objective, we face much the same challenges that we noted in the NPRM: It is a very challenging task to estimate the adequacy of supply in light of the myriad complexities of the fuels market and how individual aspects of the industry might change in the future, and also because we cannot precisely predict how the market will respond to the volume-driving provisions of the RFS program. This is the type of assessment that is not given to precise measurement and necessarily involves considerable exercise of judgment.

Our investigation into whether there is adequate supply to meet the total renewable fuel volume shown in Table V.A–1 was driven primarily by a consideration of the total amount of ethanol that can be reasonably attained in light of various constraints, and the total volume of biodiesel and renewable diesel that can be reasonably attained. We also considered smaller contributions from non-ethanol cellulosic and other non-ethanol renewable fuels (*i.e.* naphtha, heating oil, butanol, and jet fuel). With regard to the more dominant contributors, the information that is available has allowed us to make a relatively more precise estimate of total supply of ethanol than of biodiesel/renewable diesel. This is due to the fact that the primary constraints in the supply of ethanol in 2017 are readily identifiable, although still challenging to quantify, while there are many different factors that could potentially constrain the supply of biodiesel and renewable diesel in 2017. As a result, we did not attempt to derive a specific estimate of reasonably attainable supply of total biodiesel and renewable diesel. Instead, after estimating what we consider to be reasonably attainable supply of ethanol in 2017, and taking into account the estimates of non-ethanol cellulosic biofuel supply discussed in Section III.D above and estimates of other non-ethanol renewable fuel supply discussed in Section IV.B.3, we considered whether the supply of total biodiesel and renewable diesel would be adequate to satisfy a requirement of 19.28 billion gallons.[103] The following sections provide our assessment of ethanol and biodiesel/renewable diesel volumes.

1. Ethanol

Ethanol is the most widely produced and consumed biofuel, both domestically and globally. Since the beginning of the RFS program, the total volume of renewable fuel produced and consumed in the United States has grown substantially each year, primarily due to the increased production and use of corn ethanol. However, the rate of growth in the supply of ethanol to the U.S. market has decreased in recent years as the gasoline market has become saturated with E10, and efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates. Although we believe ethanol use is growing and can continue to grow, the low number of retail stations selling these higher-level ethanol blends, along with poor price advantages compared to E10, and a limited number of FFVs, among others, represent challenges to the rate of growth of ethanol as a transportation fuel in the United States.

In the 2014–2016 final rule we discussed in detail the factors that constrain growth in ethanol supply and the opportunities that exist for pushing the market to overcome those constraints.[104] That discussion generally remains relevant for 2017, though we believe that the supply of ethanol can be somewhat higher in 2017 than in 2016.

Ethanol supply is not currently limited by production and import capacity, which is in excess of 15 billion gallons.[105] Instead, the amount of ethanol supplied is constrained by the following:

- Overall gasoline demand and the volume of ethanol that can be blended into gasoline as E10 (typically referred to as the E10 blendwall).
- The number of retail stations that offer higher ethanol blends such as E15 and E85.
- The number of vehicles that can both legally and practically consume E15 and/or E85.
- Relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- The supply of gasoline without ethanol (E0).

The applicable standards that we set under the RFS program provide incentives for the market to overcome many of these ethanol-related constraints.

While in the short term the RFS program is unlikely to have a direct effect on overall gasoline demand or the number of vehicles designed to use higher ethanol blends, it can provide incentives for changes in some other market factors, such as the number of retail stations that offer higher ethanol blends and the relative pricing of those higher ethanol blends in comparison to E10. The RFS program complements other efforts to increase the use of renewable fuels, such as the following:

- USDA's Biofuel Infrastructure Partnership (BIP) program which has provided $100 million in grants for the expansion of renewable fuel infrastructure in 2016 (supported by additional State matching funds)
- USDA's Biorefinery Assistance Program which has provided loan guarantees for the development and construction of commercial-scale biorefineries with a number of the new projects focused on producing fuels other than ethanol.
- The ethanol industry's Prime the Pump program, which has committed more than $45 million to date for retail refueling infrastructure [106]

In response to the NPRM, many stakeholders repeated their views from the 2014–2016 rulemaking regarding the existence and nature of the E10 blendwall. Ethanol proponents generally regard the blendwall as a fictional idea created by refiners, and said or implied that increases in ethanol supply beyond the blendwall are only limited by refiners' unwillingness to invest in the necessary infrastructure. Some also said that EPA's approach to setting standards, in which constraints on the supply of ethanol are used as justification for reducing the volume requirement below the statutory targets, was a self-fulfilling prophecy that guaranteed that the blendwall would

[103] As noted earlier, ''reasonably attainable'' volumes may be less than the ''maximum achievable'' volumes we would seek to identify when using the general waiver authority based on a finding of inadequate domestic supply. It follows that if there are sufficient reasonably attainable volumes of renewable fuel to satisfy a total renewable fuel requirement of 19.28 billion gallons, that there is no basis for a finding of inadequate domestic supply.

[104] 80 FR 77456–77465.

[105] ''RFA 2016 Annual Industry Outlook,'' docket EPA–HQ–OAR–2016–0004.

[106] ''Email dialogue with Robert White on Prime the Pump,'' docket EPA–HQ–OAR–2016–0004.

never be exceeded. Refiners and marketers typically viewed the constraints associated with the blendwall as representing a firm barrier that could not or should not be crossed, with costs for necessary infrastructure changes being prohibitively high and the associated opportunities for greater profits at retail being inconsequentially low. In their views, higher level ethanol blends such as E15 and E85 would be negligible in 2017 and standards that required higher ethanol blends to increase dramatically would compel refiners to reduce domestic supply of gasoline and diesel or risk non-compliance.

As stated in the 2014–2016 final rule and in the NPRM, our view of the E10 blendwall falls between these two viewpoints. We continue to believe that there are real constraints on the ability of the market to exceed an average nationwide ethanol content of 10%. However, these constraints do not have the same significance at all ethanol concentrations above 10%. Instead, for the state of infrastructure that can be available in 2017, the constraints represent a continuum of mild resistance to growth at the first increments above 10% ethanol and evolve to significant obstacles at higher levels of ethanol. In short, the E10 blendwall is not the barrier that some stakeholders believe it to be, but neither are increases in poolwide ethanol concentrations above 10% unlimited in the 2017 timeframe.

We continue to believe that the constraints associated with the E10 blendwall do not represent a firm barrier that cannot or should not be crossed. Rather, the E10 blendwall marks the transition from relatively straightforward and easily achievable increases in ethanol consumption as E10 to those increases in ethanol consumption as E15 and E85 that are more challenging to achieve. Comments received in response to the NPRM provided no compelling evidence that the nationwide average ethanol concentration in gasoline cannot exceed 10.0%.

However, we also recognize that the market is not unlimited in its ability to respond to the standards we set. This is true both for expanded use of ethanol and for non-ethanol renewable fuels. The fuels marketplace in the United States is large, diverse, and complex, made up of many different players with different, and often competing, interests. Substantial growth in the renewable fuel volumes beyond current levels will require action by many different parts of the fuel market, and a constraint in any one part of the market can act to limit the growth in renewable fuel supply. Whether notable constraints are in the technology development and commercialization stages, as has been the case with cellulosic biofuels, the development of distribution infrastructure as is the case with ethanol, or in the distribution and use of biodiesel, the end result is that these constraints limit the growth rate in the available supply of renewable fuel as transportation fuel, heating oil, or jet fuel. These constraints were discussed in detail in the 2014–2016 final rule, and we believe that the same constraints will operate to limit supply for 2017 as well.[107] Other factors outside the purview of the RFS program also impact the supply of renewable fuel, including the price of crude oil and global supply and demand of both renewable fuels and their feedstocks. These factors add uncertainty to the task of estimating the adequacy of supply of renewable fuel in the future.

While the constraints are real and must be taken into account in our evaluation of whether there is adequate supply to meet 19.28 billion gallons of total renewable fuel, none of those constraints represent insurmountable barriers to growth. Rather, they are challenges that are in the process of being addressed and will be overcome in a responsive marketplace given enough time and with appropriate investment. The speed with which the market can overcome these constraints is a function of whether and how effectively parties involved in the many diverse aspects of renewable fuel supply respond to the challenges associated with transitioning from fossil-based fuels to renewable fuels, the incentives provided by the RFS program, and other programs designed to incentivize renewable fuel use.

i. E0

We based the proposed total renewable fuel volume requirement in the NPRM on the same expectation from the 2014–2016 final rule regarding supply of E0: The RFS program would result in all but a tiny portion—estimated at 200 million gallons—of gasoline to contain at least 10% ethanol. We based this determination on the following two considerations:

1. The RFS program will continue incentivizing the market to transition from E0 to E10 and other higher level ethanol blends through the RIN mechanism.

2. Recreational marine engines represent a market segment that we believe would be particularly difficult to completely transition from E0 since they are used in a water environment where there is a greater potential for water contamination of the fuel. Some consumers are concerned that there could be a potential for consequent engine damage following phase separation of the water and fuel.[108]

Based on the analysis conducted for the 2014–2016 final rule, it is most likely that any recreational marine engines refueled at retail service stations (*i.e.,* not at marinas) would use only E10 since E0 is not typically offered at retail. Moreover, only a small minority of recreational marine engines refuel at marinas where E0 is more likely to be available, catering to that particular market. In a memorandum to the docket, we evaluated the information that had been supplied to us by stakeholders, highlighting the uncertainty in that information and concluding that about 200 million gallons of E0 was a reasonable estimate of the volume likely to be consumed by recreational marine engines.[109] In the NPRM, we expressed our belief that this analysis also reflected reasonable expectations for 2017.

In response to the proposal for the 2017 standards, some stakeholders said that we had significantly underestimated the volume of E0 used by recreational marine engines. However, no new information was provided that was not already considered in the 2014–2016 final rule and discussed in the aforementioned memorandum and, as before, no stakeholders provided any data on actual consumption of E0 by recreational marine engines. Moreover, the anecdotal information suggesting that most if not all recreational marine engines are fueled on E0 does not represent an appropriate basis for increasing our estimate since it was not based on any form of data and moreover appears highly unlikely given our expectation that only a small minority of recreational marine engines refuel at marinas where E0 is likely to be more prevalent.

Other stakeholders said that we had ignored significant demand for E0 in our determination of the total volume of

[107] See 80 FR 77450.

[108] We note that a recent report from the National Renewable Energy Laboratory calls into question the significance of water contamination for recreational marine engines. See ''Gas becomes stale before water uptake becomes a concern,'' Ethanol Producer Magazine, September 21, 2016. See also original report ''Water Uptake and Weathering of Ethanol-Gasoline Blends in Humid Environments,'' by Christensen & McCormick, National Renewable Energy Laboratory, September, 2016.

[109] ''Estimating E0 use in recreational marine engines,'' memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

ethanol that can be supplied. They pointed beyond recreational marine engines to other small engines where there is demand for E0, and to Web sites like *Pure-gas.org*, which claim to list more than 11,000 stations which offer E0. Several stakeholders pointed to a report from EIA suggesting that 5.3 billion gallons of E0 was consumed in 2015.[110] Several refiners reiterated their comments responding to the 2014–2016 proposal which used EIA data to conclude that there is ongoing demand for E0 at a level of at least 3% of the total gasoline pool. This estimate of E0 demand was the primary basis for their request that the 2017 standards be set in such a way that the poolwide gasoline ethanol concentration is no higher than 9.7%.

Other than references to data and analyses collected by EIA, no stakeholder provided any data on actual E0 consumption. With regard to data from EIA, in the 2014–2016 final rule we addressed refiners' claim that 3% of the gasoline pool has been E0 for several years, concluding that those estimates were generated from incomplete EIA gasoline supply data which overestimated the potential demand for E0 at retail.[111] Comments from refiners in response to the 2017 proposal did not provide any new or different information that would change our conclusions with regard to that 3% estimate.

With regard to EIA's more recent estimate that 5.3 billion gallons of E0 was consumed in 2015, we do not believe that this value represents consumption of E0 at the retail. EIA's estimate was based on survey data from most U.S. terminals, which include information about domestic distribution from the terminal level and exports of ethanol-free gasoline, with the difference representing domestic disposition. EIA combines this information with estimates of available ethanol, assuming that the ethanol is used in a 10% blend with ethanol-free gasoline. As described in a memorandum to the docket, our analysis of EIA's estimate of 5.3 billion gallons of E0 concludes that it would require E85 volumes significantly higher than the volumes likely to have been supplied in 2015.[112] In our view, the 5.3 billion gallons of E0 estimated by EIA must include volumes that are blended with ethanol downstream of the terminal prior to dispensing from retail and centralized fleet refueling stations where additional ethanol blending can and does occur in excess of the blending used in EIA's estimate. The calculations are very sensitive to the exact volume of total ethanol available for blending, with EIA and EPA estimated volumes of total ethanol used differing by about 1 percent. We believe that EMTS data provides more accurate information on actual use of ethanol in motor fuel than EIA's survey data on ethanol production, blending, imports, and exports because it accounts for every gallon of ethanol produced but not exported, and is verified by the purchaser in the transaction within EMTS. Based on our analysis, we estimate that E0 consumption at the retail level in 2015 would have been closer to about 700 million gallons.

Some stakeholders pointed out that it would be difficult for the market to transition about 5 billion gallons of E0 to E10 within one year. However, since we believe that actual consumption of E0 in 2015 was much closer to 700 million gallons than 5.3 billion gallons, continuing to transition away from E0 since then to 200 million gallons of E0 by the end of 2017 is achievable. As a result, we continue to believe that 200 million gallons of E0 is a reasonable value to assume for purposes of assessing the adequacy of supply of total renewable fuel, based on our prior assessment that this volume dedicated to recreational marine engine use may not be significantly influenced by the standards we set in this time period, and our expectation that the RFS program will continue to incentivize all but this small portion of the gasoline pool to be blended with ethanol.

Stakeholders representing boat owners expressed concern that by including only 200 million gallons of E0 in the proposed derivation of maximum achievable total renewable fuel volumes, EPA anticipated effectively limiting the availability of E0 to 200 million gallons. This is not the case. The standards that EPA sets are not specific to ethanol nor to specific ethanol blends. Once the standards are set, the market has the flexibility to choose the mix of fuel types used to meet those standards. If, for instance, the demand for E0 in 2017 is higher than 200 million gallons, the market can compensate by providing higher volumes of E15 and/or E85, or additional non-ethanol renewable fuels.

ii. E15

In the NPRM, we proposed that a total ethanol volume of 14.4 billion gallons could be reached in 2017 based on the expectation that somewhat larger increases in ethanol supply were possible in 2017 than we had estimated for 2016. We did not provide specific estimates of E15 or E85 use in 2017, but instead said that we generally expected the RFS program to influence sales of E0, E15, and E85 in such a way as to produce this increase in ethanol volume. For this final rule, we have undertaken a more detailed estimate of the volumes of E15 and E85 that are possible in 2017, so as to more confidently assess whether there is adequate supply to reach a total renewable fuel volume requirement of 19.28 billion gallons.

Most comments in response to the NPRM repeated viewpoints they had expressed in response to the 2014–2016 proposal. Refiners and their associations, as well as parties representing fuel marketers and retail, expressed doubt that the number of stations offering E15 could increase significantly in 2017 and pointed to vehicle warranties that they believed would hinder many owners of 2001+ model year vehicles from refueling on E15. They also repeated their concerns about engine damage and liability for misfueling. Ethanol proponents generally pointed to the large number of in-use vehicles that are legally permitted to use E15 and information suggesting that many existing retail stations are already compatible with E15, or can be inexpensively upgraded. They also pointed to incentives for expanded infrastructure provided by programs such as USDA's Biofuels Infrastructure Partnership (BIP) program and the ethanol industry's Prime the Pump program. A more detailed discussion of our views of these comments can be found in the 2014–2016 final rule and in the Response to Comments document for this final rule.[113]

Consistent with our assessment for the 2014–16 final rule, we believe that neither the number of vehicles that are legally permitted to use E15, nor the number of owners of such vehicles who would choose to use it, are the predominant factors in determining the volume of E15 that is reasonably attainable in 2017. Instead, we believe that it is the number of retail stations offering E15 in 2017 that is more likely to determine how much E15 is actually consumed. The number of retail stations registered to offer E15 has grown to about 400 in the fall of 2016 based on information collected by the RFG Survey Association, more than doubling from the previous year. However, this is

[110] "Almost all U.S. gasoline is blended with 10% ethanol," Energy Information Administration, *Today In Energy,* May 4, 2016.

[111] See discussion at 80 FR 77462.

[112] "Ethanol Consumption in 2015 and Estimates of E0 Use," memorandum from David Korotney to Docket EPA–HQ–OAR–2016–0004.

[113] See discussion at 80 FR 77462–77464.

still a very small fraction of the approximately 150,000 retail stations currently operating. Based on comments received from retail station owners and their associations, this low number of retail stations offering E15 is most likely due to liability concerns and low expectations for a return on an investment in new or upgraded infrastructure.

We do not believe, based on past experience, that the core concerns retailers have with liability over equipment compatibility and misfueling would change if the RFS volume requirements were increased significantly. Similarly, while higher RFS volume requirements could make it incrementally more attractive for retailers to upgrade infrastructure to offer E15, the concerns they expressed in their comments about high capital costs and opportunities for return on their investment would remain. As a result, setting higher volume requirements would be unlikely to result in dramatic increases in the number of additional retail stations offering E15 in 2017 beyond those that may be upgraded through existing grant programs. As a result, we do not believe that E15 infrastructure expansion can occur on the much larger scale and faster timeframe that ethanol proponents believe it can. However, we do believe that retail infrastructure can and will change to offer more E15 in 2017. We have estimated the expansion that is possible in 2017 based on information on both the BIP and Prime the Pump programs, as well as an expectation that independent efforts to expand infrastructure will continue. As described in a memorandum to the docket, we believe that the number of stations will increase during the course of the year, and that an annual average of about 1,640 retail stations will be able to offer E15 in 2017.[114]

Since actual experience with E15 sales is so limited, and commenters provided little information on actual E15 sales volumes, we have made an estimate of possible E15 use in 2017 using the same methodology that was presented in the 2014–2016 final rule, supplemented by additional information about E15 that is expected to be supplied by terminals.[115] That estimate was based on the following equation, which was also used in the 2014–2016 final rule:

E15 volume = (Total gasoline throughput per station) × (Number of stations offering E15) × (Fraction of total gasoline sales which are E15)

We have updated the values used in this calculation based on comments provided by stakeholders and additional information that has become available since release of the NPRM. First, we have updated the number of retail stations that may offer E15 in 2017, as discussed above. Second, some stakeholders said that retail stations being targeted under the BIP program had greater total annual gasoline sales than average, such that it would be inappropriate to assume that the total gasoline throughput per retail service station in the above equation is equal to the nationwide average, currently about 0.95 million gallons per station per year. Available information on the BIP program does not include gasoline throughput, but larger retail stations would be more likely to produce the matching funds necessary as a condition of receiving BIP grant funds. One stakeholder that is actively and directly working with many of the retailers using funds from the BIP and Prime the Pump programs indicated that the average total gasoline throughput for affected retail stations is 2.8 billion gallons per year. Therefore, we have used this value in our determination of E15 supply for 2017. Further discussion can be found in a memorandum to the docket.[116]

Finally, in the 2014–2016 final rule we used a value of 50% for the fraction of total gasoline sales which are E15 at stations offering both E10 and E15 based on the expectation that E10 and E15 could be priced equally on a volumetric energy basis. While we continue to believe that 50% is possible, a number of refiners pointed out reasons that 50% may be too high in the near term, including the fact that there are likely to be fewer dispensers at a given retail station offering E15 than those offering only E10, and customer familiarity with E10. One party indicated that in Iowa in 2015, per-station E15 sales were 15% of per-station E10 sales, though the data on which this conclusion was based did not rely on retail stations selling both E10 and E15; the per-station estimate for E10 was based on all stations offering E10, regardless of whether they also offered E15. Not only are the Iowa data not necessarily representative of stations offering both E10 and E15, we have no information to indicate whether the experience in Iowa is representative of conditions that could exist under the increasing RFS standards in 2017. Nevertheless, we agree that the fraction of total gasoline sales which is E15 at stations offering both E15 and E10 is likely to be considerably less than 50% for the reasons described earlier (*e.g.,* number of dispensers offering E15 at a given station, consumer unfamiliarity with E15), at least in 2017. Since we only have one source of data upon which to base our estimate, we are using that 15% value in our assessment.

Although E15 has historically been produced at retail stations in blender pumps, since release of the NPRM we have become aware of new activities to produce E15 at terminals.[117] This E15 could be used in retail equipment that has been certified to be compatible with E15, and so would expand the use of E15 beyond that available through blender pumps, including those targeted by the BIP and Prime the Pump programs. Based on currently available information, four out of the approximately 1,400 terminals in the U.S. would produce E15 in 2017, and we expect that E15 production at those four terminals would be small in comparison to E10 production. As described in a memorandum to the docket, we estimate the E15 produced through terminals would be 41 million gallons in 2017.[118]

Based on the above discussion, we have estimated that total E15 supply in 2017 could reach 728 million gallons, resulting in about 38 million gallons of ethanol more than would be supplied if that portion of the gasoline pool were E10. We have included this in our discussion of total ethanol volumes in Section V.B.1.iv below.

iii. E85

As described previously, the NPRM did not provide specific estimates of E15 or E85 use in 2017, but instead indicated that we generally expected the RFS program to influence sales of E0, E15, and E85 in such a way as to produce a total ethanol supply of 14.4 billion gallons. Nevertheless, stakeholders provided comments on a variety of topics related to the estimation of achievable volumes of E85.[119] Many of these comments

[114] ''Projections of retail stations offering E15 and E85 in 2017,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[115] ''Estimates of E15 and E85 volumes in 2017,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[116] Ibid.

[117] ''HWRT & RFA Announce First-Ever Offering of Pre-blended E15,'' docket EPA–HQ–OAR–2016–0004.

[118] ''Estimates of E15 and E85 volumes in 2017,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[119] We note that, in the 2014–2016 final rule, the estimation of E85 volumes was made in the context of determining the volume that constituted inadequate domestic supply under our general waiver authority. For this final rule, we are using

Continued

focused on an analysis of the relationship between E85 sales volumes and E85 price discount derived from publically available data from six states, which was provided with the 2014–2016 final rule.[120]

As for many other aspects of this rule, stakeholders were strongly divided on the volumes of E85 that are achievable in 2017. Refiners typically said that E85 volumes are likely to reach little more than around 100 million gallons in 2017 based on their own estimates of E85 in previous years using data collected by EIA from refiners, blenders, and ethanol production facilities. For instance, refiners suggested that E85 use in 2015 reached only 87 million gallons. However, as discussed in the 2014–2016 final rule, the EIA sources on which this estimate was based do not capture all E85 that is actually used; not all production at terminals, ethanol production facilities, or blenders with less than 50,000 barrels of product storage capacity are included, nor is E85 captured which is produced using reformulated gasoline or natural gasoline as the petroleum based component. Also, reported E85 production at ethanol production facilities is likely to represent net rather than total finished fuel production given the occasional negative values reported in the past.[121] These stakeholders provided no new information on historical E85 supply beyond what these EIA sources capture. As described in a memorandum to the docket, our own estimate of actual E85 use in 2015 based on E85 supply data from six states is approximately 186 million gallons.[122] Moreover, we also do not believe it would be appropriate to merely extrapolate 2017 E85 supply from trends in the past several years as some stakeholders suggested. Doing so would ignore the ability of the market to respond to the standards that we set.

In contrast, ethanol proponents said that E85 volumes could reach at least 500 million gallons in 2017, and some provided estimates considerably higher. Several pointed to E85 supply projections from EIA's Annual Energy Outlook 2016 (AEO2016), which projects 735 million gallons for 2017. However, we do not believe that the AEO is an appropriate basis for projecting E85 supply in 2017 for the purposes of setting the applicable volume requirements under the RFS program. For instance, the same modeling that projected 735 million gallons for 2017 also projected 326 and 508 million gallons, respectively, for 2014 and 2015. These volumes are far higher than what we believe the actual supply was in these years.[123] And AEO2016 projects that total ethanol use in 2017 would be 13.8 billion gallons, far lower than the 14.4 billion gallons that we proposed as the maximum achievable, and also considerably lower than EIA's own projections for 2017 in their Short-Term Energy Outlook (STEO). As the STEO projections are based on more current information and are focused on more near-term outcomes, and the STEO also forms the basis for the gasoline and diesel demand projections that EIA has indicated should be used for determining the applicable percentage standards, we do not believe that AEO is an appropriate basis for estimating the E85 supply in 2017 that is reasonably attainable, nor, as another commenter suggested, total gasoline energy demand for 2016. We have used the STEO for the projection of 2017 total gasoline demand, combined with our own projections of total ethanol supply based on our estimates of reasonably attainable volumes of E15 and E85, along with a small amount of E0.

For those stakeholders who provided detailed comments on how E85 supply might best be projected for 2017, those comments typically focused on three areas:

- The number of flex-fueled vehicles (FFVs) in the 2017 fleet that can use E85
- The retail infrastructure that can be made available in 2017 to supply E85 to FFVs
- The degree to which E85 sales can be influenced by the E85 price discount relative to E10

We continue to believe that the number of FFVs in the fleet is not the controlling constraint on the use of E85. According to AEO2016, the number of FFVs in the fleet in 2017 is expected to be about 21 million.[124] These vehicles could use up to 13 billion gallons of E85 if all of them had access to retail stations offering it and all FFV owners chose to refuel on E85 instead of E10. We acknowledge that a larger percentage of FFVs in the fleet could increase the volume of E85 consumed, but in the short term we believe that it is the relatively very small number of retail stations offering E85 that is operating as the primary constraint on the volumes of E85 sold, and to a lesser extent the relative price of E85 and E10.

Many stakeholders provided comments on how the number of retail stations offering E85 could grow through the end of 2017. Most pointed to a combination of USDA's Biofuels Infrastructure Partnership (BIP) program, the ethanol industry's Prime the Pump program, and ongoing efforts independent of these two programs. Parties representing gasoline marketing and retail, in contrast, generally repeated the concerns that they raised in the 2014–2016 final rule about costs for new infrastructure and low expected profit margins in support of their view that the number of retail stations offering E85 would grow slowly. Several stakeholders pointed to specific examples of retail stations that had stopped offering E85 due to poor sales.

Based on the information provided by stakeholders and other information that became available following release of the NPRM, we believe that the BIP and Prime the Pump programs will drive nearly all growth in E85 stations through the end of 2017, with far less growth occurring through independent efforts. As described in a memorandum to the docket, we believe that an annual average of about 4,300 retail stations can offer E85 in 2017.[125] This is a significant increase in comparison to the 3,200 that we projected would offer E85 in 2016 in the 2014–2016 final rule, but still a relatively small number of stations compared to the estimated 150,000 retail stations nationwide.

In order to estimate reasonably attainable sales volumes of E85 in 2017, it is also necessary to estimate the volume of E85 likely to be sold at each retail station that offers it. Recognizing this, stakeholders provided comments on the aforementioned analysis of the relationship between E85 sales volumes at retail and E85 price discount derived from publically available data from six states. Refiners generally dismissed the value of the data used in this analysis, saying that the uncertainty within the data and questions about its

the cellulosic waiver authority alone, and are estimating reasonably attainable volumes of E85.

[120] "Correlating E85 consumption volumes with E85 price," memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

[121] Reported values for ethanol production facilities represent net finished fuel produced. Insofar as finished fuel brought into the facility (*i.e.,* gasoline) exceeds finished fuel produced by the facility (*i.e.,* E85), a net negative value will result. This would occur if gasoline brought into the facility is used as a denaturant only, or as both a denaturant and in the production of E85. As a result, the values reported by EIA do not capture actual E85 produced and made available by these facilities, which would be the relevant value to use in our assessment.

[122] "Final estimate of E85 consumption in 2015," memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[123] For instance, as described in the 2014–2016 final rule (80 FR 77460), we estimate that E85 use in 2014 was about 150 mill gal.

[124] Table 40, "Light-Duty Vehicle Stock by Technology Type."

[125] "Projections of retail stations offering E15 and E85 in 2017," memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

representativeness for the nation as a whole made it an improper basis for future projections. They instead suggested that E85 use in 2017 should be based only on an extrapolation of E85 supply trends from the previous few years. We disagree. The data used for the analysis demonstrated statistically significant correlations between E85 sales volumes and E85 price discounts, and represented between 21% and 31% of all stations in the U.S. which offered E85.[126] Moreover, their suggested extrapolation from historical data would insufficiently account for the influence of both the RFS program itself and programs such as BIP and Prime the Pump, and would also be based on historical estimates of E85 supply using EIA data that, as described above, we believe are likely to be inaccurate.

Ethanol proponents recognized the value of the available data in developing correlations between E85 sales at retail and E85 price discounts. However, they provided critiques of the analyses we had conducted for the 2014–2016 final rule, and they also had alternative views on the application of the resulting correlations. Comments provided by these stakeholders generally fell into broad areas:

- The data should be represented by nonlinear rather than linear correlations
- Estimates of E85 use derived from the correlations should be based on substantial extrapolations beyond the limits of the data, *i.e.* using much higher E85 price discounts than have occurred in the past

Some stakeholders conducted their own analyses of the data wherein they employed additional statistical techniques to attempt to more precisely determine the nature of the relationship between E85 sales volumes and E85 price discounts. These included such things as adding seasonal and annual categorical variables into the correlations and an investigation into different nonlinear functional forms.

In light of the comments provided by these stakeholders, we determined that the analyses conducted for the 2014–2016 final rule should be updated. Not only is additional data now available for the six states included in the analyses, but more rigorous statistical methods can be employed to more precisely determine the relationship between E85 sales volumes and E85 price discount, including whether a nonlinear correlation is appropriate. As described in a memorandum to the docket, our revised analyses indicate that a weak nonlinear relationship can be discerned in the data, and that it does provide a small increase in the explanatory power of the curve fit.[127]

In addition to an estimate of the number of retail stations that may offer E85 in 2017, the use of a correlation between E85 sales volumes and E85 price discount to estimate reasonably attainable volumes of E85 for 2017 requires that we estimate an E85 price discount that would be reasonable for 2017. Again, stakeholders were strongly divided on what E85 price discount may be attainable in 2017. Refiners typically said that an E85 price discount beyond energy parity (about 22% below the price of E10) was not supportable based on historical data and pointed to EPA's analyses showing that a sizable portion of the RIN value is not passed on to retail customers, diluting the impact of RIN prices on E85 prices. Ethanol proponents instead said that historical E85 price discounts should not be used as a gauge of what future E85 price discounts could be under the influence of higher RFS program standards. They discounted the limitations associated with the pass-through of RIN values to retail customers, arguing that if EPA set the standards high enough, the resulting higher RIN prices would result in significantly discounted retail pricing for E85 at the retail level. Some commenters presented examples of individual stations or regions where it appeared the RIN value was being passed-through to a greater degree to support their statements, however EPA does not believe these examples are representative of retailer behavior across the country.[128]

There is no straightforward mechanism for precisely identifying an E85 price discount for use in assessing 2017 ethanol supply. While some stakeholders provided examples of E85 price discounts that could be reached under specific assumed RIN prices and assumed RIN value pass-through to retail customers, such examples were purely speculative and provided no method for determining the E85 price discount that is likely to be reasonably attainable in 2017 given the E85 retail prices we have observed to date and the history of the fuels market.

In order to identify an E85 price discount that could be reasonably be assumed for the nation as a whole in 2017, we continue to believe that an investigation of E85 price discounts reached in the past is both less speculative than the suggestions made by ethanol proponents in their comments and more consistent with commonly accepted approaches to data analysis. However, we also do not believe that the average levels achieved in the past are sufficiently representative of what could be expected to occur in the future under the influence of the RFS program. As described in a memorandum to the docket that we published with the NPRM, the monthly average E85 price discount has rarely exceeded energy parity (about 22%), and the highest 12-month average retail E85 price discount has been significantly lower.[129]

TABLE V.B.1.iii–1—E85 PRICE DISCOUNTS BETWEEN 2012 AND EARLY 2016

	Fuels Institute	E85prices.com	AAA
Highest E85 price discount in a single month	21.1% (May 2015)	23.7% (Oct 2014)	24.1% (Apr 2015).
Highest 12-month average E85 price discount	16.0% (Sep 2014–Aug 2015).	19.6% (Sep 2014–Aug 2015).	18.7% (Oct 2014–Sep 2015).

In that memorandum we indicated our belief that achieving energy parity for a full year would be unprecedented, but appears to be within the capabilities of the market given the historical values shown above. E85 price discounts higher than energy parity that were suggested by some stakeholders in their comments have not been achieved in

[126] Range depends on the month and year.

[127] ''Updated correlation of E85 sales volumes with E85 price discount,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[128] For a further discussion of these comments, see Section 2.3.8.2 of the Response to Comment document.

[129] ''Estimating achievable volumes of E85,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004. Note that this memorandum was published with the NPRM on May 31, 2016, and with the exception of the discussion of historical E85 price reductions is largely supplanted by memoranda published with this final rule. See in particular ''Estimates of E15 and E85 volumes in 2017,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

the past for any notable length of time, and thus, we believe, are not likely for all of 2017. They may, however, occur in future years as the number of retail stations offering E85 increases and competition between them drives E85 prices down. For the purposes of this final rule, we have used an E85 price discount of 22% in estimating the supply of E85 in 2017.

Some stakeholders pointed to a statement in the NPRM which said ''. . . an increase in the nationwide average E85 price reduction to 30% would be unprecedented,'' and then argued that EPA had not provided any justification for expecting this level to be sustainable for a full year.[130] We note that E85 price discounts have reached 30% in the past, albeit locally and for short time periods. However, we did not propose using an E85 price discount of 30% in the determination of the proposed 2017 volume requirement for total renewable fuel, but only provided it as one of several examples for how the market might respond.

Combining the updated correlation between E85 sales volumes and E85 price discounts with estimates for the number of retail stations that can offer E85 in 2017 and a reasonably attainable E85 price discount of 22%, we have determined that supply of about 275 million gallons of E85 is reasonably attainable in 2017, resulting in about 182 million gallons of ethanol more than would be supplied if that portion of the gasoline pool were E10. This level of E85 supply is an increase of almost 40% in just one year from the 200 million gallons that we believed could be reached in 2016, primarily reflecting the significant increase in the number of stations projected to offer E85 in 2017 as a result of USDA's BIP program and the ethanol industry's Prime the Pump program.

iv. Total Ethanol

The total supply of ethanol in 2017 is a function of the respective volumes of E10, E15, and E85, while accounting for some E0. Assuming that the total demand for gasoline energy is independent of the amounts of each of these types of fuel, estimating the supply of E0, E15, and E85 that are attainable can be used to derive the supply of E10.

Several stakeholders commented that we should use a more recent version of EIA's Short-Term Energy Outlook (STEO) than the April, 2016 version we used in the NPRM to estimate gasoline demand in 2017. We agree that we should use updated EIA data. For this final rule we have used the October, 2016 version, which projects a total gasoline energy demand of 17.29 Quadrillion Btu.[131] Based on estimates of E0, E15, and E85 supply for 2017 as discussed in previous sections, the E10 volume and resulting total ethanol supply can be calculated.

TABLE V.B.1.iv–1—GASOLINE VOLUMES USE TO DETERMINE REASONABLY ATTAINABLY ETHANOL SUPPLY IN 2017

	Fuel volume (mill gal)	Ethanol volume (mill gal)	Energy (Quad Btu)
E0	200	0	0.025
E10	142,480	14,248	17.151
E15	728	109	0.086
E85 [a]	275	204	0.026
Total	143,683	14,561	17.288

[a] Assumed to contain 74% ethanol.

Based on this assessment, we estimate an ethanol supply for 2017 of 14.56 billion gallons. While the market will ultimately determine the extent to which compliance with the annual standards is achieved through the use of greater volumes of ethanol versus other, non-ethanol renewable fuels, we nevertheless believe that this ethanol volume represents a reasonably attainable level that takes into account the ability of the market to respond to the standards we set and the constraints to fuel supply that we have noted.

One stakeholder said that EIA's projections of future gasoline demand as provided in the STEO have been too low in previous years, and that EPA should account for this underestimate when making projections of the volume of ethanol that can be achieved in 2017. We investigated this issue and determined that while EIA projections of future gasoline demand do contain uncertainty, they are not consistently above or below actual gasoline demand.[132]

In response to the NPRM, some stakeholders reiterated their concerns from the 2014–2016 final rule that EPA's methodology rewarded obligated parties for their recalcitrance in not investing in the infrastructure needed to substantially increase ethanol use above the E10 blendwall. In taking these positions, stakeholders cited both the statutory requirement that obligations be placed on ''refineries, blenders, and importers, as appropriate'' and EPA's regulations which (with limited exceptions) further narrow the applicability of the obligations to producers and importers of gasoline and diesel. As described in the 2014–2016 final rule, we agree that the statutory language, in combination with the regulatory structure, generally places the responsibility on producers and importers of gasoline and diesel to ensure that transportation fuel sold or introduced into commerce contains the required volumes of renewable fuel. Obligated parties have a variety of options available to them, both to increase volumes in the near term and the longer term. The standards that we are establishing today reflect both the responsibility placed on obligated parties as well as the short-term activities available to them, and we expect obligated parties to be taking actions now that will help to increase renewable fuel volumes in future years. However, as pointed out by some refiners in response to the NPRM, this general responsibility does not require

[130] See discussion at 81 FR 34790.

[131] Derived from Table 4a of the STEO, converting consumed gasoline and ethanol projected volumes into energy using conversion factors supplied by EIA. *http://www.eia.gov/forecasts/steo/archives/oct16.pdf.*

Excludes gasoline consumption in Alaska. For further details, see ''Calculation of final % standards for 2017'' in docket EPA–HQ–OAR–2016–0004.

[132] ''Accuracy of STEO gasoline demand projections,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016.

obligated parties to take actions specific to E15 and/or E85 infrastructure, as the RFS program does not require any volumes of ethanol specifically. We continue to believe that as obligated parties procure and blend renewable fuels into transportation fuel, or purchase RINs from those who do so, the demand for RINs will drive demand for renewable fuel, thereby stimulating every participant in the fuels industry, including obligated parties themselves, to increase their activities to supply it.[133] Moreover, the reductions in statutory volumes reflected in this action are largely the result of the inability to date of renewable fuel producers to commercialize the volumes of cellulosic biofuel envisioned in the statute. This fact cannot reasonably be attributed to actions or inactions of obligated parties.

One stakeholder said that the EPA should target a poolwide gasoline ethanol content of less than 10% in part because blenders need a buffer to account for uncertainty associated with ethanol content testing and downstream mixing in the fungible distribution system. This stakeholder suggested that blenders have historically aimed to blend at less than 10% ethanol, and that as a result EPA should set standards consistent with this practice. We investigated this issue using survey data collected by the Alliance of Automobile Manufacturers for 2011–2015 and determined that the average ethanol content of all gasoline that contained more than de minimis levels of ethanol was 9.80%.[134] This estimate is based on the use of ASTM test method D–5599, which measures only the alcohol portion of the gasoline, not any denaturant that would have been included with the ethanol before it was blended into gasoline. Since the denaturant portion of ethanol is typically about 2%, ethanol that is blended into gasoline contains about 98% ethanol.[135] When blended into gasoline, therefore, the E98 would result in a gasoline-ethanol blend containing about 9.8% pure ethanol, or 10.0% denatured ethanol. Based on this investigation, we have determined that it is appropriate to continue assuming that the denatured ethanol content of E10 is 10%.

2. Biodiesel and Renewable Diesel

While the market constraints on ethanol supply are readily identifiable, it is more difficult to identify and assess the market components that may limit potential growth in the use of all qualifying forms of biodiesel and renewable diesel in 2017. Therefore, as discussed in the introduction to Section V.B, after estimating the supply of ethanol in 2017, and taking into account the estimates of non-ethanol cellulosic biofuel supply discussed in Section III.D above and estimates of other non-ethanol renewable fuel supply discussed in Section IV.B.3, we considered whether the supply of total biodiesel and renewable diesel would be adequate to satisfy a requirement of 19.28 billion gallons.

In Section V.A we described how use of the cellulosic waiver authority to provide a volume reduction for total renewable fuel that equals that provided for advanced biofuels yields a volume of 19.28 billion gallons. In addition to the ethanol volume discussed in Section V.B.1.iv above, cellulosic biogas can also contribute to this total volume of renewable fuel, as described more fully in Section III.D. While other renewable fuels such as naphtha, heating oil, butanol, and jet fuel can be expected to continue growing over the next year, collectively, we expect them to contribute considerably less than ethanol to the total volume of renewable fuel that can be supplied in 2017. These were discussed in Section IV.B.3. Based on these estimates of supply, about 2.9 billion gallons of biodiesel and renewable diesel would be needed in order to meet a total renewable fuel volume requirement of 19.28 billion gallons.

TABLE V.B.3–1—DETERMINATION OF VOLUME OF BIODIESEL AND RENEWABLE DIESEL NEEDED IN 2017 TO ACHIEVE 19.28 BILLION GALLONS OF TOTAL RENEWABLE FUEL

[Million ethanol-equivalent gallons except as noted]

Total renewable fuel volume	19,280
Ethanol	14,561
Non-ethanol cellulosic biofuel	299
Other non-ethanol renewable fuels [a]	50
Biodiesel and renewable diesel needed (ethanol-equivalent volume/physical volume)	4,370/2,819

[a] Includes naphtha, heating oil, butanol, and jet fuel. See further discussion in Section IV.B.3.

As discussed in the final rule establishing the RFS standards for 2014–2016, there are several factors that may, to varying degrees and at different times, limit the growth of biodiesel and renewable diesel, including local feedstock availability, production and import capacity, and the ability to distribute, sell, and use increasing volumes of biodiesel and renewable diesel. We continue to believe that the supply of biodiesel and renewable diesel as transportation fuel in the United States, while growing, is not without limit.

In the proposed rule we discussed the current status of each of a number of the factors that impact the supply of biodiesel and renewable diesel used as transportation fuel in the United States. We received a number of comments on our assessment of these factors. Some of these comments supported the proposed findings in the NPRM and agreed that EPA had sufficiently accounted for the factors that may constrain the growth of biodiesel and renewable diesel in 2017, while others argued that EPA had overstated these constraints and the degree to which they would limit the supply of biodiesel and renewable diesel in 2017. As stated in our proposed rule, we expect that the growth in the supply of biodiesel and renewable diesel will largely be driven by incremental developments across the marketplace to steadily increase volumes. However, after a careful review of the information submitted as comments on our proposed rule, we believe that the reasonably attainable supply of biodiesel and renewable diesel in 2017 is higher than we had proposed.

[133] The EPA Administrator signed the Proposed Denial of Petitions for Rulemaking to Change the RFS Point of Obligation on November 10, 2016. More information can be found at *https://www.epa.gov/renewable-fuel-standard-program/response-petitions-reconsideration-rfs2-rule-change-point-obligation*.

[134] Under the rounding method required under 40 CFR 80.9, ethanol concentrations of between 8.6% and 10.5% inclusive would qualify for the 1psi waiver.

[135] See definition of ''renewable fuel'' at 40 CFR 80.1401.

Based on our assessment of the various factors which affect the supply of biodiesel and renewable diesel, we have determined that 2.9 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuel) can be reasonably attained in 2017, up from the 2.5 billion gallons that was projected for 2016. This volume is significantly higher than the previously established BBD standard of 2.0 billion gallons for 2017, as we believe additional volumes of both conventional and advanced biodiesel and renewable diesel can be supplied to the United States in 2017 (see Section VI for further discussion of the BBD standard). The following sections discuss our expectations for developments in key areas affecting the supply of biodiesel and renewable diesel in 2017.

i. Feedstock Availability

In previous years, the primary feedstocks used to produce biodiesel and renewable diesel in the United States have been vegetable oils (primarily soy, corn, and canola oils) and waste fats, oils, and greases. We anticipate that these feedstocks will continue to be the primary feedstocks used to produce biodiesel and renewable diesel in 2017. Global supplies of these oils are significant, however they are expected to increase relatively slowly over time, as vegetable oil production increases primarily with increases in crop yields and the remaining untapped supply of recoverable waste oils diminishes. Additional supplies of feedstocks could be produced by increasing the planted acres of oilseed crops (soy, canola, etc.), but with the exception of palm oil most vegetable oils are produced as a co-product of the production of animal feed and increased demand for vegetable oil is unlikely to result in a significant increase in oilseed crop planting absent growing demand for the animal feed. While some have suggested that industries that compete with the biodiesel and renewable diesel industry for renewable oil feedstocks will turn to alternative feedstock sources, resulting in greater feedstock availability for biodiesel and renewable diesel producers, such a shift in renewable oil feedstock use would not result in an increase in the total available supply of renewable oil feedstocks as those volumes will have to be backfilled. As a result, this would not alter the fundamental feedstock supply dynamics for biodiesel and renewable diesel production.

We anticipate that there will be a modest increase in the available supply of feedstocks that can be used to produce biodiesel and renewable diesel in 2017. Oil crop yield increases over the next few years are expected to be relatively modest, and significant increases in the planted acres of oil crops are expected to be limited by competition for arable land from other higher value crops and demand for the animal feed co-products produced by most oilseed crops.[136] The recovery of corn oil from distillers grains and the recovery of waste oils are already widespread practices, limiting the potential for growth from these sectors compared to what has been able to occur over recent years as these new markets were being tapped. In light of this, we do not believe that the availability of biodiesel and renewable diesel feedstocks is without limit. It is also possible that biodiesel production at some *individual* facilities, especially those built to take advantage of low-cost, locally available feedstocks, may be limited by their access to affordable feedstocks in 2017, rather than their facility capacity, even if the global supply of feedstocks is sufficient to enable additional production.

As discussed in further detail in Section IV.B.2, the availability of qualifying advanced biodiesel and renewable diesel feedstocks may also be limited (even if the total supply of feedstocks is sufficient), and large increases in advanced biodiesel and renewable diesel demand could lead to significant feedstock substitution rather than increased production of advanced feedstocks. Unreasonably high demand for biodiesel and renewable diesel could also cause undesirable market disruptions. Large increases in the available supply of biodiesel and renewable diesel in future years will likely depend on the development and use of new, high-yielding feedstocks, such as algal oils or alternative oilseed crops. Based on currently available information, we believe that the availability of feedstocks (including both feedstocks that can be used to produce advanced and conventional biodiesel and renewable diesel) is unlikely to significantly limit the supply of total biodiesel and renewable diesel used for transportation fuel in the United States in 2017, when considering the standards we are establishing in this rule. This is largely the case because we believe that other constraints, discussed below, will likely constrain the distribution and use of biodiesel and renewable diesel before the feedstock limits have been reached.

ii. Biodiesel and Renewable Diesel Production Capacity

The capacity for all registered domestic biodiesel production facilities is approximately 3.5 billion gallons.[137] The capacity for all registered domestic renewable diesel production facilities is approximately 0.7 billion gallons.[138] Active production capacity is lower, however, as a number of registered facilities were idle in 2015 and 2016. The capacity for all domestic biodiesel and renewable diesel production facilities that generated RINs in 2015 or 2016 is approximately 3.1 billion gallons.[139] While idled production facilities may be brought online, doing so would likely require sufficient time to re-staff the production facilities, make any necessary repairs or upgrades to the facility, and source the required feedstocks. Additionally, there are many factors that may limit biodiesel or renewable diesel production at any given facility to a volume lower than the facility capacity.[140] As with feedstock availability, we do not expect that production capacity at registered facilities will limit the supply of biodiesel/renewable diesel for use as transportation fuel in the United States in 2017. Foreign registered biodiesel and renewable diesel facilities represent a significant volume of additional potential production that could be made available to markets in the United States. While the total registered production capacity of foreign biodiesel and renewable diesel is significant, supply of biodiesel and renewable diesel from these facilities in 2017 may be impacted by the capacity to import these fuels, discussed in the following section.

iii. Biodiesel and Renewable Diesel Import Capacity

Another important market component in assessing biodiesel and renewable diesel supply is the potential for imported volumes and the diversion of domestically produced biodiesel and renewable diesel exports to domestic uses. In addition to the approximately 560 million gallons imported into the

[136] Because most oilseed crops are grown primarily to provide livestock feed, the planted acres of these crops are expected to increase in response to demand for livestock feed rather than demand for renewable vegetable oils.

[137] ''Biodiesel and Renewable Diesel Registered Capacity (October 2016)'', Memorandum from Dallas Burkholder to EPA Docket EPA–HQ–OAR–2016–0004.

[138] Ibid.

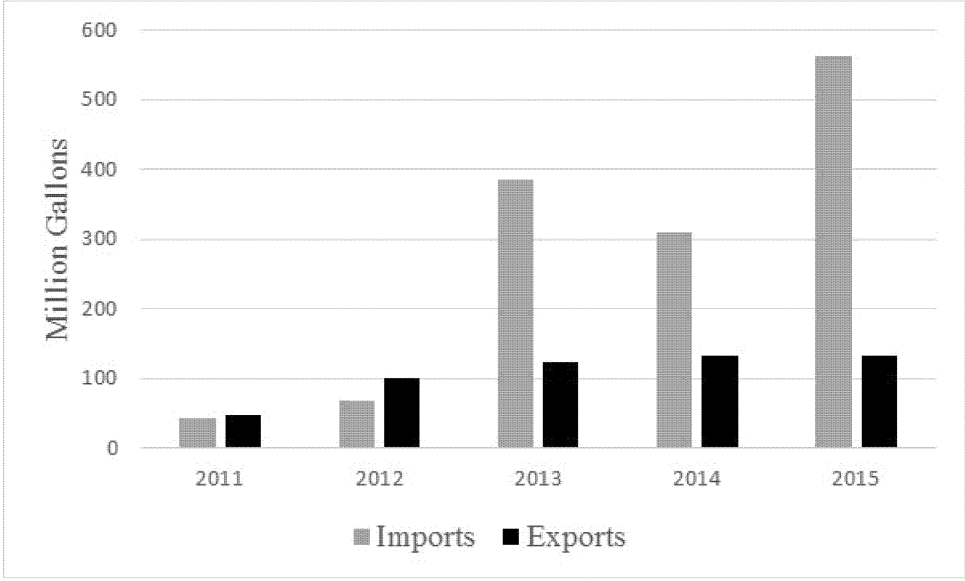
[139] Ibid.

[140] Due to the relatively low capital cost of biodiesel production facilities, many facilities were built with excess production capacity that has never been used.

U.S. in 2015, there were about 90 million gallons exported from the United States to overseas markets. One commenter used biodiesel import data from January 2012 through April 2016 to estimate that, based on the highest annual volume of biodiesel imports in the 55 cities that reported biodiesel imports during this time period, the United States current import capacity for biodiesel at these cities is approximately 659 million gallons.[141] Actual import capacity is likely to exceed this volume, as this estimate relied solely on historic import volumes, rather than an assessment of the capacity of the infrastructure that could be used to import biodiesel at these 55 cities. It is also likely that under the right circumstances there are additional locations through which biodiesel could be imported.

Given the right incentives, it may be possible to increase net biodiesel and renewable diesel imports, either by redirecting a portion of the biodiesel currently consumed in foreign countries to be exported to the U.S. and/or by reducing the volume of biodiesel exported from the United States. However, the amount of biodiesel and renewable diesel that can be imported into the United States is difficult to predict, as the incentives to import biodiesel and renewable diesel to the U.S. are a function not only of the RFS and other U.S. policies and economic drivers, but also those in the other countries around the world. These policies and economic drivers are not fixed, and change on a continuing basis. Over the years there has been significant variation in both the imports and exports of biodiesel and renewable diesel as a result of varying policies and relative economic conditions (See Figure V.B.2.iii–1 below). Increasing biodiesel and renewable diesel imports significantly beyond the 659 million gallons estimated above would require a clear signal to the parties involved that increasing imports will be economically advantageous and the potential re-negotiations of existing contracts. It may also require upgrades and expansions at U.S. import terminals. It is possible, but uncertain, whether higher RFS standards could provide such a signal. Also, to the degree that higher volumes of imported biodiesel or renewable diesel to the United States come at the expense of consumption in the rest of the world, the environmental benefits of this increased volume are expected to be modest.[142] In this final rule we have not projected biodiesel and renewable diesel imports separately from domestically produced biodiesel and renewable diesel, since these fuels are subject to the same potential limitations (*e.g.,* feedstock availability, distribution and use constraints, etc.).[143] We do believe, however that the standards in this final rule will result in an increase in biodiesel and renewable diesel imports consistent with the general trend observed in previous years, and our projection of the supply of these fuels in 2017 includes this expected increase.

Figure V.B.2.iii-11
Biodiesel and Renewable Diesel Imports and Exports (2012-2015)[a]



[a] Import data reported through the EMTS system. Export data sourced from EIA (http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm)

[141] See comments from Renewable Energy Group, Inc. (EPA–HQ–OAR–2016–0004–3477). REG used data from the Energy Information Agency in their assessment, and therefore did not capture renewable diesel imports. The total import capacity of biodiesel and renewable diesel therefore likely exceeds the volumes estimated here.

[142] See Section IV.B.2 for a further discussion of this issue.

[143] As discussed in Section IV.B.2, we expect an increase of approximately 100 million gallons of advanced biodiesel, advanced renewable diesel, and/or feedstocks that can be used to produce these fuels. We are also projecting an increase of 100 million gallons of conventional biodiesel and renewable diesel. Historically the majority of this fuel has been imported (see Table IV.B.2–2), and we expect this will again be the case in 2017.

iv. Biodiesel and Renewable Diesel Distribution Capacity

While biodiesel and renewable diesel are similar in that they are both diesel fuel replacements produced from the same types of feedstocks, there are significant differences in their fuel properties that result in differences in the way the two fuels are distributed and consumed. Renewable diesel is a pure hydrocarbon fuel that is nearly indistinguishable from petroleum-based diesel. As a result, it can generally use the existing distribution infrastructure for petroleum diesel and there are no significant constraints on its growth with respect to distribution capacity. Biodiesel, in contrast, is an oxygenated fuel rather than a pure hydrocarbon. It historically has not been distributed through most pipelines due to contamination concerns with jet fuel, and may require specialized storage facilities, additives, or blending with petroleum diesel to prevent the fuel from gelling in cold temperatures. In the past few years, however, a limited number of pipelines that do not carry jet fuel have begun shipping biodiesel blends.[144] Recent changes to the ASTM jet fuel specifications allowing up to 50 ppm biodiesel,[145] as well as experience gained in isolating jet fuel from biodiesel in pipelines may open new opportunities for distributing biodiesel blends by pipeline in future years. A number of studies have investigated the impacts of cold temperatures on storage, blending, distribution, and use of biodiesel, along with potential mitigation strategies.[146] [147] [148] Information provided by the National Biodiesel Board, as well as comments on our proposed rule, indicate that some retailers offer biodiesel blend levels that differ in the summer and winter to account for these cold temperature impacts.[149] [150] While cold temperatures can cause problems with the distribution and use of biodiesel, the experiences of states such as Minnesota and Illinois, where biodiesel is used year-round despite cold winter weather, demonstrates that these challenges can be overcome with the proper handling of biodiesel.[151] [152]

The infrastructure needed to store and distribute biodiesel has generally been built in response to the local demand for biodiesel. In some cases, the infrastructure must be expanded to bring biodiesel to new markets and additional infrastructure may also be needed to increase the supply of biodiesel in markets where it is already being sold. In other cases, sufficient infrastructure exists to increase the local supply of biodiesel and biodiesel blends using existing infrastructure.

Another factor potentially constraining the supply of biodiesel is the number of terminals and bulk plants that currently distribute biodiesel. A study conducted on behalf of the NBB used OPIS data to calculate that biodiesel is currently offered at fuel terminals in 369 of the 563 cities (approximately 66%) that have terminals providing gasoline, diesel and/or biodiesel.[153] In addition to these terminals, biodiesel is often distributed from bulk plants or directly from biodiesel production facilities. At present, the Web site Biodiesel.org lists over 600 distribution facilities reported as selling biodiesel either in pure form or blended form, the majority of which are bulk plants.[154] [155] Biodiesel production facilities also serve as important distribution centers for biodiesel. According to a survey conducted by NBB, 30% of the biodiesel produced at facilities that responded to the survey is sold directly to retailers.[156] Direct sales to retail stations provide a significant opportunity for biodiesel producers to access local markets without first transporting biodiesel to a terminal or bulk plant for further distribution.

While there are a large number of biodiesel distribution points in the United States, including terminals, bulk plants, and biodiesel production facilities, the majority of these distribution points appear to be concentrated in the Midwest and most of the population centers of the country. These same areas consume the majority of the diesel fuel in the United States, and thus have the greatest potential markets for biodiesel. For the biodiesel market to continue to expand, it must either increase the volume of biodiesel sold in markets where it is already being sold, or expand into markets that currently do not have access to biodiesel. Either of these methods for expanding the biodiesel market will likely require additional infrastructure. Transportation of the biodiesel from production facilities to retail fuel stations, whether directly or through terminals and bulk plants, will also need to be expanded for volumes to continue to grow. This will likely require additional trucks and/or rail cars,[157] as biodiesel and biodiesel blends are currently generally not transported in common carrier pipelines. If recent changes to the ASTM specifications for jet fuel (discussed above) allow for greater volumes of biodiesel blends to be shipped by pipeline this would be a potentially significant change, as it would likely allow for biodiesel distribution at terminals that currently do not have access to biodiesel blends and could significantly reduce the cost of distributing biodiesel. Distributing biodiesel via truck or rail results in high fuel transportation costs (relative to petroleum derived diesel, which is generally delivered to terminals via pipelines), which may impact the viability of adding biodiesel distribution capacity at a number of existing terminals or bulk plants. It is likely that until and unless significant volumes of biodiesel blends are transported by pipeline, increasing the biodiesel market will require greater investment per volume of biodiesel supplied than in the past, as the new biodiesel distribution facilities will generally

[144] See NBB comments on the Proposed Rule (EPA–HQ–OAR–2016–0004–2904).

[145] While the ASTM specification generally limits biodiesel contamination in jet fuel to 50 ppm, up to 100 ppm biodiesel may be allowed on an ''emergency basis.'' Subcommittee J intends to consider a ballot to increase the limit of biodiesel in jet fuel to 100 ppm (See ASTM D1655).

[146] ''Biodiesel Cloud Point and Cold Weather Issues,'' NC State University & A&T State University Cooperative Extension, December 9, 2010.

[147] ''Biodiesel Cold Weather Blending Study,'' Cold Flow Blending Consortium.

[148] ''Petroleum Diesel Fuel and Biodiesel Technical Cold Weather Issues,'' Minnesota Department of Agriculture, Report to Legislature, February 15, 2009.

[149] *http://biodiesel.org/using-biodiesel/finding-biodiesel/retail-locations/biodiesel-retailer-listings*.

[150] See comment from CountryMark on the proposed rule (EPA–HQ–OAR–2016–0004–1826).

[151] Biodiesel is used year-round in Minnesota and Illinois in large part due to state mandates and tax credits respectively, in addition to the incentives provided by the RFS program.

[152] ''Report to the Legislature Annual Report on Biodiesel,'' Kevin Hennessy, Minnesota Department of Agriculture. January 15, 2016. Available online *<https://www.leg.state.mn.us/docs/2016/mandated/160162.pdf>*.

[153] See Attachment 6 of the comments submitted by the National Biodiesel Board (EPA–HQ–OAR–2016–0004–2904). The report lists 453 cities with terminals that offer gasoline and diesel, 369 that offer biodiesel or biodiesel blends, and 259 that offer both petroleum diesel and biodiesel.

[154] List of biodiesel distributers from Biodiesel.org Web site (*http://biodiesel.org/using-biodiesel/finding-biodiesel/locate-distributors-in-the-us/distributors-map*). Accessed 10/8/15. This list does not include terminals that distribute biodiesel or biodiesel blends.

[155] Bulk plants are much smaller than major gasoline and diesel distribution terminals, and generally receive diesel and biodiesel shipped by trucks from major terminals.

[156] See Attachment 6 of the comments submitted by the National Biodiesel Board (EPA–HQ–OAR–2016–0004–2904).

[157] Biodiesel can also be transported by barge, however we expect that a limited number of biodiesel production facilities have access to barge or ocean transportation. Survey data collected by NBB indicates that only 7% of biodiesel is currently transported by barge (see NBB comments on the proposed rule, attachment 6; EPA–HQ–OAR–2016–0004–2904).

have access to smaller markets than the existing facilities, or will face competition as they seek to expand into areas already supplied by existing distribution facilities.

The net result is that the expansion of the distribution infrastructure required to transport biodiesel to distribution points and retail stations and store it at these locations will be necessary, whether biodiesel consumption is increased through additional consumption in existing markets, expansion to new markets, or some combination of the two. While this is not an insurmountable challenge, it will require time and investment, and may limit the potential for the rapid expansion of the biodiesel supply. In previous years the expansion of biodiesel distribution and storage has largely been enabled by high volume diesel retailers, such as truck stops and travel centers. We believe this is likely to be the case in the near future as well, however the rate of increase of biodiesel and renewable diesel at these locations may slow as many are already supplying significant volumes of biodiesel and renewable diesel.

The distribution of biodiesel and biodiesel blends is an area in which the biodiesel industry has made steady progress over time, and we anticipate that this progress can and will continue into the future, particularly with the ongoing incentive for biodiesel growth provided by the RFS standards. This is especially true to the degree that excess biodiesel transportation infrastructure (trucks, rail cars, barges, etc.) and storage capacity currently exist. Low oil prices, however, may present a challenge to the expansion of biodiesel distribution infrastructure, since the profitability of such projects in current market conditions is largely dependent on government support such as the biodiesel blenders tax credit and RFS RIN value.[158] Since some investors view such government supports as inherently uncertain they may be hesitant to invest in new infrastructure to enable additional biodiesel distribution at a time when diesel prices are low. As with many of these potential supply constraints, increasing biodiesel storage and distribution capacity will require time and investment, potentially limiting the potential growth in 2017 and future years.

v. Biodiesel and Renewable Diesel Retail Infrastructure Capacity

For renewable diesel, we do not expect that refueling infrastructure (*e.g.,* refueling stations selling renewable diesel blends) will be a significant limiting factor in 2017 due to its similarity to petroleum-based diesel and the relatively small volumes expected to be supplied in the United States. The situation is different, however, for biodiesel. Biodiesel is typically distributed to retail stations in blended form with diesel fuel as blends varying from B2 up to B20, and in some narrow cases at levels exceeding B20. Biodiesel blends up to and including B20 can be sold using existing retail infrastructure, and generally do not require any upgrades or modifications at the retail level. Small retailers of diesel fuel, however, generally have only a single storage tank for diesel fuel, and can therefore generally only offer a single biodiesel blend. We expect that many of the retailers in this situation will be hesitant to offer biodiesel blends above B5, as doing so would mean only selling a fuel that is not recommended for use by some vehicle and engine manufacturers (see following section for a further discussion of potential engine warranty issues).

Large diesel fuel retailers, such as truck stops and travel centers may have sufficient tankage to offer multiple blends of diesel fuel and/or biodiesel, should they choose to do so. Some of these large retailers have biodiesel blending infrastructure at their retail facilities, allowing them greater control over the blends of biodiesel sold at their stations. This is significant, as EIA estimates that 80% of all diesel fuel sold in the United States is sold through large and mid-sized truck stops, with 25% of the diesel fuel being sold through stations owned by the four largest on-highway diesel sellers.[159] As some of the highest volume truck stops have begun selling increasing volumes of biodiesel blends in recent years, it has allowed biodiesel volumes to grow quickly. These large truck stops and travel sellers sell significant volumes of biodiesel, and in many cases offer biodiesel blends higher than B5.[160] Further they have expressed an intention to expand their sales of biodiesel in future years.[161] We expect that in future years these large truck stops and travel centers will continue to be a primary location for biodiesel sales, and will likely look to expand biodiesel sales in the future where it is profitable to do so. In addition, many centrally fueled fleets that often consume large volumes of diesel fuel have increased their use of biodiesel blends.[162]

As discussed in the next section, biodiesel blends up to 5% may be legally sold as diesel fuel without the need for special labeling, and are approved for use in virtually all diesel engines. Because biodiesel blends up to B5 can be used in virtually all diesel engines and require no specialized infrastructure at refueling stations, and many large diesel retailers have demonstrated a willingness to offer biodiesel blends higher than B5, expanding the number of refueling stations offering biodiesel blends is therefore expected to be constrained less by resistance from the retail facilities themselves, and more by the presence of nearby wholesale distribution networks that can provide the biodiesel blends to retail at attractive prices. As discussed in the previous section, we expect this expansion will continue at a steady pace in 2017.

vi. Biodiesel and Renewable Diesel Consumption Capacity

Virtually all diesel vehicles and engines now in the in-use fleet have been warranted for the use of B5 blends. Both the Federal Trade Commission (FTC) and ASTM International (ASTM) specifications for diesel fuel (16 CFR part 306 and ASTM D975 respectively) allow for biodiesel concentrations of up to five volume percent (B5) to be sold as diesel fuel, with no separate labeling required at the pump. Biodiesel blends of up to 5% are therefore often indistinguishable from diesel fuel that is not blended with biodiesel.

In recent years an increasing number of vehicle and engine manufacturers have approved the use of biodiesel blends up to B20.[163] According to information submitted to EPA by NBB, over 30% of all diesel vehicles registered in the United States are approved to use biodiesel blends up to B20 by the vehicle and engine manufacturers.[164] The percentage of vehicles and engines approved by the manufacturers to use biodiesel blends up to B20 rises to over 50% for class 8 trucks, which use the majority of the

[158] See comments from NATSO (EPA–HQ–OAR–2016–0004–1830).

[159] Estimates of diesel fuel sales through various retailers from EIA Web site: *http://www.eia.gov/petroleum/gasdiesel/diesel_proc-methods.cfm.*

[160] See information submitted by NBB in comments on the proposed rule (EPA–HQ–OAR–2016–0004–2904), pages 29–30.

[161] June 9, 2016 hearing statements from Musket Corporation, ''Transcript for room Chicago,'' docket EPA–HQ–OAR–2016–0004.

[162] ''Biodiesel Ranks First Among Fleets for Alt Fuel Use,'' *Biodiesel.org,* March 23, 2016. Available online <*http://biodiesel.org/news/news-display/2016/03/23/biodiesel-ranks-first-among-fleets-for-alt-fuel-use*>.

[163] See, for example, Paccar announcement approving all engines to use B20 blends.

[164] Information on the number of vehicles approved to use B20 from a presentation by NBB to EPA staff on July 28, 2016.

diesel fuel in the United States.[165] This information indicates that while the potential consumption of biodiesel in blends that exceed B5 in vehicles and engines that are approved for the use of this fuel is significant, such approval is not universal. For the nearly 70% of vehicles and engines that are not approved to use biodiesel blends greater than B5, using higher level blends could potentially void the warranties of the engines if the damage to the engine damage is attributable to the fuel that was used. While many of the vehicles that are not approved to use biodiesel blends greater than B5 are likely no longer covered by the manufacturer's warranty, the owners of these vehicles may still be hesitant to use a fuel that was not approved for use in their vehicle.

In light of the ability of effectively all diesel engines to use biodiesel blends at the B5 level, the increasing number of diesel engines approved to use biodiesel blends up to B20, and the compatibility of renewable diesel with in-use diesel engines, we believe the market will be capable of consuming 2.9 billion gallons of biodiesel and renewable diesel in 2017. However, to achieve this level of consumption we believe it will become increasingly necessary to sell higher-level biodiesel blends, greater quantities of renewable diesel, and/or additional volumes of biodiesel in qualifying nonroad applications. Even if every gallon of diesel sold in the United States in 2017 contained 5% biodiesel, the total volume of biodiesel consumed would only reach approximately 2.8 billion gallons.[166] When considering the potential availability of renewable diesel together with the use of biodiesel in non-road applications and higher level biodiesel blends, there are several scenarios that would enable the consumption of 2.9 billion gallons of biodiesel and renewable diesel. If we assume the availability of approximately 500 million gallons of renewable diesel in 2017 (approximately a 100 million gallon increase from 2015) and the use of 100 million gallons of biodiesel in qualifying nonroad (such as agricultural and mining equipment) and heating oil applications, approximately 84% of the highway diesel pool in 2017 would have to be sold as a B5 blend to supply 2.9 billion gallons of biodiesel and renewable diesel in 2017.[167] If we further assume that 20% of all diesel fuel in the United States is sold at higher biodiesel blend levels averaging B10 (to account for the sales of higher blends at travel centers and in states with biodiesel blend mandates), only 54% of the remaining diesel pool would have to be blended with 5% biodiesel to enable the consumption of 2.9 billion gallons of biodiesel and renewable diesel. We believe these scenarios, along with the possibility for even greater volumes of biodiesel to be used in qualifying non-road applications and higher level biodiesel blends, demonstrate that 2.9 billion gallons of biodiesel and renewable diesel is reasonably attainable in the United States in 2017. EPA will continue to monitor the compatibility of the in-use vehicle fleet to use of biodiesel in future years as we assess potential constraints on increased volumes.

vii. Biodiesel and Renewable Diesel Consumer Response

Consumer response to the availability of renewable diesel and low-level biodiesel blends (B5 or less) has been generally positive, and this does not appear to be a significant impediment to growth in biodiesel and renewable diesel use. Because of its similarity to petroleum diesel, consumers who purchase renewable diesel are unlikely to notice any difference between renewable diesel and petroleum-derived diesel fuel. Similarly, biodiesel blends up to B5 are unlikely to be noticed by consumers, especially since, as mentioned above, they may be sold without specific labeling. Consumer response to biodiesel blends is also likely aided by the fact that despite biodiesel having roughly 10 percent less energy content than diesel fuel, when blended at 5 percent the fuel economy impact of B5 relative to petroleum-derived diesel is a decrease of only 0.5%, an imperceptible difference. Consumer response has been further aided by the lower prices that many wholesalers and retailers have been willing to provide to the consumers for the use of biodiesel blends. The economic incentives provided by the biodiesel blenders tax credit and the RIN have made it possible for retailers to offer these blends at a lower price per gallon than diesel fuel that has not been blended with biodiesel despite the higher cost of production for biodiesel relative to petroleum based diesel, and the competition among diesel fuel retailers has generally led to these incentives being reflected in the retail price of biodiesel blends. The ability for retailers to offer biodiesel blends at competitive prices relative to diesel that does not contain biodiesel, even at times when oil prices are low, is a key factor in the growth in the supply of biodiesel and renewable diesel to date.

viii. Projected Supply of Biodiesel and Renewable Diesel in 2017

Due to the large number of market segments where actions and investments may be needed to support the continued growth of biodiesel blends, it is difficult to isolate the specific constraint or group of constraints that would be the limiting factor or factors to the supply of biodiesel and renewable diesel in the United States in 2017. Not only are many of the potential constraints inter-related, but they are likely to vary over time. The challenges in identifying a single factor limiting the growth in the supply of biodiesel and renewable diesel in 2017 does not mean, however, that there are no constraints to the growth in supply.

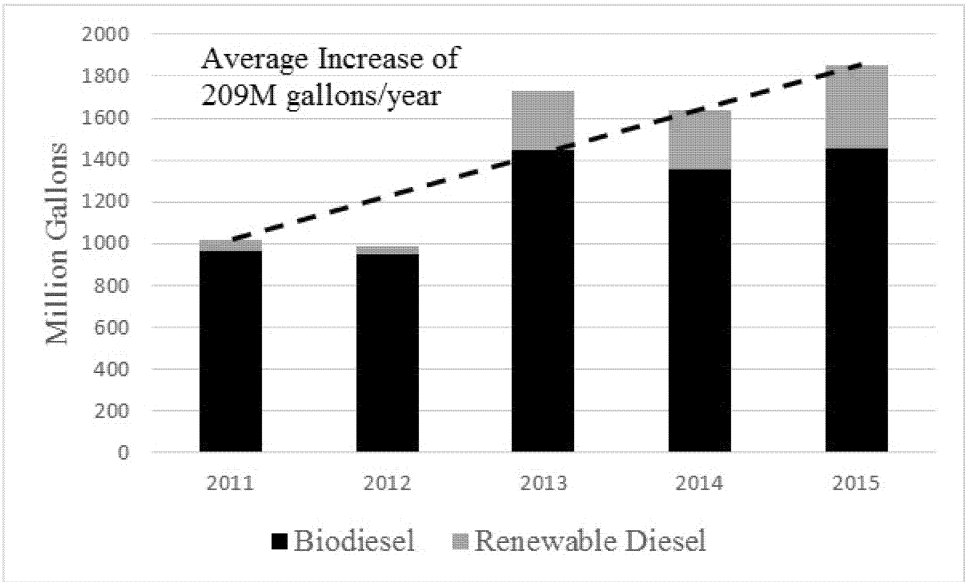
A starting point in developing a projection of the available supply of biodiesel and renewable diesel in 2017 is a review of the volumes of these fuels supplied for RFS compliance in previous years. In examining the data, both the absolute volumes of the supply of biodiesel and renewable diesel in previous years, as well as the rates of growth between years are relevant considerations. The volumes of biodiesel and renewable diesel (including both D4 and D6 biodiesel and renewable diesel) supplied each year from 2011 through 2015 are shown below.

[165] Ibid.

[166] This estimate assumes 55.5 billion gallons of diesel fuel are used in the United States in 2016 (from the EIA's August Short Term Energy Outlook). It also assumes no biodiesel is used in blends greater than B5.

[167] This estimate again assumes 55.5 billion gallons of diesel fuel are used in the United States in 2016 (from the EIA's August Short Term Energy Outlook) and no biodiesel is used in blends greater than B5.

Figure V.B.2.viii-1
Biodiesel and Renewable Supply by Year (2011-2015)[a]



[a] Values represent current estimates of the net supply of biodiesel and renewable diesel (including conventional, advanced, and BBD biodiesel and renewable diesel) from EMTS, accounting for the production, import, and export of biodiesel and renewable diesel.

To use the historical data (shown in the figure above) to project the available supply of biodiesel and renewable diesel in 2017, we started with the volume expected to be supplied in 2016 (2.5 billion gallons), and then assessed how much the supply could be expected to increase in 2017 in light of the constraints discussed above. Using historic data is appropriate to the extent that growth in the year or years leading up to 2016 reflects the rate at which biodiesel and renewable diesel constraints can reasonably be expected to be addressed and alleviated in the future. In assessing the potential growth of biodiesel and renewable diesel in 2017 we believe this to be the case. There are many potential ways the historical data could be used to project the supply of biodiesel and renewable diesel in future years. Two relatively straightforward methods would be to use either the largest observed annual supply increase (743 million gallons from 2012 to 2013) or the average supply increase (209 million gallons from 2011 to 2015) to project how much biodiesel and renewable diesel volumes could increase over 2016 levels in 2017. We recognize that there are limitations in the probative value of past growth rates to assess what can be done in the future, however we believe there is significant value in considering historical data, especially in cases where the future growth rate is expected to be largely determined by the same variety of complex and inter-dependent factors that have factored into historical growth.

In projecting the available supply of biodiesel and renewable diesel in 2016 for the final rule establishing the 2014–2016 standards, we estimated that the supply of biodiesel and renewable diesel could increase from the level supplied in 2015 in line with the largest observed annual supply increase from the historic record. While the availability of RIN generation data for 2016 is limited, we believe the data available to date confirm that this high year-over-year increase is possible.[168] We believe this is the case in part due to the relatively small growth in the supply of biodiesel and renewable diesel in 2014 and 2015, during which no annual RFS standards were in place to promote growth in the supply of biodiesel and renewable diesel and during which time the biodiesel blenders tax credit was only reinstated retroactively. During these years (2014–2015), while growth in the supply of biodiesel and renewable diesel was limited, significant progress continued to be made in a number of areas (upgrades at biodiesel production facilities, increasing number of vehicles approved to use blends greater than B5, increasing biodiesel distribution infrastructure, etc.) to expand the potential supply of biodiesel and renewable diesel used as transportation fuel in the United States. We believe that despite this progress, the absence of RFS standards for most of this time period (along with other economic factors such as the lapses in the biodiesel blenders tax credit and the fluctuating prices of petroleum diesel and biodiesel and renewable diesel feedstocks) resulted in limited increases to the supply of biodiesel and renewable diesel in these years. We therefore believe that the significant increase in the projected supply of biodiesel and renewable diesel from 2015 to 2016 was significantly enabled by the relatively slow growth in supply in 2014 and 2015.

Commenters also noted a similarly large increase in the supply of biodiesel and renewable diesel from 2010 to 2011 to support claims that large annual increases in the supply of biodiesel and renewable diesel to the United States could be achieved in successive years.[169] While this increase is yet another example of the rapid increase in the supply that can be achieved under certain market conditions, we once again note that in the years prior to 2010 the biodiesel and renewable diesel supply had been declining. It is not

[168] ''Comparison of 2016 availability of RINs and 2016 standards,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[169] See NBB comments on the proposed rule (EPA–HQ–OAR–2016–0004–2904), page 5.

clear from the historical data whether such large increases are sustainable year-over-year. Increases of this magnitude require a number of factors, including feedstock supply, production capacity, distribution capacity, retail offerings, and biodiesel consumption, to be addressed. In previous years a significant excess of feedstocks, in combination with newly established state and federal incentives and a group of large, interested retail partners have enabled significant rapid growth in the supply of biodiesel and renewable diesel. We believe that these market conditions are unlikely to be repeated in future years, but that there still exist opportunities for growth in the supply of biodiesel and renewable diesel. After reviewing the available information and the comments received on the proposed rule, we believe that increases in the supply of biodiesel and renewable diesel greater than those we have proposed are possible, but we do not believe that these increases are without limit, as some commenters have suggested.

We recognize that the growth rates achieved in the past (such as the average annual growth rate or the largest annual supply increase) do not necessarily indicate the growth rate that can be achieved in the future. In the past, biodiesel was available in fewer markets, allowing new investments to be targeted to have a maximum impact on volume. However, as the market becomes more saturated and biodiesel becomes available in an increasing number of markets, additional investments may tend to have less of an impact on volume, potentially limiting the increases in supply year over year. Additionally, much of the increase in the volume of biodiesel and renewable diesel supplied from 2012 to 2013 was renewable diesel, which is faced with far fewer distribution and consumption challenges than biodiesel for blends above B5. Such an increase in the available supply of renewable diesel in 2017 is unlikely as we are currently unaware of any renewable diesel facilities under construction, either in the United States or abroad, that are likely to supply significant volumes of fuel to the United States in 2017, and the capital costs and construction timelines associated with constructing new renewable diesel facilities are significant. It will likely require greater investment to achieve the same levels of growth in the supply of biodiesel and renewable diesel in 2017 as compared to the higher rates from previous years.

However, we must also consider the extent to which historic growth rates can be seen as representing what is possible with the RFS standards and other incentives in place. The year with the historic maximum rate of growth was 2013—a year in which both tax incentives and RFS incentives were in place to incentivize growth through the entire year. There were also fewer potential constraints to the growth of biodiesel and renewable diesel related to the distribution and use of biodiesel in 2013 than there are currently due to the significantly lower volume of these fuels supplied in 2012. We believe it is reasonable to assume the incentives provided by the standards in 2017 will be sufficient to enable supply increases despite these challenges discussed above, but do not believe it would be reasonable to assume that the RFS and other incentives could drive a rate of growth in 2017 that is equal to that seen in 2013. Comments received from the National Biodiesel Board, as well as from the National Association of Truck Stop Owners (which represents parties with significant experience and investment in the distribution and sales of biodiesel) suggest that parties have already begun making the necessary investments to distribute and sell volumes of biodiesel that exceed the volumes projected in our proposed rule in anticipation of ongoing support for biodiesel from both the blenders tax credit and the RFS program. At the public hearing for the proposed 2017 RFS standards, Michael Whitney of Musket Corporation testified that his company, which is the supply and trading arm of Love's Travel Stops, anticipated increasing biodiesel supply by 100 million gallons in 2017.[170] He further estimated that as they accounted for approximately 20–25% of all biodiesel blended in the United States, that total supply could be increased by 500 million gallons in 2016.[171] While we believe these numbers are somewhat speculative, we also believe they provide support for an expectation of considerable growth in 2017. We also note, however, that while the National Association of Truck Stop Owners (NATSO) generally supported ''ambitious'' standards with respect to biodiesel and renewable diesel, they also supported EPA's consideration of ''market realities'' to prevent the RFS standards from being set at unreasonably high levels.[172] Failure to do so, they stated, could result in RFS standards that are significantly beyond the market's ability to supply renewable fuels, ultimately resulting in higher prices for diesel fuel, negatively impacting both NATSO members and the entire U.S. economy.[173]

In the NPRM we projected that the available supply of biodiesel and renewable diesel in 2017 would be approximately 2.7 billion gallons. We discussed the many different factors that could potentially constrain the production and use of biodiesel and renewable diesel in 2017, and placed particular emphasis on the potential limitations associated with the ability to distribute increasing volumes of biodiesel from production facilities to retail locations. In response to our proposed rule, several parties, including NBB and REG, provided significant new information to EPA related to the ability of the market to distribute biodiesel from production facilities to retail locations.[174] This information included data on the significant volume of biodiesel that is sold and transported to retail stations and/or other end users directly from biodiesel production facilities, bypassing the traditional fuel distribution points such as fuel terminals or bulk plants. These data were supported by statements from diesel retailers, such as the testimony of Michael Whitney cited above. While we continue to believe that the potential to produce, distribute, and consume biodiesel and renewable diesel in the United States is not without limit, we believe the information we received in comments in our proposed rule provides a sufficient basis for concluding that a volume of 2.9 billion gallons of biodiesel and renewable diesel can be produced, distributed, and consumed in the United States in 2017. When taken together with our projection of 2.4 billion gallons of advanced biodiesel and renewable diesel, this assessment assumes 500 million gallons of conventional biodiesel and renewable diesel to be used towards satisfying the total renewable fuel standard.[175] However the market could choose to fill

[170] See testimony of Michael Whitney, Musket Corporation, June 9, 2016 (Chicago Room).

[171] Ibid.

[172] See comments from NATSO (EPA–HQ–OAR–2016–0004–1830).

[173] Ibid. If RFS standards are significantly beyond the market's ability to supply renewable fuels, the price of biofuels and separated RINs could rise to extreme levels as obligated parties seek to obtain the RINs necessary to satisfy their obligations. This would be expected to cause an increase in gasoline and diesel prices as obligated parties sought to recover their RFS compliance costs through the prices of the petroleum fuels they sell.

[174] See comments from NBB (EPA–HQ–OAR–2016–0004–2904) and REG (EPA–HQ–OAR–2016–0004–3477).

[175] Lesser volumes of conventional biodiesel and renewable diesel may be used to satisfy the standards if additional volumes of advanced biodiesel and renewable diesel are supplied to the market, or if the volume of ethanol supplied to the market exceeds EPA's projections in the previous section.

these volumes with advanced biodiesel or with other forms of renewable fuel.

The present constraints do not represent insurmountable barriers, but they will take time to overcome. The market has been making efforts to overcome these constraints in recent years, as demonstrated by discussion above and the fact that biodiesel and renewable diesel supply in the U.S. has been steadily increasing. We believe that opportunity for ongoing growth exists, but that the constraints listed above will continue to be a factor in the rate of growth in future years and that year-on-year growth may slow as the opportunities for large increases diminish. Taking all of the above into consideration, we believe that it would be reasonable to assume that growth in 2017 can exceed the 226 million gallon historic annual average increase from the 2011–2015 time period, but will be unlikely to reach the maximum 659 million gallon annual increase seen in 2013. Considering the multiplicity of factors potentially influencing supply, we do not believe that a projection can be made pursuant to any particular formula, but requires considerable exercise of judgment. We believe that it is reasonable to project a 400 million gallon increase in supply in 2017, which would result in a total supply of 2.9 billion gallons in 2017.

Throughout this section we have focused on determining if the market can reasonably attain the 2.9 billion gallons of biodiesel and renewable diesel needed, together with reasonably attainable volumes of ethanol and other renewable fuels, to satisfy the 19.28 billion gallon total renewable fuel volume derived through use of the cellulosic waiver authority alone. Based on the data available to EPA at this time, including data submitted in comments on the NPRM, we believe that the market is capable of producing, distributing, and using 2.9 billion gallons of biodiesel and renewable diesel in 2017. We note, however, that the 400 million gallon increase is significantly higher than the annual average increase in the supply of biodiesel and renewable diesel from 2011–2015, and when combined with the projected increase of approximately 600 million gallons from 2015 to 2016 would result in an increase in the supply of biodiesel and renewable diesel of over one billion gallons in just two years. While our analysis has not focused on determining the maximum reasonably achievable volume of biodiesel and renewable diesel in 2017, we believe that the ambitious growth in the supply of biodiesel projected from 2015 to 2017 indicate that the maximum reasonably achievable volume of these fuels in 2017 is likely near the 2.9 billion gallons assessed in this rule.

We recognize that the market may not necessarily respond to the final total renewable standard by supplying exactly 2.9 billion gallons of biodiesel and renewable diesel to the transportation fuels market in the United States in 2017, but that the market may instead supply a lower or higher volume of biodiesel and renewable diesel with corresponding changes in the supply of other types of renewable fuel. As a result, we believe there is less uncertainty with respect to the attainability of the total volume requirement of 19.28 billion gallons than there is concerning the projected 2.9 billion gallons of biodiesel and renewable diesel that we have used in determining the adequacy of supply of total renewable fuel for 2017.

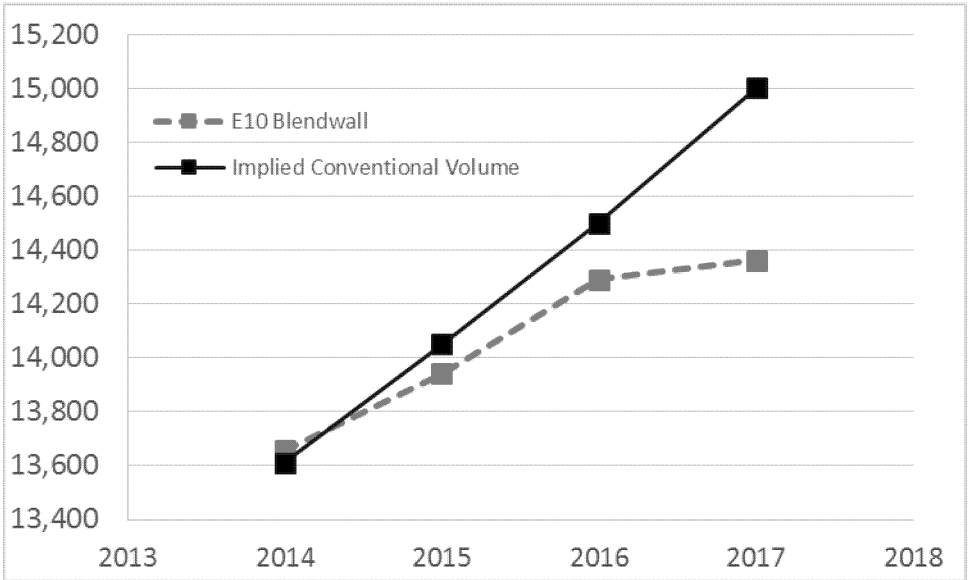
3. Total Renewable Fuel Supply

In Section V.A we described how use of the cellulosic waiver authority to provide a volume reduction for total renewable fuel that equals that provided for advanced biofuels yields a volume of 19.28 billion gallons. Based on our assessment of supply of ethanol and biodiesel/renewable diesel, along with smaller amounts of non-ethanol cellulosic biofuel and other non-ethanol renewable fuels, we have determined that there will be adequate supply to meet a volume requirement of 19.28 billion gallons for total renewable fuel. As a result, there is no need for further reductions on the basis of an ''inadequate domestic supply'' determination using the general waiver authority.[176] Therefore, we are establishing the total renewable fuel volume requirement at 19.28 billion gallons.

Our use of the cellulosic waiver authority alone to set the advanced biofuel and total renewable fuel volume requirements results in an implied volume for non-advanced (*i.e.* conventional) renewable fuel of 15.0 billion gallons. This is an increase over the proposed level of 14.8 billion gallons, and a significant increase in comparison to the 2016 implied volume of 14.5 billion gallons. We recognize that some stakeholders are primarily concerned about this implied conventional renewable fuel volume. For these stakeholders, it may be helpful to compare the implied volume for conventional renewable fuel to the E10 blendwall, despite the fact that a portion of the 15.0 billion gallon implied volume is likely to be met with conventional biodiesel and renewable diesel. As shown below, 15.0 billion gallons continues a year-by-year trend of exceeding the E10 blendwall (the volume of ethanol that could be consumed if all gasoline was E10 and there was no E0, E15, or E85) by ever increasing amounts.

[176] As discussed in the response to comments document, we also do not believe that the record indicates either severe economic or environmental harm that would justify further reductions using the general waiver authority.

Figure V.B.3-1
Comparison of E10 Blendwall to Implied Conventional Volume



As discussed in Section V.B.2.viii above, we believe that there will be adequate supply of biodiesel and renewable diesel such that the total renewable fuel volume requirement of 19.28 billion gallons can be satisfied, based in part on our determination that 2.9 billion gallons of biodiesel and renewable diesel is reasonably attainable in 2017. While our analysis has not focused on determining the maximum reasonably achievable volume of renewable fuel in 2017, we believe that the ambitious growth in the supply of each of the various types of renewable fuel (discussed in further detail in the preceding Sections) indicates that the maximum reasonably achievable volume of these fuels in 2017 is likely near the 19.28 billion gallons assessed in this rule.

We note that the contributions from individual sources shown in Table V.B.3–1 were developed only for the purpose of determining the adequacy of supply of total renewable fuel; they do not represent EPA's projection of precisely how the market will respond. As we said in the 2014–2016 final rule, any supply estimate we make for particular fuel types may be uncertain, but there is greater certainty that the overall volume requirements can be met given the flexibility in the market that is inherent in the RFS program.

C. Market Responses to the Advanced Biofuel and Total Renewable Fuel Volume Requirements

To meet the final volume requirements, the market will need to respond by some combination of increasing domestic production and/or imports of those biofuels that have fewer marketplace constraints, by expanding the infrastructure for distributing and consuming renewable fuel, and/or by improving the relative pricing of renewable fuels and conventional transportation fuels at the retail level to ensure that they are attractive to consumers. However, because the transportation fuel market is dynamic and complex, and the RFS program is only one of many factors that determine the relative types and amounts of renewable fuel that will be used, we cannot precisely predict the mix of different fuel types that will result. In this section we delineate a range of possible outcomes, and doing so provides a means of demonstrating that the volume requirements can reasonably be satisfied through multiple possible paths.

We evaluated a number of scenarios with varying levels of E0, E15, E85, imported sugarcane ethanol, advanced biodiesel and renewable diesel, and conventional biodiesel and renewable diesel. In doing so we sought to capture the range of possibilities for each individual source, based both on levels achieved in the past and how the market might respond to the applicable standards. Each of the rows in Table V.C–1 represents a scenario in which the total renewable fuel and advanced biofuel volume requirements would be satisfied.

TABLE V.C–1—VOLUME SCENARIOS ILLUSTRATING POSSIBLE COMPLIANCE WITH THE 2017 VOLUME REQUIREMENTS

[million gallons] [a] [b]

E85	E15	E0	Total ethanol [c]	Sugarcane ethanol	Total biodiesel and renewable diesel [d]	Minimum volume of advanced biodiesel and renewable diesel [d]
200	600	200	14,504	0	2,856	2,528
200	600	500	14,474	0	2,876	2,528
200	600	500	14,474	200	2,876	2,399
200	600	500	14,474	500	2,876	2,206

TABLE V.C–1—VOLUME SCENARIOS ILLUSTRATING POSSIBLE COMPLIANCE WITH THE 2017 VOLUME REQUIREMENTS—Continued

[million gallons] [a] [b]

E85	E15	E0	Total ethanol [c]	Sugarcane ethanol	Total biodiesel and renewable diesel [d]	Minimum volume of advanced biodiesel and renewable diesel [d]
200	600	500	14,474	800	2,876	2,012
200	1,200	200	14,535	500	2,836	2,206
330	600	500	14,559	800	2,820	2,012
330	1,200	200	14,621	0	2,780	2,528
330	1,200	200	14,621	200	2,780	2,399
330	1,200	200	14,621	500	2,780	2,206
330	1,200	200	14,621	800	2,780	2,012
330	1,200	500	14,590	200	2,800	2,399

[a] Assumes for the purposes of these scenarios that supply of other advanced biofuel other than ethanol, BBD and renewable diesel (*e.g.,* heating oil, naphtha, etc.) is 50 mill gal, and that the cellulosic biofuel final volume requirement is 311 mill gal, of which 12 mill gal is ethanol and the remainder is primarily biogas.

[b] Biodiesel + renewable diesel is given in physical gallons, and can be converted into ethanol-equivalent gallons by multiplying by 1.55 (see discussion of this conversion factor in Section IV.B.2). Other categories are given as ethanol-equivalent volumes.

[c] For the range of total ethanol shown in this table, the poolwide average ethanol content would range from 10.08% to 10.17%.

[d] Includes supply from both domestic producers as well as imports.

The scenarios in the tables above are not the only ways that the market could choose to meet the total renewable fuel and advanced biofuel volume requirements that we are establishing in this action. Indeed, other combinations are possible, with volumes higher than the highest levels we have shown above or, in some cases, lower than the lowest levels we have shown. The scenarios above cannot be treated as EPA's views on the only, or even most likely, ways that the market may respond to the 2017 volume requirements. Instead, the scenarios are merely illustrative of the various ways that it could play out. Our purpose in generating the list of scenarios above is only to illustrate a range of possibilities which demonstrate that the standards we are establishing in this action can reasonably be met.

We provided a similar table of volume scenarios in the NPRM, and stakeholders were strongly divided on whether those scenarios were achievable and whether they captured the most likely outcomes. Refiners generally said that most if not all of the scenarios were not achievable in 2017, expressing concern that the chosen volumes of E0 were lower than actual market demand and that the chosen volumes of other ethanol blends and renewable fuel sources were considerably higher than historical levels. Proponents of renewable fuels generally said that the provided scenarios were not demonstrative of the much higher renewable fuel volumes that were possible. Comments on reasonably attainable levels of specific ethanol blends and non-ethanol renewable fuel types are addressed in Section V.B above and in Sections 2.3 through 2.5 of the RTC document.

Several proponents of the ethanol industry said that the proposed standards would provide no incentive for greater volumes of E15 and/or E85 in 2017 compared to 2016, and no incentive for increased investment in the infrastructure that supports these higher ethanol blends. We disagree. The proposed volume requirement for total renewable fuel, and the implied volume for non-advanced renewable fuel, were both higher than the corresponding final volume requirements for 2016. While none of the applicable RFS program standards are specific to ethanol, the higher proposed volume requirements would have created greater incentives for growth in E15 and/or E85 in 2017 than existed in 2016. Moreover, we have increased the final volume requirement for total renewable fuel and the implied volume for non-advanced renewable fuel in this final rule, in comparison to the NPRM, providing additional incentives for expansion of E15 and/or E85.

One stakeholder representing conventional ethanol interests said that the volume scenarios in the NPRM demonstrated that 15 billion gallons of non-advanced renewable fuel were possible in 2017. To do this, the stakeholder pointed to the highest volumes in each category to construct a new scenario higher than the proposed volume requirements. While we are in fact finalizing standards for 2017 that include an implied volume of 15 billion gallons of non-advanced renewable fuel, we continue to believe, as we stated in the NPRM, that it would be inappropriate to construct a new scenario (as this commenter attempted) based on the highest volumes in each category that are shown in the tables above in order to argue for higher volume requirements. Doing so would result in summing of values that we have determined are higher than the reasonably attainable volumes of the different fuel categories, resulting in a total volume that we believe would be extremely unlikely to be reasonably attainable or appropriate. We have more confidence in the ability of the market to attain the volume requirements for advanced biofuel and total renewable fuel than we have in the ability of the market to achieve a specific level of, say, biodiesel, or E85. The probability that the upper limits of all sources shown in the tables above could be reasonably attained simultaneously is very small. For instance, if all volume levels in Table V.C–1 were equally likely, then there would be a less than 1% likelihood that the maximum levels could be attained simultaneously.[177]

We recognize that in some scenarios described in the NPRM and above, the volume of a particular category of renewable fuel exceeds the historical maximum or previously demonstrated production level. Stakeholders who believed that the proposed volume requirements were too high pointed to this fact as evidence that many, if not all, volume levels in the scenarios were not achievable. However, as stated in the NPRM, the fact that the scenarios

[177] For illustrative purposes only. We have not determined the relative likelihood of the different volume levels shown in Table V.C–1.

included volumes higher than historical levels cannot be treated as a reason for concluding that such levels are not achievable. The RFS program is intended to result in supply in any given year that is higher than in all previous years, and it is our determination that for 2017 this is reasonably attainable.

With regard to E85, under highly favorable conditions related to growth in the number of E85 retail stations, retail pricing, and consumer response to that pricing, it is possible that E85 volumes as high as 330 million gallons could be reached. For instance, growth in the number of retail stations offering E85 may increase more rapidly than we have estimated under USDA's Biofuels Infrastructure Partnership (BIP) grant program and the ethanol industry's Prime the Pump program. If so, the total number of retail stations offering E85 could perhaps increase from about 3,100 today to 4,800 in 2017 (average for the year), rather than the 4,300 we assumed above in Section V.B.1.iii. Also, it is possible that increases in the price of D6 RINs since the release of the 2014–2016 final rule can help to increase the E85 price discount relative to E10 if producers and marketers of E85 pass the value of the RIN to the prices offered to customers at retail, providing greater incentive to FFV owners to refuel with E85 instead of E15. Under such circumstances, an E85 price discount as high as 30% is possible. Indeed, E85 price discounts this high have been reached in the past in some locales.[178] Efforts to increase the visibility of E85, including expanded marketing and education, can also help to increase E85 sales. Sales volumes of E85 higher than 330 million gallons are very unlikely, but are possible if pump installations increase significantly and the market can overcome constraints associated with E85 pricing at retail and consumer responses to those prices.

Similarly, we believe that under favorable conditions, it is possible that E15 volumes as high as 1,200 million gallons could be reached in 2017. Again, the BIP program and Prime the Pump program could result in a higher growth rate for retail stations offering E15 than we have estimated, potentially reaching as high as 2,000 in 2017 (average for the year). Although for the purposes of estimating reasonably attainable E15 in 2017 we have estimated that sales of E15 would be 15% of all gasoline sales at stations selling both E10 and E15, it is possible that sales of E15 could be as high as 50% under favorable pricing conditions as described in Section V.B.1.ii. Also, additional terminals could produce E15 in 2017 beyond the four that we included in our estimate of reasonably attainable volumes of E15 in 2017.[179]

As the table above illustrates, the volume requirements could result in the consumption of 2.88 billion gallons of biodiesel and renewable diesel in 2017. This level is less than our estimate of the production capacity for all registered domestic biodiesel and renewable diesel production facilities, and approximately the same as the 2.9 billion gallons that we used in the context of determining whether there is adequate supply to meet the total renewable fuel volume requirement of 19.28 billion gallons in 2017. Given the necessarily imprecise nature of our estimate of supply of biodiesel and renewable diesel in the context of determining whether there will be adequate supply to meet the total renewable fuel volume requirement of 19.28 billion gallons in 2017, volumes as high as 2.88 billion gallons and potentially higher are possible.

Finally, out of the maximum of about 2.9 billion gallons of biodiesel and renewable diesel shown in Table V.C–1, more than 2.5 billion gallons could be advanced biodiesel. While this is slightly higher than the 2.4 billion gallons that we used in determining the advanced biofuel volume requirement, it could be supplied from current biodiesel domestic production capacity which is about 3 billion gallons, though this would possibly involve additional feedstock switching as discussed in Section IV.

D. Impacts of 2017 Standards on Costs

In this section we provide illustrative cost estimates for the 2017 standards. By ''illustrative costs,'' EPA means the cost estimates provided are not meant to be precise measures, nor do they attempt to capture the full impacts of this final rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a ''representative'' renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these cost estimates. First, there are a number of different feedstocks that could be used to produce ethanol and biodiesel, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some fuels may be cost competitive with the petroleum fuel they replace; however, we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

Second, the costs and benefits of the RFS program as a whole are best assessed when the program is fully mature in 2022 and beyond.[180] We continue to believe that this is the case, as the annual standard-setting process encourages consideration of the program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the long-term economic effects of the program. Thus, EPA did not quantitatively assess other direct and indirect costs or benefits of increased renewable fuel volumes such as infrastructure costs, investment, GHG emissions and air quality impacts, or energy security benefits, which all are to some degree affected by this final rule. While some of these impacts were analyzed in the 2010 final rulemaking which established the current RFS program, we have not fully analyzed these impacts for the 2017 volume requirements. We have framed the analyses we have performed for this final rule as ''illustrative'' so as not to give the impression of comprehensive estimates.

Third, at least two different scenarios could be considered the ''baseline'' for the assessment of the costs of this rule. One scenario would be the statutory volumes (*e.g.,* the volumes in the Clean Air Act 211(o)(2) for 2016) in which case this final rule would be reducing volumes, reducing costs as well as decreasing expected GHG benefits. For the purposes of showing illustrative overall costs of this rulemaking, we use the preceding year's standard as the baseline (*e.g.,* the baseline for the 2017 advanced standard is the 2016 advanced standard), an approach consistent with past practices in previous annual RFS rules.

EPA is providing cost estimates for three illustrative scenarios:

1. If the entire change in the advanced standards is met with soybean oil BBD
2. If the entire change in the advanced standards is met with sugarcane ethanol from Brazil
3. If the entire change in the total renewable fuel volume standards that can be satisfied with conventional (*i.e.,* non-advanced) renewable fuel is met with corn ethanol.

[178] For instance, data from the Fuels Institute indicates that 3% of E85 price discounts were above 30% at surveyed retail stations in 2015.

[179] HWRT Oil Company intends to eventually offer E15 from 17 additional terminals in addition to the four announced on July 19, 2016. ''HWRT & RFA Announce First-Ever Offering of Pre-blended E15,'' docket EPA–HQ–OAR–2016–0004.

[180] 77 FR 59477.

While a variety of biofuels could help fulfill the advanced standard beyond soybean oil BBD and sugarcane ethanol from Brazil, these two biofuels have been most widely used in the past. The same is true for corn ethanol vis-a-vis the non-advanced component of the total renewable fuel standard. We believe these scenarios provide illustrative costs of meeting the applicable 2017 standards.

For this analysis, we estimate the per gallon costs of producing biodiesel, sugarcane ethanol, and corn ethanol relative to the petroleum fuel they replace at the wholesale level, then multiply these per gallon costs by the difference in the volumes between the relevant 2017 standard and the previous 2016 standard for the advanced (for biodiesel and sugarcane ethanol) and non-advanced component of the total renewable fuel (for corn ethanol) categories. More background information on this section, including details of the data sources used and assumptions made for each of the scenarios, can be found in a Memorandum submitted to the docket.[181]

Because we are focusing on the wholesale level in each of the three scenarios, these comparisons do not consider taxes, retail margins, and any other costs or transfers that occur at or after the point of blending (*i.e.,* transfers are payments within society and are not additional costs). Further, as mentioned above we do not attempt to estimate potential costs related to infrastructure expansion with increased renewable fuel volumes (*e.g.,* the costs of providing pumps and storage tanks associated with higher level ethanol blends). In addition, because more ethanol gallons must be consumed to go the same distance as gasoline and more biomass-based diesel must be consumed to go the same distance as petroleum diesel due to each of the biofuels' lesser energy content, we consider the costs of ethanol and biomass-based diesel on an energy equivalent basis to their petroleum replacements (*i.e.,* per energy equivalent gallon).

For our first illustrative cost scenario, we estimate the costs of soybean-based biodiesel to meet the entire change in the advanced biofuel standard for 2017.[182] Table V.D–1 below presents the annual change in volumes being established by this rule, a range of illustrative cost differences between biomass-based diesel and petroleum-based diesel by individual gallon on a diesel gallon equivalent (DGE) basis, and multiplies those per gallon cost estimates by the volume of fuel displaced by the advanced standard on an energy equivalent basis to obtain an overall cost estimate of meeting the standard.

TABLE V.D–1—ILLUSTRATIVE COSTS OF SOYBEAN BIODIESEL TO MEET INCREASE IN ADVANCED BIOFUEL STANDARDS IN 2017

	2016	2017
Advanced Volume Required (Million Gallons)	3,610	4,280
Advanced Volume Required (Million Gallons as Biodiesel)	2,407	[183] 2,853
Annual Change in Volume Required (Million Gallons as Biodiesel)		447
(DGE)[184]		*(408)*
Cost Difference Between Soybean Biodiesel and Petroleum Diesel Per Gallon ($/DGE)		$1.98–$2.95
Annual Increase in Overall Costs (Million $)		[185] $807–$1,203

For our second illustrative cost scenario, we estimate the costs of Brazilian sugarcane ethanol to meet the entire change in the advanced biofuel standard for 2017. Table V.D–2 below presents the annual change in volumes established by this final rule, a range of illustrative cost differences between Brazilian sugarcane ethanol and wholesale gasoline on a per gasoline gallon equivalent (GGE) basis, and multiplies those per gallon cost estimates by the volume of fuel displaced by the advanced standard on an energy equivalent basis to obtain an overall cost estimate of meeting the standard.

TABLE V.D–2—ILLUSTRATIVE COSTS OF BRAZILIAN SUGARCANE ETHANOL TO MEET INCREASE IN ADVANCED BIOFUEL STANDARDS IN 2017

	2016	2017
Advanced Volume Required (Million Gallons)	3,610	4,280
Annual Change in Volume Required (Million Gallons)		670
(GGE)[186]		*(447)*
Cost Difference Between Sugarcane Ethanol and Gasoline Per Gallon ($/GGE)		$1.00–$2.16
Annual Increase in Overall Costs (Million $)		[187] $446–$966

[181] "Illustrative Costs Impact of the Final Annual RFS2 Standards, 2017", Memorandum from Michael Shelby and Aaron Sobel to EPA Docket EPA–HQ–OAR–2016–0004.

[182] Soybean biodiesel could meet the pre-established 2017 biomass-based diesel volume, which itself is a nested volume within the 2017 advanced biofuel RFS volume. Illustrative costs represent meeting all of the costs of the annual increase of the 2017 advanced standard using entirely soybean-based biodiesel as one scenario.

[183] EPA used a value of 1.5 when calculating the RIN equivalencies of soybean-based biodiesel for the purpose of this illustrative costs example. See section IV.B–2 for a more detailed explanation of the biodiesel and renewable diesel equivalence value used for the purpose of deriving the renewable fuel standard under the 2017 RFS rule.

[184] Due to the difference in energy content between biodiesel and diesel, one gallon of biodiesel is energy-equivalent to approximately 91% of a gallon of diesel; 447 million gallons of biodiesel is energy-equivalent to approximately 408 million gallons of diesel.

[185] Overall costs may not match per gallon costs times volumes due to rounding.

[186] Due to the difference in energy content between ethanol and gasoline, one gallon of ethanol is energy-equivalent to approximately 67% of a gallon of gasoline; 670 million gallons of ethanol is energy-equivalent to approximately 447 million gallons of gasoline.

[187] Overall costs may not match per gallon costs times volumes due to rounding.

For our third illustrative cost scenario, we assess the difference in cost associated with a change in the implied volumes available for conventional (*i.e.,* non-advanced) biofuels for 2017. We provide estimates of what the potential costs might be if corn ethanol is used to meet the entire change in implied conventional renewable fuel volumes. Table V.D–3 below presents the annual change in volumes established by this final rule, a range of illustrative cost differences between corn ethanol and the wholesale gasoline on a per gasoline gallon equivalent (GGE) basis, and multiplies those per gallon cost estimates by the volume of petroleum displaced on an energy equivalent basis by the change in implied conventional fuel volumes for an estimated overall cost in 2017.

TABLE V.D–3—ILLUSTRATIVE COSTS OF CORN ETHANOL TO MEET INCREASE IN THE CONVENTIONAL (*i.e.,* NON-ADVANCED) PORTION OF THE TOTAL RENEWABLE FUEL STANDARDS IN 2017

	2016	2017
Implied Conventional Volume (Million Gallons)	14,500	15,000
Annual Change in Implied Conventional Volume (Million Gallons)		500
(GGE) [188]		*(333)*
Cost Difference Between Corn Ethanol and Gasoline Per Gallon ($/GGE)		$0.72–$1.04
Annual Increase in Overall Costs (Million $)		[189] $240–$347

These illustrative cost estimates are not meant to be precise measures, nor do they attempt to capture the full impacts of the rule. These estimates are provided solely for the purpose of illustrating how the cost to produce renewable fuels could compare to the costs of producing petroleum fuels. There are several important caveats that must be considered when interpreting these costs estimates. First, there is a significant amount of heterogeneity in the costs associated with different feedstocks and fuels that could be used to produce renewable fuels; however, EPA did not attempt to capture this range of potential costs in these illustrative estimates. Second, EPA did not quantify other impacts such as infrastructure costs, job impacts, or investment impacts. If the illustrative costs from the Tables above, representing the range for combined advanced and non-advanced fuel volumes, were summed together they would range from $686–$1,550 million in 2017. It is important to note that these costs do not represent net benefits of the program.

For the purpose of this annual rulemaking, we have not quantified benefits for the 2017 standards. We do not have a quantified estimate of the GHG impacts for a single year (*e.g.,* 2017), and there are a number of benefits that are difficult to quantify, such as rural economic development, employment impacts, and national security benefits from more diversified fuel sources. When the RFS program is fully phased in, the program will result in considerable volumes of renewable fuels that will reduce GHG emissions in comparison to the fossil fuels which they replace. EPA estimated GHG, energy security, and air quality impacts and benefits in the 2010 RFS2 final rule assuming full implementation of the statutory volumes in 2022.[190]

VI. Biomass-Based Diesel Volume for 2018

In this section we discuss the final biomass-based diesel (BBD) applicable volume for 2018. We are establishing this volume in advance of those for other renewable fuel categories in light of the statutory requirement in CAA section 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time establishing the BBD percentage standards that would apply to obligated parties in 2018 but intend to do so in the Fall of 2017, after receiving EIA's estimate of gasoline and diesel consumption for 2018. Although the BBD applicable volume sets a floor for required BBD use, because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any ''excess'' BBD produced beyond the mandated 2018 BBD volume can be used to satisfy both of these other applicable volume requirements. Therefore, these other standards can also influence BBD production and use.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume for calendar year 2012, which is 1.0 billion gallons. The statute does not, however, establish any other numeric criteria, or provide any guidance on how the EPA should weigh the importance of the often competing factors, and the overarching goals of the statute when

[188] 500 million gallons of ethanol is energy-equivalent to approximately 333 million gallons of gasoline.

[189] Overall costs may not match per gallon costs times volumes due to rounding.

[190] 75 FR 14670.

the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no guidance, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

B. Determination of Applicable Volume of Biomass-Based Diesel

1. BBD Production and Compliance Through 2015

One of the primary considerations in determining the biomass-based diesel volume for 2018 is a review of the implementation of the program to date, as it affects biomass-based diesel. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, and distribute BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the production and import of BBD. The number of BBD RINs generated, along with the number of RINs retired due to export or for reasons other than compliance with the annual BBD standards from 2011–2015 are shown below.

TABLE VI.B.1–1—BIOMASS-BASED (D4) RIN GENERATION AND STANDARDS IN 2013–2017

[Million gallons] [191]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons)	BBD standard (RINs)
2011	1,692	110	98	1,483	800	1,200
2012	1,737	183	90	1,465	1,000	1,500
2013	2,739	298	101	2,341	1,280	1,920
2014	2,710	126	92	2,492	1,630	[b] 2,490
2015	2,796	133	32	2,631	1,730	[b] 2,655
2016	N/A	N/A	N/A	N/A	1,900	2,850
2017	N/A	N/A	N/A	N/A	2,000	3,000

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons due to rounding.

[b] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon. In 2014 and 2015 the number of RINs in the BBD Standard column is not exactly equal to 1.5 times the BBD volume standard as these standards were established based on actual RIN generation data for 2014 and a combination of actual data and a projection of RIN generation for the last three months of the year for 2015. Some of the volume used to meet the biomass-based diesel standard was renewable diesel, which generally has an equivalence value of 1.7.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011 and 2013. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit, and favorable blending economics. In 2012 the available BBD RINs were slightly less than the BBD standard. There are many reasons this may have been the case, including the temporary lapse of the biodiesel tax credit at the end of 2011.[192] The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years. This is because the standards for these years were finalized at the end of November 2015 when RIN generation data were available for all of 2014 and much of 2015, and we exercised our authority to establish the required BBD volumes for these time periods to be approximately equal to the number of BBD RINs that were available (for past time periods) or were expected to be available (for the months of 2015 for which EPA did not yet have reliable data) in the absence of the influence of the RFS standards. While we do not yet have final compliance data for 2016, BBD RIN generation is currently on track to exceed the volume required by the BBD standard by a significant margin.[193] This strongly suggests that there is demand for these RINs to satisfy the advanced biofuel and/or total renewable fuel requirements.

2. Interaction Between BBD and Advanced Biofuel Standards

The BBD standard is nested within the advanced biofuel and total renewable fuel standards. This means that when an obligated party retires a BBD RIN (D4) to satisfy their BBD obligation, this RIN also counts towards meeting their advanced biofuel and total renewable fuel obligations. It also means that obligated parties may use BBD RINs in excess of their BBD obligations to satisfy their advanced biofuel and total renewable fuel obligations. Higher advanced biofuel and total renewable fuel standards, therefore, create demand for BBD, especially if there is an insufficient supply of other advanced or conventional renewable fuels to satisfy the standards, or if BBD RINs can be acquired at or below the price of other advanced or conventional biofuel RINs.[194]

In reviewing the implementation of the RFS program to date, it is apparent that the advanced biofuel and/or total renewable fuel volume requirements were in fact helping grow the market for volumes of biodiesel above the BBD standard. In 2013 the number of advanced RINs generated from fuels other than BBD and cellulosic biofuel was not large enough to satisfy the implied standard for ''other advanced'' biofuel (advanced biofuel needed to satisfy the advanced biofuel standard after the BBD and cellulosic biofuel standards are met), and additional volumes of BBD filled the gap (see Table

[191] Net BBD RINs Generated and BBD RINs Retired for Non-Compliance Reasons information from EMTS. Biodiesel Export information from EIA. *http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm.*

[192] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was once authorized and applied retro-actively for all of 2015 as well as through the end of 2016.

[193] ''Comparison of 2016 availability of RINs and 2016 standards,'' memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[194] The biodiesel blenders tax credit effectively reduced the cost of BBD, allowing it to be priced lower than many other advanced biofuels.

VI.B.2–1 below). In fact, the amount by which the available BBD RINs exceeded the 1.28 billion gallon BBD volume requirement (421 million RINs) was larger than the amount of such excess BBD needed, together with other types of advanced biofuels, to satisfy the advanced biofuel standard (278 million RINs; the number of advanced biofuel RINs required after subtracting the number of RINs generated to meet the BBD standard and the number of RINs generated for non-BBD advanced biofuels), suggesting that the additional increment was incentivized by the total renewable fuel standard. Preliminary data for 2016 similarly reveal the ability for the advanced and total renewable fuel standards to incentivize increased BBD production. The current RIN generation data suggest that BBD production is on track to exceed the BBD standard for 2016 by a significant margin, and that these excess BBD RINs will be needed to enable compliance with the advanced biofuel and total renewable fuel standards given the limited production of other advanced biofuels.[195] As discussed above, the 2014 and 2015 BBD standards were intended to reflect the full number of available BBD RINs in these years and were set in late 2015, at which point the number of available RINs in these years was largely known. We can therefore draw no conclusions about the ability for the advanced and total renewable fuel standards to incentivize BBD production from these years. While the available BBD RINs in 2012 were slightly less than the BBD standard despite the opportunity to contribute towards meeting the advanced and total renewable fuel standards, there are several factors beyond the RFS standards (2012 drought, expiration of the biodiesel tax credit, opportunities for increased ethanol blending as E10) that likely impacted BBD production in 2012. We continue to believe that the advanced biofuel and total renewable fuel standards can provide a strong incentive for increased BBD volume in the United States in excess of that required to satisfy the BBD standard (for further discussion on this issue see 80 FR 77492).

TABLE VI.B.2–1—BIOMASS-BASED DIESEL AND ADVANCED BIOFUEL RIN GENERATION AND STANDARDS

[Million RINs]

	Available BBD (RINs)	BBD standard (RINs)	Available D5 RINs (advanced biofuels) [a]	Opportunity for "Other Advanced" biofuels [b]
2011	1,483	1,200	225	150
2012	1,465	1,500	597	500
2013	2,341	1,920	552	830
2014	2,492	2,490	143	147
2015	2,631	2,655	147	102

[a] Does not include BBD or cellulosic biofuel RINs, which may also be used towards an obligated party's advanced biofuel obligation.

[b] Advanced biofuel that does not qualify as BBD or cellulosic biofuel; calculated by subtracting the number of required BBD RINs (BBD required volume × 1.5) and the number of required cellulosic biofuel RINs from the advanced biofuel volume requirement.

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through mid-2016 also support the conclusion that advanced biofuel and/or total renewable fuel standards provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[196] If, however, BBD RINs are being used by obligated parties to satisfy their advanced biofuel and/or total renewable fuel obligations, above and beyond the BBD standard, we would expect the prices of conventional renewable fuel, advanced biofuel, and BBD RINs to converge to the price of the BBD RIN.[197] When examining RIN prices data from 2013 through mid-2016, shown in Figure VI.B.2–1 below, we see that throughout this entire time period the advanced RIN price and biomass-based diesel RIN prices were approximately equal. Similarly, throughout most of this time period the conventional renewable fuel and biomass-based diesel RIN prices were approximately equal. This suggests that the advanced biofuel standard and/or total renewable fuel standard was capable of incentivizing increased BBD volumes beyond the BBD standard in these years.[198] While final standards were not in place throughout 2014 and most of 2015, EPA had issued proposed rules for both of these years. In each year, the market response was to supply volumes of BBD that exceeded the proposed BBD standard in order to satisfy the advanced biofuel standard. Additionally, the RIN prices in these years strongly suggests that obligated parties and other market participants anticipated the need for BBD RINs to meet their advanced biofuel obligations, and responded by purchasing advanced biofuel and BBD RINs at approximately equal prices.

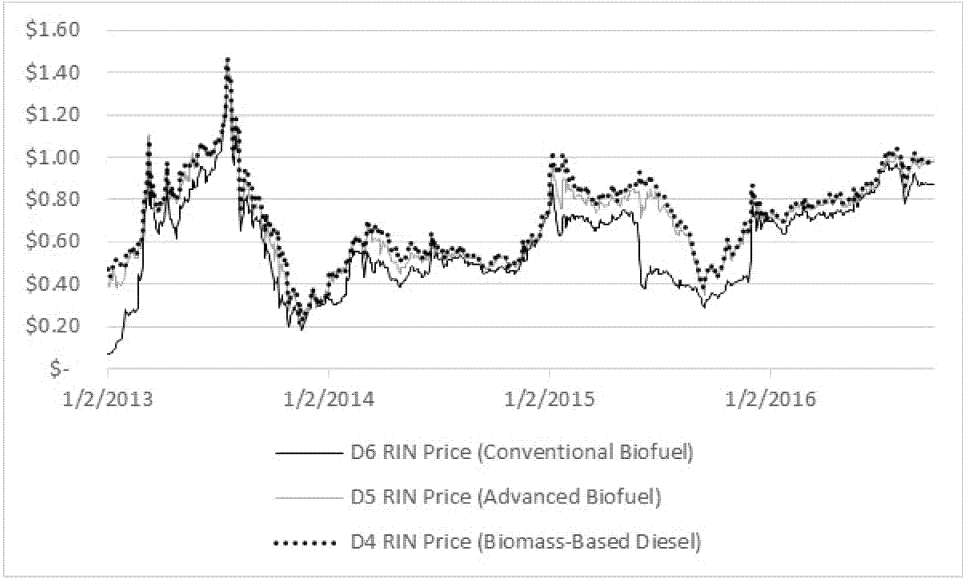
[195] "Comparison of 2016 availability of RINs and 2016 standards," memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[196] This is because when an obligated party retires a BBD RIN to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[197] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

[198] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute (76 FR 38844, 38843).

Figure VI.B.2-1
Current Year RIN Prices (2013-2016)[a]



[a] For a list of the eligible pathways for each D-code see Table 1 to §80.1426
RIN Price Data from OPIS (2013-2015) and Argus (2016)

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. That is, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to be used to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met. Indeed, since Congress specifically directed growth in BBD only through 2012, leaving development of volume targets for BBD to EPA for later years while also specifying substantial growth in the cellulosic biofuel and advanced biofuel categories, we believe that Congress clearly intended for EPA to evaluate in setting BBD volume requirements after 2012 the appropriate rate of participation of BBD within the advanced biofuel standard.

When viewed in a long-term perspective, BBD can be seen as competing for research and development dollars with other types of advanced biofuels for participation as advanced biofuels in the RFS program. We believe that preserving space within the advanced biofuel standard for advanced biofuels that do not qualify as BBD or cellulosic biofuel provides the appropriate incentives for the continued development of these types of fuels. In addition to the long-term impact of our action in establishing the BBD volume requirements, there is also the potential for short-term impacts during the compliance years in question. By establishing BBD volume requirements at levels lower than the advanced biofuel volume requirements (and lower than the expected production of BBD to satisfy the advanced biofuel requirement), we are creating the potential for some competition between BBD and other advanced biofuels to satisfy the advanced biofuel volume standard. We continue to believe that preserving space under the advanced biofuel standard for non-BBD advanced biofuels, as well as BBD volumes in excess of the BBD standard, will help to encourage the development and production of a variety of advanced biofuels over the long term without reducing the incentive for additional volumes of BBD beyond the BBD standard in 2018. A variety of different types of advanced biofuels, rather than a single type such as BBD, would positively impact energy security (*e.g.,* by increasing the diversity of feedstock sources used to make biofuels, thereby reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[199]

While a single-minded focus on the ability of the advanced and total renewable fuel standards to incentivize increasing production of the lowest cost qualifying biofuels, regardless of fuel type, would suggest that a flat or even decreasing BBD volume requirement may be the optimal solution, this is not the only consideration. Despite many of these same issues being present in previous years, we have consistently increased the BBD standard each year. Our decisions to establish increasing BBD volumes each year have been made in light of the fact that while cellulosic biofuel production has fallen far short of the statutory volumes, the available supply of BBD in the United States has grown each year. This growing supply of BBD allowed EPA to establish higher advanced biofuel standards, and to realize the GHG benefits associated with greater volumes of advanced biofuel, than would otherwise have been possible in light of the continued shortfall in the availability of cellulosic biofuel. It is in this context that we determined that steadily increasing the BBD requirements was appropriate to encourage continued investment and innovation in the BBD industry, providing necessary assurances to the industry to increase production, while also serving the long term goal of the RFS statute to increase volumes of advanced biofuels over time.

[199] All types of advanced biofuel, including biomass-based diesel and cellulosic biofuel, must achieve lifecycle greenhouse gas reductions of at least 50%.

Although the BBD industry has performed well in recent years, we believe that for 2018 a continued appropriate increase in the BBD volume requirement will help provide stability to the BBD industry and encourage continued growth. This industry is currently the single largest contributor to the advanced biofuel pool, one that to date has been largely responsible for providing the growth in advanced biofuels envisioned by Congress. Nevertheless, many factors that impact the viability of the BBD industry in the United States, such as commodity prices and the biodiesel tax credit, remain uncertain. Continuing to increase the BBD volume requirement should help to provide market conditions that allow these BBD production facilities to operate with greater certainty. This result is consistent with the goals of the Act to increase the production and use of advanced biofuels (for further discussion of these issues see 80 FR 77492).

3. BBD Volume for 2018

With the considerations discussed in Section IV.B.2 in mind, as well as our analysis of the factors specified in the statute, we are setting the applicable volume of BBD at 2.1 billion gallons for 2018. This volume represents an annual increase of 100 million gallons over the applicable volume of BBD in 2017. We believe this is appropriate for the same reasons reflected in the December 14, 2015 final rule: To provide additional support for the BBD industry while allowing room within the advanced biofuel volume requirement for the participation of non-BBD advanced fuels. Although we are not setting the advanced biofuel volume requirement for 2018 at this time, we anticipate that the 2018 advanced biofuel requirement will be larger than the 2017 advanced biofuel volume requirement, and the 2018 BBD volume requirement reflects this anticipated approach. Our assessment of the required statutory factors, summarized in the next section and in a memorandum to the docket, supports this approach.[200]

We believe this approach strikes the appropriate balance between providing a market environment where the development of other advanced biofuels is incentivized, while also maintaining support for growth in BBD volumes. Given the volumes for advanced biofuel we anticipate requiring in 2018, setting the BBD standard in this manner would continue to allow a considerable portion of the advanced biofuel volume to be satisfied by either additional gallons of BBD or by other unspecified types of qualifying advanced biofuels.

C. Consideration of Statutory Factors for 2018

In this section we discuss our consideration of the statutory factors set forth in CAA section 211(o)(2)(B)(ii)(I)–(VI). As noted earlier in Section IV.B.2, the BBD volume requirement is nested within the advanced biofuel requirement and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement. This means that any BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. The result is that in considering the statutory factors we must consider the potential impacts of increasing BBD in comparison to other advanced biofuels.[201] For a given advanced biofuel standard, greater or lesser BBD volume requirements do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD requirement may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement.

Consistent with our 2017 approach in setting the final BBD volume requirement, EPA's primary assessment of the statutory factors for the final 2018 BBD applicable volume is that because the BBD requirement is nested within the advanced biofuel volume requirement, we expect that the final 2018 advanced volume requirement, when set next year, will largely determine the level of BBD production and imports that occur in 2018. Therefore, EPA continues to believe that the same overall volume of BBD would likely be supplied in 2018 regardless of the BBD volume we mandate for 2018 in this final rule. This assessment is based, in part, on our review of the RFS program implementation to date, as discussed above in Section VI.B.1–VI.B–2.

As we stated in our proposal, even though we are not setting the 2018 advanced biofuel volume requirement in this final rule, the final BBD volume requirement for 2018 that we are establishing in this action is not expected to impact the volume of BBD that is actually produced and imported during the 2018-time period. Thus we do not expect our final 2018 BBD volume requirement to result in a difference in the factors we are required to consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI). However, we note that our approach of setting BBD volume requirement at a higher level in 2018 (as we did in 2017), while still at a volume level lower than the anticipated overall production and consumption of BBD in 2018, is consistent with our evaluation of statutory factors in CAA sections 211(o)(2)(B)(ii) (I), (II) and (III), since we continue to believe that our decision on the BBD volume requirement can have a positive impact on the future development and marketing of other advanced biofuels and can also result in potential environmental and energy security benefits, while still sending a supportive signal to potential BBD investors, consistent with the objectives of the Act to encourage the continued growth in production and use of renewable fuels, and in particular, advanced renewable fuels.

Even though we are finalizing only the 2018 BBD volume requirement at this time and not the 2018 advanced biofuel requirement, we believe that our primary assessment with respect to the 2018 BBD volume requirement is appropriate, as is clear from the fact that the reasoning and analysis would apply even if we did not increase the 2018 advanced biofuel requirement above 2017 levels.[202] Nevertheless, we anticipate that the 2018 advanced biofuel requirement will be set to reflect reasonably attainable and appropriate volumes in the use of all advanced biofuels, similar to the approach used in this rule, and that the advanced biofuel volume standard will be larger in 2018 than in 2017.

As an additional supplementary assessment, we have considered the potential impacts of modifying the 2018 BBD volume requirement from the level of 2.1 billion gallons based on the assumption that in guaranteeing the BBD volume at any given level there could be greater use of BBD and a corresponding decrease in the use of other types of advanced biofuels. However, setting a BBD volume requirement higher or lower than 2.1

[200] ''Memorandum to docket: Final Statutory Factors Assessment for the 2018 Biomass-Based Diesel (BBD) Applicable Volumes.''

[201] While excess BBD production could also displace conventional renewable fuel under the total renewable standard, as long as the BBD applicable volume is significantly lower than the advanced biofuel applicable volume our action in setting the BBD applicable volume is not expected to displace conventional renewable fuel under the total renewable standard, but rather other advanced biofuels. See Table V. C–1.

[202] As explained in Section IV, in deriving the 2017 advanced biofuel applicable volume requirement, we assumed that 2.4 billion gallons of BBD (3.72 billion RINs) would be used to satisfy the 4.28 bill gal advanced biofuel requirement. Thus the mandated 2018 BBD applicable volume is less than we anticipate will actually be used in 2017.

billion gallons in 2018 would only be expected to impact BBD volumes on the margin, protecting to a lesser or greater degree BBD from being outcompeted by other advanced biofuels. In this supplementary assessment we have considered all of the statutory factors found in CAA section 211(2)(B)(ii), and as described in a memorandum to the docket,[203] our assessment does not appear, based on available information, to provide a reasonable basis for setting a higher or lower volume requirement for BBD than 2.1 billion gallons for 2018.

Overall and as described in our final memorandum to the docket, we have determined that both the primary assessment and the supplemental assessment of the statutory factors specified in CAA section 211(o)(2)(B)(ii)(I)–(VI) for the year 2018 does not provide significant support for setting the BBD standard at a level higher or lower than 2.1 billion gallons in 2018.

The EPA received numerous comments pertaining to the consideration of the statutory factors for the 2018 BBD volume requirement. Many of these comments were made previously in response to last year's proposal to set the 2017 BBD volume requirement at 2.0 billion as part of the renewable fuels program's annual rulemaking.[204] Below we reiterate our responses to a number of key issues which continue to be raised by the National Biodiesel Board (NBB). Additional comments and EPA responses can be found in the Response to Comment document that accompanies this final rule.

NBB restated its claim that we improperly based our consideration of the statutory factors on a comparison of BBD to other advanced biofuels, rather than to diesel fuel. They continued to suggest that setting the BBD standard at a higher level than proposed would actually result in BBD competing against diesel fuel, and therefore, EPA should analyze the impacts of displacing diesel fuel with BBD in its statutory factors analysis. We continue to disagree. In setting the advanced biofuel volume requirement, we have assumed reasonably attainable and appropriate volumes in BBD and other advanced biofuels. After determining that it is in the interest of the program, as described in Section VI.B.2 to set the BBD volume requirement at a level below anticipated BBD production and imports, so as to provide continued incentives for research and development of alternative advanced biofuels, it is apparent that excess BBD above the BBD volume requirement will compete with other advanced biofuels, rather than diesel.[205] The only way for EPA's action on the BBD volume requirement to result in a direct displacement of petroleum-based fuels, rather than other advanced biofuels, would be if the BBD volume requirement were set larger than the total renewable fuel requirement. However, since BBD is a type of advanced biofuel, and advanced biofuel is a type of renewable fuel, the BBD volume requirement could never be larger than the advanced requirement and the advanced biofuel requirement could never be larger than the total renewable fuel requirement.

NBB also continues to assert that our analysis of the desirability of setting the BBD volume requirement in a manner that would promote the development and use of a diverse array of advanced biofuels is prohibited by statute. We disagree with these comments and continue to believe that the statutory volumes of renewable fuel established by Congress in CAA section 211(o)(2)(B) provide an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to be used to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met. Ensuring that a diversity of renewable biofuels are produced is consistent with CAA section 211 (o)(2)(A)(i), which requires that the EPA ''ensure that transportation fuel sold, or introduced into commerce in the United States . . . contains at least the applicable volume of renewable fuel, advanced biofuels, cellulosic biofuel, and biomass-based diesel . . .''. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, when an obligated party retires a BBD RIN (D4) to satisfy their obligation, this RIN also counts towards meeting their advanced biofuel and total renewable fuel obligations. It also means that obligated parties may use BBD RINs in excess of their BBD obligations to satisfy their advanced biofuel and total renewable fuel obligations. To the extent that obligated parties are required to achieve compliance with the overall advanced biofuel standard using higher volumes of BBD D4 RINs, they forgo the use of other biofuels considered advanced biofuels to meet the advanced biofuel requirement. Therefore, the higher the BBD volume standard is, the lower the opportunity for other non-BBD advanced biofuels to compete for market share within the context of the advanced biofuel standard. When viewed in a long-term perspective, BBD can be seen as competing for research and development dollars with other types of advanced biofuels for participation as advanced biofuels in the RFS program.

Finally, NBB restated its argument that the EPA previously found statutory factors supported greater annual increases in BBD volume requirement for 2013 and the statutory factors analysis developed to justify the 2017 BBD and now the 2018 volume requirements contradicts the analysis EPA put forward in 2013. We disagree. As in 2013, we have determined that incremental increases in the 2018 BBD volume requirement are appropriate to provide continued support to the BBD industry. We did this in 2013, acknowledging the important role the industry thus far had played in providing advanced biofuels to the marketplace, and in furthering the GHG reduction objectives of the statute. We did not in 2013, and are not today, setting the BBD volume requirement at the maximum potential production volume of BBD.

VII. Percentage Standards for 2017

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party meets the percentages by acquiring and retiring an appropriate number of RINs, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel (BBD), and advanced biofuel used will meet the

[203] ''Memorandum to docket: Final Statutory Factors Assessment for the 2018 Biomass-Based Diesel (BBD) Applicable Volumes.''

[204] Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Final Rule. 80 FR 77420.

[205] The possibility for competition between BBD and other types of advanced biofuels is not precluded by our setting the advanced biofuel requirement at a level that reflects reasonably attainable volumes of all advanced biofuel types, or by our setting the total renewable fuel volume requirement at a level that also reflects the reasonably achievable volume of all fuel types. Any of our estimates related to a particular fuel type could prove to be either an over or under estimate. We are confident that the sum of all individual estimates used in setting the applicable volumes for 2017 as well as the 2018 BBD volume requirement at an appropriate level are reasonable, and more accurate than our individual estimates for any particular fuel type. It is at the margin where our estimates regarding production and import of individual fuel types may be in error that competition between qualifying fuels can take place.

applicable volume requirements on a nationwide basis.

Sections III through V provide our rationale and basis for the volume requirements for 2017.[206] The volumes used to determine the percentage standards are shown in Table VII–1.

TABLE VII–1—VOLUMES FOR USE IN SETTING THE 2017 APPLICABLE PERCENTAGE STANDARDS

[Billion gallons]

Cellulosic biofuel	0.311
Biomass-based diesel [a]	2.00
Advanced biofuel	4.28
Renewable fuel	19.28

[a] Represents physical volume.

For the purposes of converting these volumes into percentage standards, we generally use two decimal places to be consistent with the volume targets as given in the statute, and similarly two decimal places in the percentage standards. However, for cellulosic biofuel we use three decimal places in both the volume requirement and percentage standards to more precisely capture the smaller volume projections and the unique methodology that in some cases results in estimates of only a few million gallons for a single producer.

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in § 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA, and include ethanol and biodiesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of ethanol and biodiesel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

As specified in the March 26, 2010 RFS2 final rule, the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. The formula specified in the regulations for calculation of the BBD percentage standard is based on biodiesel-equivalence, and thus assumes that all BBD used to satisfy the BBD standard is biodiesel and requires that the applicable volume requirement be multiplied by 1.5. However, BBD often contains some renewable diesel, and a gallon of renewable diesel typically generates 1.7 RINs.[207] In addition, there is often some renewable diesel in the conventional renewable fuel pool. As a result, the actual number of RINs generated by biodiesel and renewable diesel is used in the context of our assessing reasonably attainable volumes for purposes of deriving the applicable volume requirements and associated percentage standards for advanced biofuel and total renewable fuel, and likewise in obligated parties' determination of compliance with any of the applicable standards. While there is a difference in the treatment of biodiesel + renewable diesel in the context of determining the percentage standard for BBD versus determining the percentage standard for advanced biofuel and total renewable fuel, it is not a significant one given our approach to determining the BBD volume requirement; o. Our intent in setting the BBD applicable volume is to provide an additional increment of guaranteed volume for BBD, but as described in Section VI.B, we do not expect the BBD standard to be binding. That is, we expect that actual supply of BBD, as well as supply of conventional biodiesel + renewable diesel, will be driven by the advanced biofuel and total renewable fuel standards.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries [208] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or based on an EPA determination of ''disproportionate economic hardship'' on a case-by-case basis in response to small refinery petitions. In reviewing petitions, EPA, in consultation with the Department of Energy, evaluates the impacts petitioning refineries would likely face in achieving compliance with the RFS requirements and how compliance would affect their ability to remain competitive and profitable.

EPA has granted some exemptions pursuant to this process in the past. However, at this time, no exemptions have been approved for 2017, and therefore we have calculated the percentage standards for this year without an adjustment for exempted volumes. Any requests for exemptions for 2017 that are approved after the final rule is released will not be reflected in the percentage standards that apply to all gasoline and diesel produced or imported in 2017. As stated in the final rule establishing the 2011 standards, ''EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' [209]

C. Final Standards

The formulas in § 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and exemptions for small refineries. The values of all the variables used for this final rule are shown in Table VII.C–1.[210]

[206] The 2017 volume requirement for BBD was established in the 2014–2016 final rule.

[207] Although in some cases a gallon of renewable diesel generates either 1.5 or 1.6 RINs.

[208] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

[209] See 75 FR 76804 (December 9, 2010).

[210] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. The Alaska fractions are determined from the

TABLE VII.C–1—VALUES FOR TERMS IN CALCULATION OF THE 2017 STANDARDS[211]

[Billion gallons]

Term	Description	Value
RFV_{CB}	Required volume of cellulosic biofuel	0.311
RFV_{BBD}	Required volume of biomass-based diesel	2.00
RFV_{AB}	Required volume of advanced biofuel	4.28
RFV_{RF}	Required volume of renewable fuel	19.28
G	Projected volume of gasoline	143.61
D	Projected volume of diesel	53.15
RG	Projected volume of renewables in gasoline	14.35
RD	Projected volume of renewables in diesel	2.28
GS	Projected volume of gasoline for opt-in areas	0.00
RGS	Projected volume of renewables in gasoline for opt-in areas	0.00
DS	Projected volume of diesel for opt-in areas	0.00
RDS	Projected volume of renewables in diesel for opt-in areas	0.00
GE	Projected volume of gasoline for exempt small refineries	0.00
DE	Projected volume of diesel for exempt small refineries	0.00

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were provided by EIA and are consistent with the October, 2016 version of EIA's Short-Term Energy Outlook (STEO).[212] These projections reflect EIA's judgment of future demand volumes in 2017, accounting for the low oil price environment in 2016.

Using the volumes shown in Table VII.C–1, we have calculated the percentage standards for 2017 as shown in Table VII.C–2.

TABLE VII.C–2—FINAL PERCENTAGE STANDARDS FOR 2017

Cellulosic biofuel	0.173
Biomass-based diesel	1.67
Advanced biofuel	2.38
Renewable fuel	10.70

VIII. Assessment of Aggregate Compliance

A. Assessment of the Domestic Aggregate Compliance Approach

The RFS2 regulations contain a provision for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land that relieves them of the individual recordkeeping and reporting requirements concerning the specific land from which their feedstocks were harvested. To enable this approach, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. We therefore provided that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not comply with the individual recordkeeping and reporting requirements related to documenting that their feedstocks are renewable biomass, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded.

In the final RFS2 regulations, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

The Aggregate Compliance methodology provided for the exclusion of acreage enrolled in the Grassland Reserve Program (GRP) and the Wetlands Reserve Program (WRP) from the estimated total U.S. agricultural land. However, the 2014 Farm Bill terminated the GRP and WRP as of 2013 and USDA established the Agriculture Conservation Easement Program (ACEP) with wetlands and land easement components. The ACEP provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements (ACEP–ALE) component, USDA helps Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements (ACEP–WRE) component, USDA helps to restore, protect and enhance enrolled wetlands. The WRP was a voluntary program that offered landowners the opportunity to protect, restore, and enhance wetlands on their property. The GRP was a voluntary conservation program the emphasized support for working grazing operations, enhancement of plant and animal biodiversity, and protection of grassland under threat of conversion to other uses.

USDA and EPA concur that the ACEP–WRE and ACEP–ALE represent a continuation in basic objectives and goals of the original WRP and GRP. Therefore, it was assumed in this rulemaking that acreage enrolled in the easement programs would represent a reasonable proxy of WRP and GRP acreage and was excluded when estimating total U.S. agricultural land.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 380 million acres in 2016, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking, with the GRP and WRP substitution as noted above. Specifically, we started with FSA crop history data for 2016, from which we derived a total estimated acreage of 380,429,574 acres. We then subtracted the ACEP–ALE and ACEP–WRE enrolled areas by the end of Fiscal Year 2016, 313,284 acres, to yield an estimate

June 29, 2016 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[211] See "Calculation of final % standards for 2017" in docket EPA–HQ–OAR–2016–0004.

[212] "EIA projections of transportation fuel for 2017," docket EPA–HQ–OAR–2016–0004.

of approximately 380 million acres of U.S. agricultural land in 2016. Note that these programs were still in place in 2016. The USDA data used to make this derivation can be found in the docket to this rule.[213]

B. Assessment of the Canadian Aggregate Compliance Approach

On March 15, 2011, EPA issued a notice of receipt of and solicited public comment on a petition for EPA to authorize the use of an aggregate approach for compliance with the Renewable Fuel Standard renewable biomass requirements, submitted by the Government of Canada. The petition requested that EPA determine that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass. After thorough consideration of the petition, all supporting documentation provided and the public comments received, EPA determined that the criteria for approval of the petition were satisfied and approved the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and non-forested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2016 is estimated at 118.4 million acres. This total agricultural land area includes 94.6 million acres of cropland and summer fallow, 14.0 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The trigger point for further evaluation of the data for subsequent years, provided by Canada, is 124 million acres. The data used to make this calculation can be found in the docket to this rule.

[213] For the first time since 2013, USDA provided EPA with data on legacy acreage still covered by the discontinued GRP and WRP. Given this new data, EPA also estimated the total U.S. agricultural land taking the GRP and WRP acreage into account. In 2016, combined land under GRP and WRP totaled 2,966,122 acres. Factoring in the GRP, WRP, ACEP–WRE, and ACEP–ALE data yields an estimate of 377,150,168 acres or approximately 377 million total acres of U.S. agricultural land in 2016.

IX. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on May 31, 2016 (81 FR 34778), and we also held a public hearing on June 9, 2016, at which many parties provided both verbal and written testimony. All comments received, both verbal and written, are available in EPA docket EPA–HQ–OAR–2016–0004 and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble and in the accompanying RTC document, which is available in the docket for this action.

X. Statutory and Executive Order Reviews

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of illustrative costs associated with this action. This analysis is presented in Section V.D of this preamble.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0637 and 2060–0640. The final standards will not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

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 the RFS program are small refiners, which are defined at 13 CFR 121.201. We have evaluated the impacts of this final rule on small entities from two perspectives: As if the 2017 standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the standards as if they were a standalone action separate and apart from the original rulemaking which established the RFS2 program, then the standards could be viewed as increasing the volumes required of obligated parties between 2016 and 2017. To evaluate this rule from this perspective, EPA has conducted a screening analysis[214] to assess whether it should make a finding that this action would not have a significant economic impact on a substantial number of small entities. Currently-available information shows that the impact on small entities from implementation of this rule would not be significant. EPA has reviewed and assessed the available information, which suggests that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[215] [216] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. Even if we were to assume that the cost of acquiring RINs were not recovered by obligated parties, and we used the maximum values of the illustrative costs discussed in Section V.D and the gasoline and diesel fuel volume projections and wholesale prices from the October 2016 version of EIA's Short-Term Energy Outlook, and current wholesale fuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1% of the value of their sales.

[214] ''Updated Screening Analysis for the Final Renewable Fuel Standard Program Renewable Volume Obligations for 2017'', memorandum from Dallas Burkholder and Tia Sutton to EPA Air Docket EPA–HQ–OAR–2016–0004.

[215] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[216] Knittel, Christopher R., Ben S. Meiselman, and James H. Stock. ''The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuel Standard.'' Working Paper 21343. NBER Working Paper Series. Available online *http://www.nber.org/papers/w21343.pdf.*

While the screening analysis described above supports a certification that this rule would not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule (75 FR 14670, March 26, 2010), which was the rule that implemented the entire program required by the Energy Independence and Security Act of 2007 (EISA 2007). As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, EPA conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, it was estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862).

We have determined that this final rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this final rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. As shown above in Tables I–1 and I.A–1 (and discussed further in Sections III, IV, and V), this rule establishes the 2017 volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel at levels significantly below the statutory volume targets. This exercise of EPA's waiver authority reduces burdens on small entities, as compared to the burdens that would be imposed under the volumes specified in the Clean Air Act in the absence of waivers—which are the volumes that we assessed in the screening analysis that we prepared for implementation of the full program. Regarding the biomass-based diesel standard, we are increasing the volume requirement for 2018 over the statutory minimum value of 1 billion gallons. However, this is a nested standard within the advanced biofuel category, which we are significantly reducing from the statutory volume targets. As discussed in Section VI, we are setting the 2018 biomass-based diesel volume requirement at a level below what is anticipated will be produced and used to satisfy the reduced advanced biofuel requirement. The net result of the standards being established in this action is a reduction in burden as compared to implementation of the statutory volume targets, as was assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20% RIN rollover allowance (up to 20% of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, as we realize that there may be cases in which a small entity experiences hardship beyond the level of assistance afforded by the program flexibilities, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[217] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) that allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that compliance with the requirements of the RFS program would result in the refinery experiencing a ''disproportionate economic hardship.'' EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief. A small refiner may petition for a small refiner exemption based on a similar showing that compliance with the requirements of the RFS program would result in the refiner experiencing a ''disproportionate economic hardship'' (see 40 CFR 80.1442(h)). EPA evaluates these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, EPA consults with the U.S. Department of Energy, and takes the findings of DOE's 2011 Small Refinery Study and other economic factors into consideration. EPA successfully implemented these provisions by evaluating petitions for exemption from 13 small refineries for the 2014 RFS standards.

Given that this final rule will not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets, would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to successfully implement), and available information shows that the impact on small entities from implementation of this rule would not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program, we have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This final action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared a written statement required under section 202 of UMRA. This statement is presented in Section V.D in the form of illustrative cost estimates of the 2017 RFS standards. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule.

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

[217] See CAA section 211(o)(9)(B).

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. This final rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. 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 implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2017, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and lowering lifecycle greenhouse gas emissions of transportation fuel.

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 environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

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 a ''major rule'' as defined by 5 U.S.C. 804(2).

XI. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this final rule come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: November 23, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—[Amended]

■ 2. Section 80.1405 is amended by adding new paragraph (a)(8) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(8) *Renewable Fuel Standards for 2017.*

(i) The value of the cellulosic biofuel standard for 2017 shall be 0.173 percent.

(ii) The value of the biomass-based diesel standard for 2017 shall be 1.67 percent.

(iii) The value of the advanced biofuel standard for 2017 shall be 2.38 percent.

(iv) The value of the renewable fuel standard for 2017 shall be 10.70 percent.

* * * * *

[FR Doc. 2016–28879 Filed 12–9–16; 8:45 am]

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Part V

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Uninterruptible Power Supplies; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2016–BT–TP–0018]

RIN 1904–AD68

Energy Conservation Program: Test Procedure for Uninterruptible Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is revising its battery charger test procedure established under the Energy Policy and Conservation Act of 1975, as amended. These revisions will add a discrete test procedure for uninterruptible power supplies (UPSs) to the current battery charger test procedure.

DATES: The effective date of this rule is January 11, 2017. The final rule changes will be mandatory for representations starting June 12, 2017. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on January 11, 2017.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at *https://www.regulations.gov/docket?D=EERE-2016-BT-TP-0018.* The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference the following industry standards into 10 CFR part 430:

1. ANSI/NEMA WD 6–2016, ''Wiring Devices—Dimensional Specifications'', ANSI approved February 11, 2016, Figure 1–15 and Figure 5–15.

Copies of ANSI/NEMA WD 6–2016 can be obtained from American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or by going to *http://www.ansi.org*

2. IEC 62040–3, ''Uninterruptible power systems (UPS)—Part 3: Methods of specifying the performance and test requirements,'' Edition 2.0, 2011–03, Section 5.2.1, Clause 5.2.2.k, Clause 5.3.2.d, Clause 5.3.2.e, Section 5.3.4, Section 6.2.2.7, Section 6.4.1 (except 6.4.1.3, 6.4.1.4, 6.4.1.5, 6.4.1.6, 6.4.1.7, 6.4.1.8, 6.4.1.9 and 6.4.1.10), Annex G, and Annex J.

Copies of the IEC 62040–3 Ed. 2.0 standard are available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, or at *http://webstore.ansi.org/.*

For further discussion of these standards, see section IV.N.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency.[1] Part B [2] of title III, established the Energy Conservation Program for Consumer Products Other Than Automobiles. Battery chargers are among the consumer products affected by these provisions. (42 U.S.C. 6295(u))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which

[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act, Public Law 114–11 (April 30, 2015).

[2] For editorial reasons, Part B was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified).

measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

Background

DOE previously published a notice of proposed rulemaking (NOPR) on March 27, 2012, regarding energy conservation standards for battery chargers and external power supplies (March 2012 NOPR) in which it proposed standards for battery chargers, including uninterruptible power supplies (UPSs). 77 FR 18478.

Following the publication of this March 2012 NOPR, DOE explored whether to regulate UPSs as ''computer systems.'' *See, e.g.,* 79 FR 11345 (Feb. 28, 2014) (proposed coverage determination); 79 FR 41656 (July 17, 2014) (computer systems framework document). DOE received a number of comments in response to those documents (and the related public meetings) regarding testing of UPSs, which are discussed in the May 2016 NOPR. DOE also received questions and requests for clarification regarding the testing, rating, and classification of battery chargers.

As part of the continuing effort to establish federal energy conservation standards for battery chargers and to develop a clear and widely applicable test procedure, DOE published a notice of data availability (May 2014 NODA) on May 15, 2014. 79 FR 27774. This NODA sought comments from stakeholders concerning the repeatability of the test procedure when testing battery chargers with several consumer configurations, and concerning the future market penetration of new battery charging technologies that may require revisions to the battery charger test procedure. DOE also sought comments on the reporting requirements for manufacturers attempting to comply with the California Energy Commission's (CEC's) efficiency standards for battery chargers in order to understand certain data discrepancies in the CEC database. These issues were discussed during DOE's May 2014 NODA public meeting on June 3, 2014.

Based upon discussions from the May 2014 NODA public meeting and written comments submitted by various stakeholders, DOE published a NOPR (August 2015 NOPR) to revise the current battery charger test procedure. 80 FR 46855 (Aug. 6, 2015). DOE received a number of stakeholder comments on the August 2015 NOPR and the computer systems framework document regarding regulation of battery chargers including UPSs. After considering these comments, DOE reconsidered its position and found that because a UPS meets the definition of a battery charger, it is more appropriate to regulate UPSs as part of the battery charger rulemaking. Therefore, DOE issued the May 2016 NOPR, which proposed to add a discrete test procedure for UPS to the existing battery charger test procedure. This final rule adopts the proposals discussed in the May 2016 NOPR, along with revisions suggested by stakeholder comments.

II. Synopsis of the Final Rule

This final rule adds provisions for testing UPSs to the battery charger test procedure. Specifically, DOE is incorporating by reference specific sections of the IEC 62040–3 Ed. 2.0 standard, with additional instructions, into the current battery charger test procedure published at appendix Y to subpart B of 10 CFR part 430. This final rule also adds formal definitions of uninterruptible power supply, voltage and frequency dependent UPS, voltage independent UPS, voltage and frequency independent UPS, energy storage system, normal mode and reference test load to appendix Y to subpart B of 10 CFR part 430 and revises the compliance certification requirements for battery chargers published at 10 CFR 429.39. Table II.1 shows the significant changes since the May 2016 NOPR.

TABLE II.1—SUMMARY OF SIGNIFICANT CHANGES

Sections	May 2016 NOPR	Final rule
429.39	• Proposed a sampling plan for compliance certification based on the test results of at least 2 units per basic model.	• Adopted the proposed sampling plan for compliance certification based on the test results of at least 2 units per basic model. Also added option for manufacturers to certify compliance based on the test results of a single unit per basic model.
1. Scope	• Proposed scope covered all products that met the proposed definition of a UPS and have an AC output.	• Adopted scope covers all products that meet the adopted definition of UPS, utilize a NEMA 1–15P or 5–15P input plug and have an AC output.
2. Definitions	• ''*Voltage and frequency independent UPS* or *VFI UPS* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source. The input voltage and frequency variations through which the UPS must remain in normal mode is as follows: (1) ± 10% of the rated input voltage or the tolerance range specified by the manufacturer, whichever is greater; and (2) ± 2% of the rated input frequency or the tolerance range specified by the manufacturer, whichever is greater.''	• ''*Voltage and frequency independent UPS* or *VFI UPS* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source.''

TABLE II.1—SUMMARY OF SIGNIFICANT CHANGES—Continued

Sections	May 2016 NOPR	Final rule
	• "*Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage without depleting the stored energy source. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system."	• "*Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system."
4. Testing Requirements for Uninterruptible Power Supplies.	• Proposed that the average power can be calculated either using accumulated energy or instantaneous power.	• Adopted that the average power can only be calculated using instantaneous power.
	• Proposed that efficiency can only be calculated from average power.	• Adopted that efficiency can be calculated from average power or accumulated energy.

III. Discussion

In response to the May 2016 NOPR, DOE received written comments from six interested parties, including manufacturers, trade associations, energy efficiency advocacy groups, and a foreign government.

Table III.1 lists the entities that commented on the May 2016 NOPR and their affiliation. These comments are discussed in further detail below, and the full set of comments can be found at: *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EERE-2016-BT-TP-0018*

TABLE III.1—INTERESTED PARTIES THAT PROVIDED WRITTEN COMMENTS ON THE MAY 2016 NOPR

Commenter	Acronym	Organization type/affiliation	Comment No. (docket reference)
ARRIS Group, Inc	ARRIS	Manufacturer	0004
Information Technology Industry Council	ITI	Trade Association	0007
National Electrical Manufacturers Association	NEMA	Trade Association	0008
Natural Resources Defense Council, Appliance Standards Awareness Project, Northwest Energy Efficiency Alliance, Alliance to Save Energy, and American Council for an Energy Efficient Economy.	NRDC, et al.	Energy Efficiency Advocates	0006
People's Republic of China	P. R. China	Foreign Government	0009
Schneider Electric	Schneider Electric	Manufacturer	0005

A number of interested parties also provided oral comments at the June 9, 2016, public meeting. These comments can be found in the public meeting transcript (Pub. Mtg. Tr.), which is available on the docket.

A. Covered Products and Scope

In the May 2016 NOPR, DOE proposed that all products that meet the proposed definition of UPS and have an AC output will be subject to the testing requirements of the proposed test procedure. 81 FR 31545. During the public meeting held on June 9, 2016, to discuss the May 2016 NOPR, Schneider Electric called the proposed scope broad and argued that the proposed scope covers UPSs that can operate at power levels beyond the standard household power plugs. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 16–17) Schneider Electric claimed that voltage and frequency dependent (VFD) UPSs exist in a consumer environment, voltage independent (VI) UPSs may exist in a consumer environment and voltage and frequency independent (VFI) UPSs do not exist in a consumer environment and requested that DOE update the proposed scope of the test procedure to represent what consumers are purchasing. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 29–30) NEMA requested that DOE adopt the standard wall plug requirement (12A at 115V) in the scope to differentiate consumer UPSs from commercial UPSs. (NEMA, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 22) Further, as part of written stakeholder comments, Schneider Electric expressed concern that DOE's definition of consumer products is inadequate to describe the scope of products that DOE intends to regulate. The range of products within the scope of the definition of consumer products will be much broader than consumer products in the marketplace and will include commercial and industrial applications that are not found in residences due to size and other criteria. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 1) Schneider Electric requested that DOE identify and add indicators to differentiate consumer products from commercial products, such as pluggable Type A equipment as defined by the IEC 60950–1 standard, to the scope. It reasoned that assumptions regarding covered versus non-covered products can result in significant effort and expense wasted redesigning non-covered products or result in significant fines for failing to redesign products mistakenly and unintentionally thought to be out of scope. Schneider Electric requested that DOE add the North American residential mains power, single phase requirement of no more than 12A to the scope and remove all rack mounted or rack mountable UPSs and UPSs that require multiphase power from the scope. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 5) Schneider Electric further pointed out that the proposed load weightings table refers to UPSs with output powers greater than 1500W, which could include UPSs that are not specifically targeted for consumers. According to Schneider Electric, UPSs greater than

1500W are consistently targeted at commercial and industrial applications and DOE's attempt to regulate them is not justified by the scope of EPCA or the Energy Independence and Security Act of 2007 (EISA). Schneider Electric explained that the proposed scope can cause UPSs that are not intended to be distributed to consumer or in residential applications to be included within the scope of the test procedure, inflating savings for the DOE that are clearly not consumer based. In addition, this causes undue burden on the industry to test devices which were not intended for consumer applications, but may fall within the scope. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 8) NEMA requested that DOE narrow the scope of the proposed test procedure by adding the following parameters: non-rack mounted, FCC Class B compliant, 12A at 120 V or less, whose input characteristics are either VFD or VI. NEMA argued that products outside these parameters are commercial in nature or have power consumption and electrical characteristics which place them outside the use in typical consumer environments. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 4)

DOE had also solicited comments from stakeholders on the use of product characteristics, such as capacity, to narrow the scope of coverage and differentiate between consumer and commercial UPSs in the computer and battery backup systems framework document published on July 11, 2014 where DOE explored whether to regulate UPSs as part of that rulemaking. ITI noted that personal computers are powered using single residential/office outlet, 5–15 amperes (A) typically. (ITI, No. 0010, EERE–2014–BT–STD–0025, p. 2) ITI also commented that UPSs at home do not utilize multiphase voltage and the maximum amperage of a single device on a single branch circuit should be less than or equal to 80 percent of the circuit amperage the limit for which is 15A according to the National Electrical Code (NEC). (ITI, No. 0010, EERE–2014–BT–STD–0025, p. 11). Schneider Electric noted that run-time and battery capacity of the UPS would be inappropriate as a differentiator since commercial and consumer customers may have similar needs but that consumer (residential) applications do not exist in excess of 120V and that the NEC defines residential circuitry amperage limit for a single branch to be 15 Amps. (Schneider Electric, No 0008, EERE–2014–BT–STD–0025, p. 8). The Natural Resources Defense Council (NRDC), The Appliance Standard Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Consumer Federation of America, Consumers Union, Northeast Energy Efficiency Partnerships (NEEP), and Northwest Energy Efficiency Alliance (NEEA) (hereafter referred to as Joint Responders) also agreed with the use of residential power circuits for differentiating consumer from commercial UPSs, but discouraged the use of a standard wall plug as it would eliminate UPSs capable of running on 240V 3-phase receptacles. (Joint Responders, No. 0013, EERE–2014–BT–STD–0025, p. 6)

In response to Schneider Electric's comment regarding the definition of consumer product, DOE notes that the definition of this term in 10 CFR 430.2 is the same as that set forth by Congress in EPCA. (42 U.S.C. 6291(1)) Further, in the May 2016 NOPR, DOE found that UPSs meet the definition of battery charger and proposed to define UPS as ''a battery charger consisting of a combination of convertors, switches and energy storage devices, constituting a power system for maintaining continuity of load power in case of input power failure.'' Battery chargers are a type of consumer product, defined in EPCA, for which the statute directs DOE to prescribe test procedures. (42 U.S.C. 6295(u)) Therefore, necessarily, the scope of the battery charger test procedure, which includes UPSs, only applies to consumer products.

Nonetheless, after considering stakeholder comments regarding the proposed scope, DOE agrees with NEMA, ITI and Schneider Electric's suggestion that the scope of the test procedure need not include products typically used in a commercial or industrial environment. Accordingly, DOE is limiting the scope of the test procedure to UPSs that utilize a standard NEMA 1–15P and 5–15P wall plugs. NEMA 1–15P and 5–15P input plugs are designed to mate with NEMA 1–15R and 5–15R receptacles as specified in ANSI/NEMA WD 6–2016. These receptacles are the most commonly found outlets in U.S. households with limited use in products designed to exclusively operate in commercial or industrial environments because of their restrictive power handling capability. Specifying NEMA 1–15P and 5–15P plugs in defining the scope of this test procedure also avoids the need for DOE to further add power constraints as these plugs are only capable of handling up to 15A of current at 125V, which limits their maximum power handling capability to 1875W. DOE is therefore adding the NEMA 1–15P and 5–15P input plug requirement by incorporating by reference ANSI/NEMA WD 6–2016 standard into section 1, ''Scope'', of appendix Y to subpart B of 10 CFR part 430. Hence, any product that meets the definition of a UPS, utilizes a NEMA 1–15P or 5–15P input plug, and has an AC output is covered under the testing requirements being adopted in this final rule.

Schneider Electric also inquired whether specific or all DC output UPSs are excluded from the proposed scope of the test procedure, and if the proposed scope includes hybrid AC/DC UPSs, UPSs with DC charging, and UPSs with USB ports. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 16–17, 20) (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 6) Schneider Electric also requested clarification on whether UPSs that do not have an AC output socket or UPSs that do not provide the full power rating through the AC output socket are excluded from the proposed scope. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 32) Lastly, Schneider Electric inquired whether the USB ports of a UPS be loaded or unloaded during testing. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 20)

DOE clarifies that all products that meet the definition of UPS, utilize a NEMA 1–15P or 5–15P input plug, and have AC output(s) are included in scope under the testing requirements of this final rule. This includes UPSs with AC output(s) as well as additional DC output(s) such as but not limited to USB port(s). Similarly, hybrid AC/DC output UPSs are also included in scope under the testing requirements of this final rule. All DC output port(s) of an AC output UPS must be unloaded during testing. DOE is adding specific language in section 4.2.1, which is being added to appendix Y to subpart B of 10 CFR part 430 to highlight this setup requirement. Further, it is DOE's understanding and intention that the term ''AC output socket'' of a UPS refers to any port capable of providing the full or partial rated output power of the UPS as AC. The scope is not limited to UPSs with standardized NEMA receptacles. Therefore, all UPSs that utilize NEMA 1–15P or 5–15P input plugs and have an AC output are included in the scope of this final rule.

Schneider Electric also inquired if UPSs with ultra-capacitors, flywheels and storage technologies other than batteries are covered under the proposed scope. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 31) DOE notes that UPSs are a subset of battery chargers. A

product that does not meet the definition of a battery charger as stated in 10 CFR 430.2 is excluded from the scope of the UPS test procedure being adopted today. Because ultra-capacitor, flywheels, or storage technologies other than batteries do not meet the definition of a battery as stated in section 2.6 of appendix Y to subpart B of 10 CFR part 430, DOE concludes that UPSs that use ultra-capacitor, flywheels, or storage technologies other than batteries as their energy storage system also do not meet the definition of battery charger and therefore are excluded from the scope of the UPS test procedure.

ARRIS submitted written comments arguing that products such as modems that use a battery exclusively for back-up power have architectures that would fit within the standard IEC 62040–3 Ed. 2.0 definition of a UPS which states that ''uninterruptible power supply or UPS means a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure''. ARRIS highlighted that a simple addition to this definition to reflect that the load power is provided to external devices would provide clarity and help differentiate covered UPSs from other products with a battery exclusively for back-up purposes, which only provide continuity of power internally to the product. (ARRIS, No. 0004, EERE–2016–BT–TP–0018, pp. 2–3) Lastly, ARRIS highlighted that considering a product's typical use also helps differentiate UPS products that provide AC output from other products with a back-up battery that have typical uses such as lighting, medical, security, networking equipment, etc. (ARRIS, No. 0004, EERE–2016–BT–TP–0018, p. 4)

DOE agrees with ARRIS that the definition of a UPS may cover certain back-up battery chargers; however, the current battery charger test procedure specifically defines and excludes back-up battery chargers from its scope. Therefore, certain back-up battery chargers such as those found in cable modems that may meet the definition of a UPS will continue to be excluded from the battery charger test procedure. Additionally, DOE's proposed scope as stated in section 1 of appendix Y to subpart B of 10 CFR part 430 is limited to UPSs with an AC output. (81 FR 31554) Even if a back-up battery charger meets the definition of a UPS, DOE is not aware of any such back-up battery charger that has an AC output. Therefore limiting the scope to only UPSs with an AC output further prevents the applicability of this test procedure to the type of backup battery charger that is of concern to ARRIS. DOE also does not consider a product's typical use an effective way of prescribing the scope of a rulemaking as this leaves significant room for interpretation. With the added requirement of NEMA 1–15P and 5–15P input plugs, the adopted scope of UPS test procedure is definitive and unambiguous.

P. R. China highlighted that Appendix J.2 of IEC 62040–3 Ed. 2.0 standard does not apply to products with output power of less than or equal to 0.3 kilo Volt-Amperes (kVa) and requested DOE to make the proposed test method consistent with the IEC 62040–3 Ed. 2.0 standard by excluding UPSs with output power of less than or equal to 0.3 kVa. (P. R. China, No. 0009, EERE–2016–BT–TP–0018, p. 3) While Annex I of the IEC 62040–3 Ed. 2.0 standard prescribes efficiencies for UPSs rated above 0.3 kVA, the actual conditions and methods for determining the efficiency of a UPS stated in Annex J of the IEC 62040–3 Ed. 2.0 standard does not have any scope restrictions as claimed by P. R. China and are applicable to UPSs rated below 0.3 kVA. Additionally, DOE does not have any data to indicate that UPSs with output power of less than or equal to 0.3 kVA are any different in design than those above 0.3kVA such that this test method would not accurately capture their energy performance. Therefore, DOE is not excluding UPSs with output power of less than or equal to 0.3 kVA from the scope of the UPS test procedure.

B. Existing Test Procedures and Standards Incorporated by Reference

In the May 2016 NOPR, DOE proposed to add specific testing provisions for UPSs in the battery charger test procedure, because the specifications in the current battery charger test procedure are not appropriate for UPSs. The current battery charger test procedure measures energy consumption of a battery charger as it charges a fully discharged battery, which is inappropriate for a UPS because a UPS rarely has a fully discharged battery. The majority of the time a UPS provides a small amount of charge necessary to maintain fully charged batteries and also delivers power to a connected load. Therefore, in order to accurately capture the energy consumption and energy efficiency of the normal operation of a UPS, the test procedure should measure the energy consumption of maintaining a fully charged battery and conversion losses associated with delivering load power. 81 FR 31545.

Schneider Electric appreciated that DOE has agreed with and supports the industry's position that UPSs operate differently than most battery chargers. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 2) NEMA agreed with the establishment of a test procedure for UPSs, consistent with NEMA's comments cited by DOE in the May 2016 NOPR. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 3) NEMA also agreed with DOE's conclusion that measuring the energy use of a UPS in normal mode effectively captures the energy used during the entirety of the time that a UPS is connected to mains power. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 6) Further, ARRIS also supported DOE's conclusion that the current battery charger test procedure does not represent typical use of a UPS and reiterated that the current battery charger test procedure does not work well for continuous use products that include a battery exclusively for back-up purposes. (ARRIS, No. 0004, EERE–2016–BT–TP–0018, p. 3)

To measure the energy consumption of a UPS during normal mode, DOE proposed to incorporate by reference Section 6 and Annex J of IEC 62040–3 Ed. 2.0 in the battery charger test procedure. 81 FR 31546.

Schneider Electric supported incorporation by reference of the IEC 62040–3 Ed. 2.0 standard without DOE's proposed changes in the battery charger test procedure and provided an advanced notice that the IEC 62040–3 Ed. 2.0 standard is under maintenance and anticipated to be revised over the next 2 years. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 1) However, NEMA highlighted that there are presently no planned changes to the IEC 62040–3 Ed. 2.0 standard that would affect the manner in which a UPS is tested for efficiency. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 3)

In light of these stakeholder comments, DOE is finalizing the incorporation by reference of Section 6 and Annex J of IEC 62040–3 Ed. 2.0 in the battery charger test procedure. Additionally, DOE will monitor the revision of the IEC 62040–3 standard and consider, once these revisions are complete, whether to initiate a new test procedure rulemaking to consider incorporating the latest version.

C. Definitions

In the May 2016 NOPR, DOE proposed to include the following definitions, in section 2 of appendix Y to subpart B of 10 CFR part 430. DOE requested stakeholder comments on all proposed definitions, which are discussed in the following subsections:

1. Reference Test Load

DOE proposed the following definition for reference test load: ''*Reference test load* is a load or condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated.'' 81 FR 31554. NRDC, *et al.* argued that a resistive reference test load (power factor greater than or equal to 0.99) may not be representative of common UPS applications such as desktop computers. NRDC, et al. provided data to show that the power factor of a non-ENERGY STAR desktop computer without power factor correcting functionality can be quite low and urged DOE to evaluate the potential differences in UPS efficiency when serving loads with different power factors including non-linear loads that are more representative of computers and other typical UPS applications. If the difference in measured efficiency between different load types is significant, NRDC, *et al.* requested that DOE specify a reference test load that is more representative of common applications, particularly for VFD UPS which commonly serve loads with low power factors. (NRDC, *et al.*, No. 0006, EERE–2016–BT–TP–0018, p. 2–3)

The proposed power factor requirement of reference test load aligns with ENERGY STAR UPS V. 1.0 and the IEC 62040–3 Ed. 2.0 standard, which are extensively supported by the UPS industry. DOE is refraining from adopting a reference test load with a power factor that differs from that of ENERGY STAR UPS V. 1.0 or the IEC 62040–3 Ed. 2.0 because DOE does not have enough market information to assess the impact of such a divergence from ENERGY STAR UPS V. 1.0 and IEC 62040–3 Ed. 2.0. Therefore, DOE is adopting the proposed reference test load in this final rule. DOE will continue to monitor the UPS market and may consider adopting other reference test loads in future rulemakings.

2. Uninterruptible Power Supply

DOE proposed the following definition for UPS: ''*Uninterruptible power supply* or *UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices, constituting a power system for maintaining continuity of load power in case of input power failure.'' 81 FR 31554. Schneider Electric disagreed with the proposed definition of UPS. Schneider Electric argued that the proposed definition of UPS implies that the primary function of a UPS is to charge batteries, and asserted that the primary functions of a UPS are wave shaping, power conditioning, assuring the quality of power, measuring the quality of power on a continual basis, detecting mains power drop out, communicating the status, and reporting abnormal conditions through networked ports. Schneider Electric stated that UPSs only charge batteries intermittently and in some cases charge batteries after a few days or weeks. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 15–16; Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 3) Lastly, Schneider Electric argued that DOE's proposed definition of UPS may have major implications on the market and the product in the marketplace and requested that DOE adopt the definition of UPS from the IEC 62040–3 Ed. 2.0 standard. (Schneider Electric, No. 0005. EERE–2016–BT–TP–0018, p. 3; Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 19) Similarly, NEMA requested that DOE adopt the definition of UPS from the established IEC 62040–3 Ed. 2.0 standard and highlighted that the Office of Management and Budget Circular A–119 encourages the use of international standards in establishing regulations when effective and appropriate in the fulfillment of legitimate objectives of the agency and the underlying statute. NEMA argued that these criteria are satisfied by using the definition of UPS in the IEC 62040–3 Ed. 2.0 standard and highlighted that the CSA C813.1 specification in Canada, and the European Norms reference the IEC 62040–3 Ed. 2.0 standard. NEMA contended that, as DOE attempts to harmonize its regulations with Canada and the European Union, deviation from the IEC 62040–3 Ed. 2.0 standard would make DOE's UPS regulations impossible to harmonize with international norms. (NEMA, No. 0008, EERE–2016–BT–TP–0018, pp. 2–4)

Schneider Electric acknowledged that a UPS system contains or has embedded within the UPS a battery charger. Further, Schneider does not question DOE's authority to regulate a UPS as a battery charger (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 2). DOE notes that 10 CFR 430.2 defines a battery charger as a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. It does not state or imply that the primary function of a product that meets the definition of battery charger is to charge batteries. UPSs charge and maintain their batteries at full charge and therefore meet the statutory definition of a battery charger. DOE disagrees with Schneider Electric's comment that the proposed definition of UPS implies that that the primary function of a UPS is to charge batteries and that the proposed UPS definition may have major implications on the market and the product in the marketplace. There is only one difference between the proposed DOE definition and IEC definition of a UPS and that is that DOE refers to UPSs as battery charger within the proposed definition. As DOE is regulating UPSs as part of its battery charger regulations, it is necessary to indicate in the UPS definition that UPSs are a subset of battery chargers, and, as a result, must also meet EPCA's definition of a battery charger. Accordingly, DOE is adopting the proposed definition of a UPS in this final rule.

3. Input Dependency

In the May 2016 NOPR, DOE proposed definitions for VFD UPS, VI UPS and VFI UPS in section 2 of appendix Y to subpart B of 10 CFR part 430. In this final rule, DOE is revising the proposed definition of VI UPS to highlight that a VI UPS, in normal mode, must not deplete its stored energy source when outputting an AC voltage within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage. This change brings consistency between the definitions of VI and VFI UPSs.

To help manufacturers determine whether a UPS is properly considered to be VFD, VI, or VFI, DOE also proposed tests to verify the input dependency of the UPS as follows: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0 and observing that the output voltage remains within the specified limit during the test. VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0 and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted. VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test specified in sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0 and observing that, at a minimum, the output voltage and frequency remain within the specified output tolerance band during the test. These tests may be performed to determine the input dependency supported by the test unit.

NEMA and Schneider Electric argued that UPS manufacturers already know the architecture of their models and

DOE's proposed tests to identify the architecture of a UPS will unjustifiably increase testing burden for manufacturers. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 4; Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 2) Schneider Electric requested DOE to exclude the proposed performance criteria from input dependency tests and, similar to the IEC 62040–3 Ed. 2.0 standard, rely on manufacturer declarations to classify UPSs as VFD, VI or VFI. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 32–33)

While most UPS manufacturers are aware of the input dependencies of their models, there are UPS models available in the marketplace whose input dependencies may not be obvious to a third party. In response to the comment from Schneider Electric and NEMA, DOE notes that the input dependency tests being adopted in sections 2.27.1, 2.27.2 and 2.27.3 of this final rule, are not mandatory. If a manufacturer is already aware that the basic model in question conforms to the performance criteria outlined in section 2.27.1, 2.27.2 and 2.27.3, the input dependency tests need not be performed. However, because these performance criteria are included within the definition of each UPS architecture, the onus is on the manufacturer to properly classify their UPS according to this criteria in order to represent its energy efficiency and adhere to any potential energy conservation standard.

With regards to performance criteria, Section 5.2.1 of the IEC 62040–3 Ed. 2.0 standard asks that the UPS must remain in normal mode when the input voltage and frequency is varied by ±10% and ±2%, respectively, for the IEC 62040–3 Ed. 2.0 standard to be applicable. Although the specific steady state input voltage and frequency tolerance tests of sections 6.4.1.1 and 6.4.1.2 of the IEC 62040–3 Ed. 2.0 standard require that the UPS need only meet the tolerance range specified by the manufacturer of the device, the requirements of section 5.2.1 must first be met at a minimum. In aligning its requirements with that of IEC 62040–3 Ed. 2.0, DOE has also used the criteria of section 5.2.1 of the IEC 62040–3 Ed. 2.0 standard in the definition of VI and VFI UPSs in this final rule. DOE notes that these adopted performance criteria will remove any ambiguity in the classification of UPS input dependency during certification and enforcement.

If manufacturers are uncertain about the input dependency of their UPS models, then manufacturers can perform the input dependency tests and use the associated performance criteria to verify the input dependency of their models. In enforcement testing, DOE will use these input dependency tests and performance criteria to verify the classification claimed by a manufacturer in the compliance certification report of a UPS basic model and to ensure that the correct load weightings, listed in table 4.3.1 of appendix Y to subpart B of 10 CFR part 430, were applied. This also ensures that manufacturers are not left to create their own performance criteria for VFD, VI and VFI classification, which would lead to inconsistencies in the certified results. Because section 4.3.4 of appendix Y to subpart B of 10 CFR part 430 is being made optional in this final rule, this rule also amends 10 CFR 429.134 to state that, in enforcement testing, DOE will determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI in sections 2.28.1 through 2.28.3 of appendix Y to subpart B of 10 CFR part 430.

4. Normal Mode

In the May 2016 NOPR, DOE proposed a definition of normal mode in section 2 of appendix Y to subpart B of 10 CFR part 430. The proposed definition of normal mode required a UPS to provide output power to the connected load without switching to battery power. However, for VFI UPSs, the output power to the connected load may also be provided by the battery in normal mode of operation. Hence, the proposed definition of normal mode would have conflicted with the input dependency test for VFI UPSs. After careful consideration, DOE is revising the proposed definition of normal mode to specify that the AC input supply is within required tolerances and supplies the UPSs rather than that the UPS provides the required output power to the connected load without switching to battery power, and that the energy storage system is being maintained at full charge or is under charge rather than just being maintained at full charge. Further, the revision of the definition of normal mode increases harmonization between the definitions of normal mode in DOE's test procedure and the IEC 62040–3 Ed. 2.0 standard.

Additionally, DOE also proposed a definition for 'Energy Storage Systems', on which DOE has not received any stakeholder comment; therefore DOE is adopting the proposed definition in this final rule.

D. Test Conditions

Although a majority of the test conditions proposed in the May 2016 NOPR were adopted from the IEC 62040–3 Ed 2.0 standard, DOE proposed certain supplementary instructions for the test conditions in appendix Y to subpart B of 10 CFR part 430 in order to eliminate the possibility of ambiguity. DOE requested comment on the proposed test conditions.

1. Accuracy and Precision of Measuring Equipment

DOE proposed that the power meter and other equipment used during the test procedure must provide true root mean square (r. m. s.) measurements of the active input and output power, with an uncertainty at full rated load of less than or equal to 0.5 percent at the 95 percent confidence level notwithstanding that voltage and current waveforms can include a harmonic component. Further, DOE proposed that the power meter and other equipment must measure input and output values simultaneously.

Schneider Electric argued that DOE's proposed accuracy and resolution requirements for UPSs are more stringent than those required to provide compliance test results. The proposed accuracy and measurement requirements would require manufacturers to test their units with more expensive test equipment, which would create an unjustified testing burden for UPS manufacturers. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 3) Schneider Electric further argued that the type and cost of the test equipment required to test UPS systems according to the proposed requirements will especially be burdensome on small and medium businesses. Schneider Electric contends that, although small and medium businesses can utilize third party test labs to mitigate the cost of purchasing test equipment, these businesses still need to purchase some test equipment to understand measurements of their products prior to submitting them for compliance testing, and that, the expense of using third party test labs or the test equipment required to meet the proposed accuracy and measurement requirements for compliance testing will reduce competition in the marketplace. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, pp. 4–5)

DOE reiterates that the proposed accuracy and precision requirements for measuring equipment are adopted from section J.2.3 of the IEC 62040–3 Ed. 2.0 standard. It is DOE's understanding that the IEC 62040–3 Ed. 2.0 standard is widely accepted by the UPS industry. Therefore, DOE does not find that the proposed accuracy and precision requirements for measuring equipment are unjustified or burdensome for

manufacturers. Hence, DOE is adopting the proposed accuracy and precision requirements in this final rule.

Schneider Electric argued that in case the manufacturer specified calibration interval of test equipment is longer than DOE's proposed calibration interval of 1 year, DOE's proposed calibration interval would be unjustifiably burdensome on manufacturers. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 36–37) After careful consideration, DOE agrees with Schneider Electric and is requiring all measurement equipment used to conduct tests must be calibrated within the equipment manufacturer's specified calibration period.

2. Environmental Conditions

IEC 62040–3 Ed 2.0 requires that the ambient temperature must be in the range of 20 °C to 30 °C. To ensure repeatability, DOE proposed to increase the precision required for ambient temperature measurements, while keeping the same range. As a result, the ambient temperature would be 20.0 °C to 30.0 °C (*i.e.,* increasing the required precision by one decimal place) and the measurement would include all uncertainties and inaccuracies introduced by the temperature measuring equipment. Extending the precision of IEC's ambient temperature range requirement by one decimal place would minimize rounding errors and avoid scenarios in which a temperature of 19.6 °C would be rounded to 20 °C during testing and potentially provide higher efficiency usage values than those obtained at or above 20.0 °C. The proposal also required that the tests be carried out in a room with an air speed immediately surrounding the unit under test (UUT) of less than or equal to 0.5 meters per second (m/s). As proposed, there would be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT would be tested on a thermally non-conductive surface.

Schneider Electric inquired whether manufacturers would be permitted to test UPSs within the temperature range specified by the IEC 62040–3 Ed. 2.0 standard. Schneider Electric also noted that the IEC 62040–3 Ed. 2.0 standard does not have air speed requirements, and inquired if DOE's proposed requirements for air speed surrounding the unit under test limit of less than or equal to 0.5 m/s would be unidirectional or multidirectional. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 36–38) Similarly, NEMA opposed DOE's proposed test conditions, such as airflow, and requested that DOE incorporate by reference the testing conditions stated in the IEC 62040–3 Ed. 2.0 standard. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 5)

DOE reiterates that the May 2016 NOPR proposed the ambient temperature must remain in the range of 20.0 °C to 30.0 °C, including all inaccuracies and uncertainties introduced by the temperature measurement equipment, throughout the test. 81 FR 31559. The IEC 62040–3 Ed. 2.0 standard requires the ambient temperature to be between 20 °C and 30 °C, does not require all inaccuracies and uncertainties introduced by the temperature measurement equipment to be included in this range, and it has a precision requirement that is lower by one decimal place. By testing within DOE's ambient temperature range, which includes all inaccuracies and uncertainties, manufacturers will also meet the temperature requirements of the IEC 62040–3 Ed. 2.0 standard. Therefore, DOE is adopting the proposed ambient temperature range in this final rule. Further, DOE is adopting an air speed requirement surrounding the unit under test to avoid the possibility of intentional cooling during testing, which affects the efficiency of UPSs. DOE clarifies that the air speed limit of less than or equal to 0.5 m/s surrounding the unit under test is multidirectional.

3. Input Voltage and Frequency

DOE proposed that the AC input voltage to the UUT be within 3 percent of the highest rated voltage and the frequency be within 1 percent of the highest rated frequency of the device. DOE has not received any stakeholder comments on the input voltage and frequency requirements; therefore, DOE is adopting the proposed input voltage and frequency requirements in this final rule.

E. Battery Configuration

To capture the complete picture of the energy performance of UPSs, DOE proposed to test UPSs with the energy storage system connected throughout the test. Additionally, DOE proposed to standardize battery charging requirements for UPSs by including specific instructions in section 4.2.1, which is being added to appendix Y to subpart B of 10 CFR part 430. These requirements, which ensure that the battery is fully charged prior to testing, specify charging the battery for an additional 5 hours after the UPS has indicated that it is fully charged, or if the product does not have a battery indicator but the user manual specifies a time, charging the battery for 5 hours longer than the manufacturer's estimate. Finally, the proposal required charging the battery for 24 hours if the UPS does not have an indicator or an estimated charging time. 81 FR 31559.

Schneider Electric argued that it is more appropriate to test UPSs either without batteries or when the attached batteries are not allowed to discharge. Further, Schneider Electric argued that the battery charger in a UPS is turned off when it is not actively charging a depleted battery and the battery doesn't consume significant energy during normal mode of operation; therefore, testing with batteries does not add much to the test results. (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 6; Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 77) Schneider Electric also pointed out that the ENERGY STAR test procedure does not include batteries, the IEC 62040–3 Ed. 2.0 standard allows UPSs to be tested with or without a battery, and the CEC test procedure tests UPSs with an attached battery, but manufacturers are allowed to disable all known battery charger functions. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 42–44) Similarly, ITI and NEMA opposed DOE's proposal of testing UPSs with a connected energy storage system and argued that testing a UPS with a battery will increase time and cost of the test and could possibly disqualify UPSs that are currently ENERGY STAR compliant. (ITI, No. 0007, EERE–2016–BT–TP–0018, p. 2; NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 3) NEMA and Schneider Electric pointed out that testing a UPS with a fully charged battery, which is different from the ENERGY STAR and CEC test procedures, will render all data from the ENERGY STAR and CEC databases useless. (NEMA, No. 0008, EERE–2016–BT–TP–0018, pp. 3–4; Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, pp. 2, 6–7) Further, NEMA and Schneider Electric argued that DOE's proposed test procedure significantly deviates from the ENERGY STAR test procedure and the IEC 62040–3 Ed. 2.0 standard and that DOE has not justified this deviation, which appears to be arbitrary and poses unjustified financial burden on manufacturers. (NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 3; Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 9)

In addition to providing various types of power conditioning and monitoring functionality, depending on their architecture and input dependency, UPSs also maintain the fully-charged state of lead acid batteries with relatively high self-discharge rates so

that in the event of a power outage, they are able to provide backup power instantly to the connected load. Maintaining the lead acid battery consumes energy which therefore directly affects a UPS's overall energy efficiency. To capture the typical use of a UPS as required by 42 U.S.C. 6293(b)(3), a UPS must be tested with the energy storage system connected throughout the test, so as to capture the energy spent by the UPS maintaining the lead acid battery. Hence, deviation from the ENERGY STAR and CEC test procedures is necessary and justified. Concerning the ENERGY STAR and CEC databases, DOE points out that the two mentioned databases are already non-compatible because of the differences in their respective test procedures.

Additionally, Schneider Electric noted that some UPSs turn off their battery chargers for days or weeks after detecting fully charged batteries and inquired if manufacturers are allowed to keep this behavior in place during testing. Schneider Electric further explained, when turned on, some UPSs perform a battery test that reduces the state of charge and lengthens the duration of time required to fully charge connected batteries. Therefore, Schneider Electric asked if manufacturers would be allowed to disable this feature to reduce the time and burden of testing. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 41)

If a UPS, as supplied to an end user, automatically detects that the connected battery is fully charged and then disables its battery charging functionality, then this UPS will be tested as such, as it would be a proper representation of the product's typical energy use, which is a goal of all DOE test procedures. In response to Schneider Electric's second comment, manufacturers are not allowed to disable the feature that detects the state of charge and lengthens the duration of time required to fully charge connected batteries. Section 4.2.1(b), which was proposed and is being added to appendix Y to subpart B of 10 CFR part 430 in this final rule, instructs that the UPS must not be modified or adjusted to disable energy storage charging features, and the transfer of energy to and from the energy storage system must be minimized by ensuring the energy storage system is fully charged.

Lastly, Schneider Electric inquired whether the use of software battery charge indicators or some other industry standard practice is permitted; how test batteries should be selected if a UPS basic model can support multiple batteries; and how a basic model is to be selected if a UPS model has batteries supplied by multiple battery vendors. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 40–41) (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 69–70)

Section 4.2.1(b)(1), which was proposed, and is being added to appendix Y to subpart B of 10 CFR part 430 in this final rule, provides instructions on how to determine when a UPS battery is fully charged. These instructions emphasize the use of a battery charge indicator which DOE interprets as either being physically on the device or a software that accompanies the UPS. Therefore, manufacturers may use software that acts as an indicator and communicates the battery's state of charge to the user if the software is packaged with the UPS. DOE is unable to provide instructions regarding the use of 'other industry standard practices' as an indicator of a battery's state of charge without more details on these standard practices. Manufacturers must follow the instructions provided in section 4.2.1(b), which is being added to appendix Y to subpart B of 10 CFR part 430 to ensure that the batteries are fully charged prior to testing. DOE also recognizes that UPS may be capable of accommodating multiple battery models, battery vendors or battery capacities. Accordingly, it is possible that the efficiency of a UPS that otherwise has identical electrical characteristics would vary slightly based on the battery used. In the case in which a manufacturer uses different battery models, vendors or capacities in a single UPS, then the manufacturer may group some or all combinations of battery and UPS as part of a single UPS basic model and certifying compliance by ensuring that the represented efficiency of that UPS basic model applies to all combinations in the group. In that case, the represented efficiency should correspond to the least efficient combination in the group. If the Department selects a unit for assessment or enforcement testing, DOE may select any combination within the basic model to assess the entire basic model's compliance. Thus, if a manufacturer groups multiple battery and UPS combinations as part of a single basic model, DOE would test one combination to determine compliance pursuant to its regulations. Alternatively, the manufacturer may classify each unique UPSs configuration as separate basic models and certify each basic models individually. In the case where each unique UPS configuration is a separate basic model, DOE will test the unique UPS configuration to assess compliance.

F. Product Configuration

For configuring UPSs for testing, DOE proposed to reference Appendix J.2 of IEC 62040–3 Ed 2.0 in section 4.2.1, which would be added to appendix Y to subpart B of 10 CFR part 430. In addition to the IEC test method, DOE proposed to include additional requirements for UPS operating mode conditions and energy storage system derived from ENERGY STAR UPS V. 1.0. DOE did not consider including requirements for back-feeding, a condition in which voltage or energy available within a UPS is fed back to any of the input terminals of the UPS as specified in ENERGY STAR UPS V. 1.0 because back-feeding is generally only required for UPSs with an output power rating higher than loads commonly available in a consumer environment. Because the power range of UPSs in the scope of this rulemaking is limited by the requirement that these UPSs utilize a NEMA 1–15P or 5–15P plug, and loads in this range are readily available, DOE believes provisions for back-feeding will not be necessary. DOE has not received any stakeholder comment on these proposed provisions; therefore, DOE is adopting these provisions in this final rule.

On August 5, 2016, DOE published an energy conservation standards notice of proposed rulemaking for uninterruptible power supplies in the **Federal Register** (August 2016 NOPR). 81 FR 52196. In response to the August 2016 NOPR, NEMA and ITI, and Schneider Electric submitted written comments requesting that DOE thoroughly examine the impact of the energy consumption of secondary features such as USB charging ports, wired and wireless connectivity, displays, and communications etc. that are not related to battery charging on the proposed efficiency metric for UPSs. (NEMA and ITI, No. 0019, EERE–2016–BT–STD–0022 at p. 3; Schneider Electric, No. 0017, EERE–2016–BT–STD–0022 at pp. 1–2, 13) In response to the above summarized comments, DOE is adding language to the UPS test procedure, in section 4.2.2, stating that UPS manufacturers must disable features of the UPSs that do not contribute to the maintenance of fully charged battery or delivery of load power, so that the energy consumption of these features is not captured. This will permit manufacturers to disable these secondary features in order to reduce or eliminate the impact that the energy consumption of these features has on the measured efficiency metric.

In the case where a feature that does not contribute to the maintenance of fully charged battery(s) or delivery of load power cannot be turned off during testing and the UPS manufacturer believes that the test procedure evaluates the basic model in a manner that is not representative of its true energy characteristics as to provide materially inaccurate comparative data, DOE notes that there are provisions in place, as outlined in 10 CFR 430.27, for stakeholders to request a waiver or interim waiver from the test procedure. If such a waiver or interim waiver is granted, manufacturers are required to use an alternative test method to evaluate the performance of their product type in a manner that is representative of the energy consumption characteristics of the basic model.

Schneider Electric provided a list of secondary features along with the corresponding energy allowances that Schneider Electric believes should be made for these secondary features and proposed an alternate adjusted efficiency metric that accommodates the suggested allowances in place of the average load adjusted efficiency metric proposed by DOE in the May 2016 UPS test procedure NOPR. (Schneider Electric, No. 0017, EERE–2016–BT–STD–0022, pp. 1–2, 13). While DOE is not adopting Schneider Electric's proposed alternative calculation at this time, DOE notes that manufacturers may propose this as an alternative test procedure for consideration as part of a waiver petition.

G. Average Power and Efficiency Calculation

1. Average Power

DOE's proposal in the June 2016 NOPR required that all efficiency values be calculated from average power. DOE proposed two different methods for calculating average power so that manufacturers have the option of using a method better suited to the testing equipment already available at their disposal without having to purchase new equipment. DOE proposed to specify these calculation methods in section 4.3.1 of appendix Y to subpart B of 10 CFR part 430. The first proposed method of calculating average power is recording the accumulated energy (E_i) in kWh and then dividing accumulated energy (E_i) by the specified period for each test (T_i). For this method, the average power would be calculated using the following equation:

$$P_{avg} = \frac{E_i}{T_i}$$

Additionally, DOE proposed a second method to calculate average power by sampling the power at a rate of at least one sample per second and computing the arithmetic mean of all samples over the time period specified for each test (T_i). For this method, the average power (P_{avg}) would be calculated using the following equation:

$$P_{avg} = \frac{1}{n}\sum_{i=1}^{n} P_i$$

Where P_i represents measured power during a single measurement (*i*), and *n* represents total number of measurements.

NEMA and Schneider Electric opposed DOE's proposal of two different methods of calculating average power and requested that DOE adopt the method of calculating average power stated in the IEC 62040–3 Ed. 2.0 standard. (NEMA, No. 0008. EERE–2016–BT–TP–0018, p. 5; Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 3) Schneider Electric inquired whether DOE has conducted an analysis to compare the accuracy of the two proposed methods (Schneider Electric, No. 0005, EERE–2016–BT–TP–0018, p. 4) Further, during the public meeting held on June 9, 2016, Schneider Electric requested that manufacturers be allowed to calculate efficiency directly from accumulated energy measurements without having to first calculate average power. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 46)

DOE agrees, and is not adopting a requirement that average power be calculated as an intermediate step in order to calculate efficiency from accumulated energy measurements. Based on stakeholder comments, DOE is convinced that the intermediate step of converting energy measurements to average power is redundant.

The adopted method of calculating average power from instantaneous power measurements is still different from the method stated in the IEC 62040–3 Ed. 2.0 standard, which is requested by NEMA and Schneider Electric. DOE's adopted method requires measuring power for 15 minutes at a sampling rate of at least 1 sample per second, whereas the IEC 62040–3 Ed. 2.0 standard only requires three readings no more than 15 minutes apart, which lacks precision. DOE believes that measuring power for 15 minutes at a sampling rate of at least one sample per second is justified because it improves precision over the IEC 62040–3 Ed. 2.0 and does not pose a testing burden on manufacturers because measurement readings are taken and logged electronically. Further, the sampling rate of at least one sample per second ensures accuracy and repeatability of calculated values. Lastly, as DOE is no longer requiring the calculation of average power from accumulated energy measurements as part of the calculation of efficiency, Schneider Electric's comment regarding the comparison of the accuracy of the two proposed methods of calculating average power is no longer relevant to the methods adopted in this final rule. DOE is revising the proposed regulatory text in appendix Y to subpart B of 10 CFR part 430 to finalize these changes.

2. Efficiency

DOE proposed to calculate the efficiency of UPSs at each loading point as specified in section J.3 of IEC 62040–3 Ed 2.0. DOE also proposed additional requirements from ENERGY STAR UPS V. 1.0 for the purpose of ensuring repeatable and reproducible tests. ENERGY STAR UPS V. 1.0 specifies requirements for ensuring the unit is at steady state and calculating the efficiency measurements. The proposed requirements are included in section 4.3 of the proposed appendix Y to subpart B of 10 CFR part 430.

Schneider Electric argued that deviations in stability requirements and calculation of efficiency from the IEC 62040–3 Ed. 2.0 standard will increase testing burden on manufacturers by forcing them to test their products twice: Once under the IEC 62040–3 Ed. 2.0 standard and once under the DOE test method. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 48) DOE notes that the IEC 62040–3 Ed. 2.0 standard uses temperature to determine stability but does not specify where the temperature measurements must be taken. This, in DOE's opinion, leaves room for interpretation and would cause reproducibility problems with the test procedure. The ENERGY STAR UPS Test Method Rev. May 2012, which partially relies on the IEC 62040–3 Ed. 2.0 standard, also recognizes this shortcoming in the IEC 62040–3 Ed. 2.0 standard and states its own stability requirements. Consequently, DOE is finalizing the stability requirements proposed in the May 2016 NOPR which have been adopted from the ENERGY STAR UPS Test Method Rev. May 2012, as these requirements are necessary for ensuring repeatability and reproducibility of measured values.

H. Output Metric

To capture the energy efficiency of a UPS, DOE proposed that the device be tested in normal mode. DOE further proposed to use an average load adjusted efficiency metric, rounded to one tenth of a percentage point, as the final output of the UPS test procedure.[3] DOE's proposed output metric for UPSs matches the output metric utilized by ENERGY STAR UPS V. 1.0. DOE also proposed to adopt the load weightings specified in ENERGY STAR UPS V. 1.0 for calculating average load adjusted efficiency of UPSs. These load weightings vary based on the ratio of the reference test load to the full rated load of the device, the UPS architecture and the output power rating of a UPS. The requirements for calculating the final metric, shown in Table III.2, were proposed to be incorporated in section 4.3.5 of appendix Y to subpart B of 10 CFR part 430. The proposed equation to calculate the average load adjusted efficiency of UPSs is as follows:

$$Eff_{avg} = (t_{25\%} \times Eff_{25\%}) + (t_{50\%} \times Eff_{50\%}) + (t_{75\%} \times Eff_{75\%}) + (t_{100\%} \times Eff_{100\%})$$

Where:

Eff_{avg} = average load adjusted efficiency

$t_{n\%}$ = proportion of time spent at the particular $n\%$ of the reference test load

$Eff_{n\%}$ = efficiency at the particular $n\%$ of the reference test load

TABLE III.2—UPS LOAD WEIGHTINGS FOR CALCULATING AVERAGE LOAD ADJUSTED EFFICIENCY

Rated output power (W)	Input dependency characteristic	Portion of time spent at reference load			
		25%	50%	75%	100%
P ≤ 1500 W	VFD	0.2	0.2	0.3	0.3
	VI or VFI	0	0.3	0.4	0.3
P > 1500 W	VFD, VI, or VFI	0	0.3	0.4	0.3

Schneider Electric inquired whether manufacturers are required to test UPSs at loading points that have zero weighting. Further, Schneider Electric requested that DOE mandate testing UPSs in order from 100 percent, 75 percent, 50 percent and 25 percent of the reference test load. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 50–51) In this final rule, DOE adds a footnote to Table 4.3.1 of section 4.3.5 of appendix Y to subpart B of 10 CFR part 430 stating that manufacturers do not have to test a UPS at the applicable loading point with zero weighting because the measured efficiency at this loading point does not contribute to the average load adjusted efficiency of the UPS. Further, in section 4.3.3(a) of appendix Y to subpart B of 10 CFR part 430, DOE already proposes to test UPSs in the order of 100 percent, 75 percent, 50 percent and 25 percent of the rated output power. Consistent with of Schneider Electric's comment about the order of testing, DOE is adopting the proposed order of testing in this final rule.

Additionally, NRDC, et al. argued that the proposed loading points are not representative of desktop computers attached to UPSs and that DOE should instead adopt 0 percent, 5 percent, 10 percent, 25 percent and 50 percent as loading points for VFD UPSs with 0.1, 0.3, 0.3, 0.15, 0.15 time weightings for their loading points respectively. Further, NRDC, et al. requested DOE to analyze and revise loading points and associated time weightings for VI and VFI UPSs as well. (NRDC, et al., No. 0006, EERE–2016–BT–TP–0018, pp. 3–6)

DOE's output metric, loading points and weightings are adopted from ENERGY STAR UPS V. 1.0, which is extensively supported and adhered to by the UPS industry. Further, the IEC 62040–3 Ed. 2.0 standard also uses the same loading points. DOE is refraining from adopting any loading points or weightings that differ from those in ENERGY STAR UPS V. 1.0 and IEC 62040–3 Ed. 2.0 as DOE has no data from which to conclude that it would be necessary to do so. Therefore, DOE is adopting the proposed output metric, loading points and weightings in this final rule. DOE will continue to monitor the UPS market and may consider other loading points and weightings in future rulemakings.

I. Effective Date of and Compliance With Test Procedure

EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with DOE test procedures, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

NEMA argued that DOE has not adequately investigated the number of stock keeping units (SKUs) involved in this rulemaking, and as such does not appear to understand the scope of impact and associated cost burden on manufacturers if they become required to retest all products, and revise markings and published performance information within 180 days. NEMA further argued that in addition to disqualifying currently ENERGY STAR compliant products, DOE's proposed test procedure will force ENERGY STAR to update its UPS specifications, with assistance from the industry, causing additional burden on industry resources and personnel. According to NEMA, these additional testing and requalification costs will not be trivial, because the U.S. Environmental Protection Agency (EPA) requires third party certification and testing at manufacturer's expense for its ENERGY STAR program. NEMA contends that, even if the EPA takes some time to update its specification, DOE's insistence on a 180-day implementation will negate this in practical terms, possibly forcing manufacturers to perform two tests and report two different efficiency levels in the near term, one to DOE and one to EPA. (NEMA, No. 0008, EERE–2016–BT–TP–0018, pp. 2–3) Similarly, Schneider Electric argued that manufacturers would have to re-test all ENERGY STAR-certified UPSs after DOE's UPS test procedure is finalized, and testing hundreds of basic UPS models in 180 days would not be practical. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, p. 69)

DOE acknowledges that for ENERGY STAR-certified basic models, further testing may be needed to make representations in accordance with the UPS test procedure. However, DOE has adopted NEMA and Schneider Electric's sampling plan to help minimize the burden by allowing a single unit sample as required by the current ENERGY

[3] In the May 2016 NOPR, DOE used the terms 'average normal mode loading efficiency' and 'average load adjusted efficiency' interchangeably. For consistency, DOE is updating this final rule to only use the term average load adjusted efficiency.'

STAR program. DOE will work closely with EPA if any transition is needed for the current ENERGY STAR UPS specification as a result of this final rule and will consult with manufacturers in accordance with the ENERGY STAR process.

As for the comments requesting additional time to translate current representations, DOE reiterates that EPCA mandates the date by which representations must be made in accordance with the DOE test procedure. Specifically with regard to NEMA's comment regarding reporting two different efficiency levels, DOE notes that EPCA does not permit this, instead requiring that all such representations be made in accordance with the DOE test procedure. (42 U.S.C. 6293(c)(2)) EPCA does provide an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the 180-day deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (42 U.S.C. 6293(c)(3)) Beyond any such extension pursuant to the petition process specified by EPCA, as noted above, the statute does not permit DOE to extend the date by which representations must be made in accordance with the DOE test procedure.

J. Sampling Plan for Determination of Certified Rating

For any covered product, manufacturers are required to determine represented values, which includes certified ratings, for each basic model of a product, in accordance with the DOE test procedure. Because the proposed test procedure for UPSs and resulting metric differs from other battery chargers, DOE proposed that UPS manufacturers would certify the average load adjusted efficiency metric (Eff_{avg}) described in section III.H, as the representative value of energy efficiency for UPSs. To determine a rating for certifying compliance or making energy use representations, DOE typically requires manufacturers to test each basic model in accordance with the applicable DOE test procedure and apply the appropriate sampling plan. DOE proposed that the sampling provisions and certified rating requirements for battery chargers be applicable to UPSs, which requires a sample of at least 2 items to be tested.

Schneider Electric argued that testing at least two units of a basic model of UPS under the proposed test procedure will require more time and have a higher cost than testing a single unit according to the ENERGY STAR test procedure. They also argued that testing at least two units is unnecessarily burdensome on manufacturers and requested DOE to allow manufacturers to certify compliance of their basic models based on the test results of a single unit. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 53–55) Similarly, ITI and NEMA opposed DOE's proposal of testing at least two unit of a basic model of UPS to certify compliance. (ITI, No. 0007, EERE–2016–BT–TP–0018, p. 1, NEMA, No. 0008, EERE–2016–BT–TP–0018, p. 2)

After carefully considering the request by Schneider Electric, ITI and NEMA about certifying compliance based on the test results of a single unit per basic model of UPS, DOE is allowing all UPS manufacturers to certify compliance of their basic models based on either the general sampling plan stated in section (a)(4)(i) of 10 CFR 429.39 or on the test results of a single unit based on the sampling plan in section (a)(4)(ii) of 10 CFR 429.39. If manufacturers decide to certify compliance of a UPS basic model based on the test results of a single unit, the certified rating for this UPS basic model must be equal to the test results of the single unit tested. If a UPS manufacturer uses the general sampling plan stated in section (a)(4)(i) of 10 CFR 429.39 to certify compliance of a basic model, DOE will use the sampling plan for enforcement testing stated in appendix A to subpart C of 10 CFR part 429 for this basic model. If, however, a UPS manufacturer chooses to certify compliance of a basic model based on the test results of a single unit, then DOE will use a minimum sample size of one unit for enforcement testing and if a single unit in the sample of this UPS basic model does not meet the applicable Federal energy conservation standard, the UPS basic model will be considered non-compliant. DOE is revising 10 CFR 429.110 and adding appendix D to subpart C of 10 CFR part 429 to outline the sampling plans for enforcement testing of UPSs.

K. Certification Reports

In addition to the requirements specified in 10 CFR 429.12, which are applicable to each basic model of a covered product, DOE proposed the active power (W), apparent power (VA), rated input voltage (V), rated output voltage (V), efficiencies at 25 percent, 50 percent, 75 percent, and 100 percent, and average load adjusted efficiency of the UPS basic model be included in the battery charger certification report for UPSs in 10 CFR 429.39.

DOE has not received any stakeholder comments on the proposed certification report requirements; therefore, DOE is adopting the proposed certification report requirements in this final rule. Additionally, the section 4.2.1(a) of appendix Y to subpart B of 10 CFR part 430 will require that if a UPS can operate in two or more distinct normal modes as more than one UPS architecture, then the test shall be conducted in the lowest input dependency as well as the highest input dependency mode where VFD represents the lowest input dependency mode, followed by VI and then VFI. DOE is requiring that manufacturers report the input dependency modes and efficiencies at 25 percent, 50 percent, 75 percent, 100 percent and the average load adjusted efficiencies of the lowest and the highest input dependency modes as part of the battery charger certification reports for UPSs. DOE is revising the proposed language in 10 CFR 429.39 accordingly.

L. Sample Represented Value Derivation

Schneider Electric requested DOE to provide application notes or publications that show how to take actual measurement data and calculate represented values for UPSs. (Schneider Electric, Pub. Mtg. Tr., No. 0003, EERE–2016–BT–TP–0018, pp. 55–56) DOE is providing the following walkthrough to show how the represented value of the average load adjusted efficiency of a UPS basic model can be derived from the test results.

Given a 500W VFD UPS basic model, and following the requirements in 10 CFR 429.39, two units of this UPS basic model are tested to certify compliance. Testing two units of this hypothetical UPS basic model according to the provisions in appendix Y to subpart B of 10 CFR part 430 yields the following results:

TABLE III.3—HYPOTHETICAL TEST RESULTS OF A 500W VFD UPS

	Unit # 1				Unit # 2			
	Reference test load percentage				Reference test load percentage			
	25%	50%	75%	100%	25%	50%	75%	100%
P_{avg_in} (W)	80.2784	150.8857	220.7255	290.7188	80.2586	150.9758	220.7546	290.5996
P_{avg_out} (W)	69.9238	140.4241	209.9844	279.5877	69.9615	140.4254	209.9652	279.5695
Eff (%)	87.1016	93.0665	95.1337	96.1712	87.1701	93.0119	95.1125	96.2044

Using the average load adjusted equation in section 4.3.5 and the load weightings in Table 4.3.1 of appendix Y to subpart B of 10 CFR part 430, the average load adjusted efficiencies for the two test units are calculated.

TABLE III–4—HYPOTHETICAL AVERAGE LOAD ADJUSTED EFFICIENCIES OF THE 500W VFD UPS

	Unit # 1	Unit # 2
Average Load Adjusted Efficiency (%)	93.4251	93.4314

According to 10 CFR 429.39, the represented value of Eff_{avg} must be less than or equal to the lower of the mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the Eff_{avg} of the ith sample; or, the lower 97.5-percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t-statistic for a 97.5-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of subpart B of 10 CFR part 429).

Following the stated equations, the mean of the sample and the 97.5-percent LCL divided by 0.95 are calculated.

$$Mean\ of\ the\ sample = \frac{93.4251\% + 93.4314\%}{2} = 93.4283\%$$

$$\frac{LCL}{0.95} = \frac{93.4283\% - 12.71\left(\frac{4.4834 * 10^{-5}}{\sqrt{2}}\right)}{0.95} = 98.3452\%$$

Therefore, the represented value of the average load adjusted efficiency for the hypothetical 500W VFD UPS basic model must be less than 93.4 percent, the mean of the sample rounded to one-tenth of a percentage point, according to the rounding requirements specified in section 4.3.5(b) of appendix Y to subpart B of 10 CFR part 430.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA). As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and DOE's policies and procedures published on February 19, 2003. DOE has concluded that the adopted test procedure would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335999, which applies to ''all other miscellaneous electrical equipment and component manufacturing'' and includes UPSs, is 500 employees.

To estimate the number of companies that could be small businesses that manufacture UPSs covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE first attempted to identify all potential UPS manufacturers by researching EPA's ENERGY STAR certification database,[4] retailer Web sites, individual company Web sites, and the SBA's database. DOE then attempted to gather information on the location and number of employees to determine if these companies met SBA's definition of a small business for each potential UPS manufacturer by reaching out directly to those potential small businesses and using market research tools (*i.e.,* Hoover's reports), and company profiles on public Web sites (*i.e.,* Manta, Glassdoor, and LinkedIn). DOE also asked stakeholders and industry representatives if they were aware of any small businesses during manufacturer interviews. DOE used information from these sources to create a list of companies that potentially manufacture UPSs and would be impacted by this rulemaking. DOE eliminated companies that do not meet the definition of a ''small business,'' are completely foreign owned and operated, or do not manufacture UPSs in the United States.

DOE initially identified a total of 48 potential companies that sell UPSs in the United States. As part of the May 2016 TP NOPR, DOE estimated that 12 companies were small businesses. However, after reviewing publicly available information on these businesses, DOE determined that none of these companies manufacture UPSs in the United States and therefore are not considered to be small business UPS manufacturers for the purposes of this analysis. As a result, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of UPSs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including UPSs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Manufacturers would not be required to submit a certification report until such time as compliance with an energy conservation standard is required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE adopts test procedure amendments that it expects will be used to develop and implement future energy conservation standards for UPSs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this adopted rule would amend the existing test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule

[4] ENERGY STAR, Energy Star Certified Products. Available at *http://www.energystar.gov/.* Last accessed November 14, 2016.

meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://energy.gov/gc/office-general-counsel.*) DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The adopted regulatory action to amend the test procedure for measuring the energy efficiency of UPSs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This final rule incorporates testing methods contained in Section 6 and Annex J of the IEC 62040–3 Ed. 2.0, ''Uninterruptible power systems (UPS)—Method of specifying the performance and test requirements'' standard. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition and neither recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

DOE incorporates by reference Section 5.2.1, Clause 5.2.2.k, Clause 5.3.2.d, Clause 5.3.2.e, Section 5.3.4, Section 6.2.2.7, Section 6.4.1 (except 6.4.1.3, 6.4.1.4, 6.4.1.5, 6.4.1.6, 6.4.1.7, 6.4.1.8, 6.4.1.9 and 6.4.1.10), Annex G, and Annex J of the IEC 62040–3 Ed. 2.0, ''Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements'' standard. This standard is used to specify the testing requirements for UPSs and is available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York,

NY 10036 or at *http://webstore.ansi.org/*. DOE also incorporates by reference Figure 1–15 and Figure 5–15 of the NEMA standard, ANSI/NEMA Standard WD 6–2016, ''*Wiring Devices—Dimensional Specifications.*'' This standard is used to describe the scope of this final rule and is available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at *http://webstore.ansi.org/*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on November 21, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Revise § 429.39 to read as follows:

§ 429.39 Battery chargers.

(a) *Determination of represented value.* Manufacturers must determine represented values, which include certified ratings, for each basic model of battery charger in accordance with the following sampling provisions.

(1) *Represented values include:* The unit energy consumption (UEC) in kilowatt-hours per year (kWh/yr), battery discharge energy (E_{batt}) in watt hours (Wh), 24-hour energy consumption (E_{24}) in watt hours (Wh), maintenance mode power (P_m) in watts (W), standby mode power (P_{sb}) in watts (W), off mode power (P_{off}) in watts (W), and duration of the charge and maintenance mode test (t_{cd}) in hours (hrs) for all battery chargers other than uninterruptible power supplies (UPSs); and average load adjusted efficiency (Eff_{avg}) for UPSs.

(2) *Units to be tested.* (i) The general requirements of § 429.11 are applicable to all battery chargers; and

(ii) For each basic model of battery chargers other than UPSs, a sample of sufficient size must be randomly selected and tested to ensure that the represented value of UEC is greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\overline{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the UEC of the ith sample; or,

(B) The upper 97.5-percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t-statistic for a 97.5-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of this subpart).

(iii) For each basic model of battery chargers other than UPSs, using the sample from paragraph (a)(2)(ii) of this section, calculate the represented values of each metric (*i.e.,* maintenance mode power (P_m), standby power (P_{sb}), off mode power (P_{off}), battery discharge energy (E_{Batt}), 24-hour energy consumption (E_{24}), and duration of the charge and maintenance mode test (t_{cd})), where the represented value of the metric is:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean, n is the number of samples, and x_i is the measured value of the ith sample for the metric.

(iv) For each basic model of UPSs, the represented value of Eff_{avg} must be calculated using one of the following two methods:

(A) A sample of sufficient size must be randomly selected and tested to ensure that the represented value of Eff_{avg} is less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the Eff_{avg} of the ith sample; or,

(*2*) The lower 97.5-percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.975}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t-statistic for a 97.5-percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of this subpart).

(B) The represented value of Eff_{avg} is equal to the Eff_{avg} of the single unit tested.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to all battery chargers.

(2) Pursuant to § 429.12(b)(13), a certification report must include the following product-specific information for all battery chargers other than UPSs: The nameplate battery voltage of the test battery in volts (V), the nameplate battery charge capacity of the test battery in ampere-hours (Ah), and the nameplate battery energy capacity of the test battery in watt-hours (Wh). A certification report must also include the represented values, as determined in paragraph (a) of this section for the maintenance mode power (P_m), standby mode power (P_{sb}), off mode power (P_{off}), battery discharge energy (E_{batt}), 24-hour energy consumption (E_{24}), duration of the charge and maintenance mode test (t_{cd}), and unit energy consumption (UEC).

(3) Pursuant to § 429.12(b)(13), a certification report must include the following product-specific information for all battery chargers other than UPSs: The manufacturer and model of the test battery, and the manufacturer and model, when applicable, of the external power supply.

(4) Pursuant to § 429.12(b)(13), a certification report must include the following product-specific information for all UPSs: Supported input dependency mode(s); active power in watts (W); apparent power in volt-amperes (VA); rated input and output

voltages in volts (V); efficiencies at 25 percent, 50 percent, 75 percent and 100 percent of the reference test load; and average load adjusted efficiency of the lowest and highest input dependency modes.

■ 3. Section 429.110 is amended by revising paragraphs (e)(6), (7), and (8), and adding paragraph (e)(9) to read as follows:

§ 429.110 Enforcement testing.

* * * * *

(e) * * *

(6) For uninterruptible power supplies, if a basic model is certified for compliance to the applicable energy conservation standard(s) in § 430.32 of this chapter according to the sampling plan in § 429.39(a)(2)(iv)(A) of this chapter, DOE will use a sample size of not more than 21 units and follow the sampling plan in appendix A of this subpart (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment). If a basic model is certified for compliance to the applicable energy conservation standard(s) in § 430.32 of this chapter according to the sampling plan in § 429.39(a)(2)(iv)(B) of this chapter, DOE will use a sample size of at least one unit and follow the sampling plan in appendix D of this subpart (Sampling for Enforcement Testing of Uninterruptible Power Supplies).

(7) Notwithstanding paragraphs (e)(1) through (6) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model has unusual testing requirements or has limited production, DOE may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units.

(8) When DOE makes a determination in accordance with paragraph (e)(7) of this section to test less than the number of units specified in paragraphs (e)(1) through (6) of this section, DOE will base the compliance determination on the results of such testing in accordance with appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) using a sample size (n_1) equal to the number of units tested.

(9) For the purposes of this section, available units are those that are available for distribution in commerce within the United States.

■ 4. Section 429.134 is amended by adding paragraph (o) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(o) *Uninterruptible power supplies.* (1) Determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI in sections 2.28.1 through 2.28.3 of appendix Y to subpart B of 10 CFR part 430.

(2) [Reserved]

■ 5. Add appendix D to subpart C of part 429 to read as follows:

Appendix D to Subpart C of Part 429—Sampling Plan for Enforcement Testing of Uninterruptible Power Supplies

(a) The minimum sample size for enforcement testing will be one unit.

(b) Compute the average load adjusted efficiency (Eff_{avg}) of the unit in the sample.

(c) Determine the applicable DOE energy efficiency standard (EES).

(d) If all Eff_{avg} are equal to or greater than EES, then the basic model is in compliance and testing is at an end.

(e) If any Eff_{avg} is less than EES, then the basic model is in noncompliance and testing is at an end.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 7. Section 430.3 is amended by:

■ a. Redesignating paragraphs (e)(17) through (20) as (e)(18) through (21) respectively;

■ b. Adding new paragraph (e)(17);

■ c. Redesignating paragraphs (p)(3) through (8) as (p)(4) through (9) respectively; and

■ d. Adding new paragraph (p)(3).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(e) * * *

(17) ANSI/NEMA WD 6–2016, *Wiring Devices—Dimensional Specifications,* ANSI approved February 11, 2016, IBR approved for Appendix Y to subpart B; as follows:

(i) Figure 1–15—Plug and Receptacle; and

(ii) Figure 5–15—Plug and Receptacle.

* * * * *

(p) * * *

(3) IEC Standard 62040–3 Ed. 2.0, (''IEC 62040–3 Ed. 2.0''), *Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements,* Edition 2.0, 2011–03, IBR approved for appendix Y to subpart B, as follows:

(i) Section 5, Electrical conditions, performance and declared values, Section 5.2, UPS input specification, Section 5.2.1—Conditions for normal mode of operation;

(ii) Clause 5.2.2.k;

(iii) Section 5.3, UPS output specification, Section 5.3.2, Characteristics to be declared by the manufacturer, Clause 5.3.2.d;

(iv) Clause 5.3.2.e;

(v) Section 5.3.4—Performance classification;

(vi) Section 6.2, Routine test procedure, Section 6.2.2.7—AC input failure;

(vii) Section 6.4, Type test procedure (electrical), Section 6.4.1—Input—a.c. supply compatibility (excluding 6.4.1.3, 6.4.1.4, 6.4.1.5, 6.4.1.6, 6.4.1.7, 6.4.1.8, 6.4.1.9 and 6.4.1.10);

(viii) Annex G—Input mains failure—Test method

(ix) Annex J—UPS Efficiency—Methods of measurement.

* * * * *

■ 8. Section 430.23 is amended by revising paragraph (aa) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery Chargers.* (1) Measure the maintenance mode power, standby power, off mode power, battery discharge energy, 24-hour energy consumption and measured duration of the charge and maintenance mode test for a battery charger other than uninterruptible power supplies in accordance with appendix Y to this subpart.

(2) Calculate the unit energy consumption of a battery charger other than uninterruptible power supplies in accordance with appendix Y to this subpart.

(3) Calculate the average load adjusted efficiency of an uninterruptible power supply in accordance with appendix Y to this subpart.

* * * * *

■ 9. Appendix Y to subpart B of part 430 is amended by:

■ a. Revising the introductory text to appendix Y;

■ b. Revising section 1;

■ c. Redesignating section 2.24 as 2.28;

■ d. Adding a new section 2.24;

■ e. Redesignating sections 2.22 and 2.23 as sections 2.25 and 2.26, respectively;

■ f. Adding sections 2.27, 2.27.1, 2.27.2, and 2.27.3;

■ g. Redesignating sections 2.18 through 2.21 as sections 2.20 through 2.23, respectively;

■ h. Adding a new section 2.19;
■ i. Redesignating sections 2.12 through 2.17 as sections 2.13 through 2.18, respectively;
■ j. Adding a new section 2.12;
■ k. Revising sections 3 and 4; and
■ l. Removing section 5.

The additions and revisions read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Prior to November 16, 2016, manufacturers must make any representations regarding the energy consumption of battery chargers other than uninterruptible power supplies based upon results generated under this appendix or the previous version of this appendix as it appeared in the Code of Federal Regulations on January 1, 2016. On or after November 16, 2016, manufacturers must make any representations regarding the energy consumption of battery chargers other than uninterruptible power supplies based upon results generated under this appendix. On or after June 12, 2017, manufacturers must make any representations regarding the energy efficiency of uninterruptible power supplies based upon results generated under this appendix.

1. Scope

This appendix provides the test requirements used to measure the energy consumption of battery chargers operating at either DC or United States AC line voltage (115V at 60Hz). This appendix also provides the test requirements used to measure the energy efficiency of uninterruptible power supplies as defined in section 2 of this appendix that utilize the standardized National Electrical Manufacturer Association (NEMA) plug, 1–15P or 5–15P, as specified in ANSI/NEMA WD 6–2016 (incorporated by reference, see § 430.3) and have an AC output. This appendix does not provide a method for testing back-up battery chargers.

* * * * *

2. Definitions

* * * * *

2.12. *Energy storage system* is a system consisting of single or multiple devices designed to provide power to the UPS inverter circuitry.

* * * * *

2.19. *Normal mode* is a mode of operation for a UPS in which:

(1) The AC input supply is within required tolerances and supplies the UPS,

(2) The energy storage system is being maintained at full charge or is under recharge, and

(3) The load connected to the UPS is within the UPS's specified power rating.

* * * * *

2.24. *Reference test load* is a load or a condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated.

* * * * *

2.27. *Uninterruptible power supply* or *UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure.

2.27.1. *Voltage and frequency dependent UPS* or *VFD UPS* means a UPS that produces an AC output where the output voltage and frequency are dependent on the input voltage and frequency. This UPS architecture does not provide corrective functions like those in voltage independent and voltage and frequency independent systems.

Note to 2.27.1: VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3) and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

2.27.2. *Voltage and frequency independent UPS* or *VFI UPS* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source.

Note to 2.27.2: VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test in sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3) respectively and observing that, at a minimum, the UPS produces an output voltage and frequency within the specified output range when the input voltage is varied by ±10% of the rated input voltage and the input frequency is varied by ±2% of the rated input frequency.

2.27.3. *Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage without depleting the stored energy source. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system.

Note to 2.27.3: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3) and ensuring that the UPS remains in normal mode with the output voltage within the specified output range when the input voltage is varied by ±10% of the rated input voltage.

* * * * *

3. Testing Requirements for all Battery Chargers Other Than Uninterruptible Power Supplies

3.1. Standard Test Conditions

3.1.1 General

The values that may be measured or calculated during the conduct of this test procedure have been summarized for easy reference in Table 3.1.1. of this appendix.

TABLE 3.1.1—LIST OF MEASURED OR CALCULATED VALUES

Name of measured or calculated value	Reference
1. Duration of the charge and maintenance mode test.	Section 3.3.2.
2. Battery Discharge Energy.	Section 3.3.8.
3. Initial time and power (W) of the input current of connected battery.	Section 3.3.6.
4. Active and Maintenance Mode Energy Consumption.	Section 3.3.6.
5. Maintenance Mode Power.	Section 3.3.9.
6. 24 Hour Energy Consumption.	Section 3.3.10.
7. Standby Mode Power	Section 3.3.11.
8. Off Mode Power	Section 3.3.12.
9. Unit Energy Consumption, UEC (kWh/yr).	Section 3.3.13.

3.1.2. Verifying Accuracy and Precision of Measuring Equipment

Any power measurement equipment utilized for testing must conform to the uncertainty and resolution requirements outlined in section 4, ''General conditions for measurement'', as well as annexes B, ''Notes on the measurement of low power modes'', and D, ''Determination of uncertainty of measurement'', of IEC 62301 (incorporated by reference, see § 430.3).

3.1.3. Setting Up the Test Room

All tests, battery conditioning, and battery rest periods shall be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s. The ambient temperature shall be maintained at 20 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. When not undergoing active testing, batteries shall be stored at 20 °C ± 5 °C.

3.1.4. Verifying the UUT's Input Voltage and Input Frequency

(a) If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested.

(b) If a charger is powered by a low-voltage DC or AC input, and the manufacturer packages the charger with a wall adapter, sells, or recommends an optional wall adapter capable of providing that low voltage input, then the charger shall be tested using that wall adapter and the input reference source shall be 115 V at 60 Hz. If the wall adapter cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

(c) If the UUT is designed for operation only on DC input voltage and the provisions of section 3.1.4(b) of this appendix do not apply, it shall be tested with one of the

following input voltages: 5.0 V DC for products drawing power from a computer USB port or the midpoint of the rated input voltage range for all other products. The input voltage shall be within ±1 percent of the above specified voltage.

(d) If the input voltage is AC, the input frequency shall be within ±1 percent of the specified frequency. The THD of the input voltage shall be ≤2 percent, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

(e) If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(1) ≤0.2 V for DC voltages up to 10 V; or

(2) ≤2 percent of the DC voltage for DC voltages over 10 V.

3.2. Unit Under Test Setup Requirements

3.2.1. General Setup

(a) The battery charger system shall be prepared and set up in accordance with the manufacturer's instructions, except where those instructions conflict with the requirements of this test procedure. If no instructions are given, then factory or ''default'' settings shall be used, or where there are no indications of such settings, the UUT shall be tested in the condition as it would be supplied to an end user.

(b) If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use, or, failing any explicit recommendation, the factory-default charge rate. If the charger has user controls for selecting special charge cycles that are recommended only for occasional use to preserve battery health, such as equalization charge, removing memory, or battery conditioning, these modes are not required to be tested. The settings of the controls shall be listed in the report for each test.

3.2.2. Selection and Treatment of the Battery Charger

The UUT, including the battery charger and its associated battery, shall be new products of the type and condition that would be sold to a customer. If the battery is lead-acid chemistry and the battery is to be stored for more than 24 hours between its initial acquisition and testing, the battery shall be charged before such storage.

3.2.3. Selection of Batteries To Use for Testing

(a) For chargers with integral batteries, the battery packaged with the charger shall be used for testing. For chargers with detachable batteries, the battery or batteries to be used for testing will vary depending on whether there are any batteries packaged with the battery charger.

(1) If batteries are packaged with the charger, batteries for testing shall be selected from the batteries packaged with the battery charger, according to the procedure in section 3.2.3(b) of this appendix.

(2) If no batteries are packaged with the charger, but the instructions specify or recommend batteries for use with the charger, batteries for testing shall be selected from those recommended or specified in the instructions, according to the procedure in section 3.2.3(b) of this appendix.

(3) If no batteries are packaged with the charger and the instructions do not specify or recommend batteries for use with the charger, batteries for testing shall be selected from any that are suitable for use with the charger, according to the procedure in section 3.2.3(b) of this appendix.

(b)(1) From the detachable batteries specified above, use Table 3.2.1 of this appendix to select the batteries to be used for testing, depending on the type of battery charger being tested. The battery charger types represented by the rows in the table are mutually exclusive. Find the single applicable row for the UUT, and test according to those requirements. Select only the single battery configuration specified for the battery charger type in Table 3.2.1 of this appendix.

(2) If the battery selection criteria specified in Table 3.2.1 of this appendix results in two or more batteries or configurations of batteries of different chemistries, but with equal voltage and capacity ratings, determine the maintenance mode power, as specified in section 3.3.9 of this appendix, for each of the batteries or configurations of batteries, and select for testing the battery or configuration of batteries with the highest maintenance mode power.

(c) A charger is considered as:

(1) Single-capacity if all associated batteries have the same nameplate battery charge capacity (see definition) and, if it is a batch charger, all configurations of the batteries have the same nameplate battery charge capacity.

(2) Multi-capacity if there are associated batteries or configurations of batteries that have different nameplate battery charge capacities.

(d) The selected battery or batteries will be referred to as the ''test battery'' and will be used through the remainder of this test procedure.

TABLE 3.2.1—BATTERY SELECTION FOR TESTING

Type of charger			Tests to perform
Multi-voltage	Multi-port	Multi-capacity	Battery selection (from all configurations of all associated batteries)
No	No	No	Any associated battery.
No	No	Yes	Highest charge capacity battery.
No	Yes	Yes or No	Use all ports. Use the maximum number of identical batteries with the highest nameplate battery charge capacity that the charger can accommodate.
Yes	No	No	Highest voltage battery.
Yes	Yes to either or both		Use all ports. Use the battery or configuration of batteries with the highest individual voltage. If multiple batteries meet this criteria, then use the battery or configuration of batteries with the highest total nameplate battery charge capacity at the highest individual voltage.

3.2.4. Limiting Other Non-Battery-Charger Functions

(a) If the battery charger or product containing the battery charger does not have any additional functions unrelated to battery charging, this subsection may be skipped.

(b) Any optional functions controlled by the user and not associated with the battery charging process (*e.g.,* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during the test.

(c) If the battery charger takes any physically separate connectors or cables not required for battery charging but associated with its other functionality (such as phone lines, serial or USB connections, Ethernet, cable TV lines, *etc.*), these connectors or cables shall be left disconnected during the testing.

(d) Any manual on-off switches specifically associated with the battery charging process shall be switched on for the duration of the charge, maintenance, and no-battery mode tests, and switched off for the off mode test.

3.2.5. Accessing the Battery for the Test

(a) The technician may need to disassemble the end-use product or battery charger to gain access to the battery terminals for the Battery Discharge Energy Test in section 3.3.8 of this appendix. If the battery terminals are not clearly labeled, the technician shall use a voltmeter to identify the positive and negative terminals. These terminals will be the ones that give the largest voltage difference and are able to deliver significant current (0.2 C or 1/hr) into a load.

(b) All conductors used for contacting the battery must be cleaned and burnished prior to connecting in order to decrease voltage drops and achieve consistent results.

(c) Manufacturer's instructions for disassembly shall be followed, except those instructions that:

(1) Lead to any permanent alteration of the battery charger circuitry or function;

(2) Could alter the energy consumption of the battery charger compared to that experienced by a user during typical use, *e.g.,* due to changes in the airflow through the enclosure of the UUT; or

(3) Conflict requirements of this test procedure.

(d) Care shall be taken by the technician during disassembly to follow appropriate safety precautions. If the functionality of the device or its safety features is compromised, the product shall be discarded after testing.

(e) Some products may include protective circuitry between the battery cells and the remainder of the device. If the manufacturer provides a description for accessing the connections at the output of the protective circuitry, these connections shall be used to discharge the battery and measure the discharge energy. The energy consumed by the protective circuitry during discharge shall not be measured or credited as battery energy.

(f) If the technician, despite diligent effort and use of the manufacturer's instructions, encounters any of the following conditions noted immediately below, the Battery Discharge Energy and the Charging and Maintenance Mode Energy shall be reported as ''Not Applicable'':

(1) Inability to access the battery terminals;

(2) Access to the battery terminals destroys charger functionality; or

(3) Inability to draw current from the test battery.

3.2.6. Determining Charge Capacity for Batteries With No Rating

(a) If there is no rating for the battery charge capacity on the battery or in the instructions, then the technician shall determine a discharge current that meets the following requirements. The battery shall be fully charged and then discharged at this constant-current rate until it reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix. The discharge time must be not less than 4.5 hours nor more than 5 hours. In addition, the discharge test (section 3.3.8 of this appendix) (which may not be starting with a fully-charged battery) shall reach the end-of-discharge voltage within 5 hours. The same discharge current shall be used for both the preparations step (section 3.3.4 of this appendix) and the discharge test (section 3.3.8 of this appendix). The test report shall include the discharge current used and the resulting discharge times for both a fully-charged battery and for the discharge test.

(b) For this section, the battery is considered as ''fully charged'' when either: it has been charged by the UUT until an indicator on the UUT shows that the charge is complete; or it has been charged by a battery analyzer at a current not greater than the discharge current until the battery analyzer indicates that the battery is fully charged.

(c) When there is no capacity rating, a suitable discharge current must generally be determined by trial and error. Since the conditioning step does not require constant-current discharges, the trials themselves may also be counted as part of battery conditioning.

3.3. Test Measurement

The test sequence to measure the battery charger energy consumption is summarized in Table 3.3.1 of this appendix, and explained in detail in this appendix. Measurements shall be made under test conditions and with the equipment specified in sections 3.1 and 3.2 of this appendix.

TABLE 3.3.1—TEST SEQUENCE

Step/Description	Data taken?	Equipment needed				
		Test battery	Charger	Battery analyzer or constant-current load	AC power meter	Thermometer (for flooded lead-acid battery chargers only)
1. Record general data on UUT; Section 3.3.1	Yes	X	X			
2. Determine test duration; Section 3.3.2	No					
3. Battery conditioning; Section 3.3.3	No	X	X	X		
4. Prepare battery for charge test; Section 3.3.4	No	X	X			
5. Battery rest period; Section 3.3.5	No	X				X
6. Conduct Charge Mode and Battery Maintenance Mode Test; Section 3.3.6.	Yes	X	X		X	
7. Battery Rest Period; Section 3.3.7	No	X				X
8. Battery Discharge Energy Test; Section 3.3.8	Yes	X		X		
9. Determining the Maintenance Mode Power; Section 3.3.9	Yes	X	X		X	
10. Calculating the 24-Hour Energy Consumption; Section 3.3.10.	No					
11. Standby Mode Test; Section 3.3.11	Yes		X		X	
12. Off Mode Test; Section 3.3.12	Yes		X		X	

3.3.1. Recording General Data on the UUT

The technician shall record:

(a) The manufacturer and model of the battery charger;

(b) The presence and status of any additional functions unrelated to battery charging;

(c) The manufacturer, model, and number of batteries in the test battery;

(d) The nameplate battery voltage of the test battery;

(e) The nameplate battery charge capacity of the test battery; and

(f) The nameplate battery charge energy of the test battery.

(g) The settings of the controls, if battery charger has user controls to select from two or more charge rates.

3.3.2. Determining the Duration of the Charge and Maintenance Mode Test

(a) The charging and maintenance mode test, described in detail in section 3.3.6 of this appendix, shall be 24 hours in length or longer, as determined by the items below. Proceed in order until a test duration is determined.

(1) If the battery charger has an indicator to show that the battery is fully charged, that indicator shall be used as follows: If the indicator shows that the battery is charged after 19 hours of charging, the test shall be terminated at 24 hours. Conversely, if the full-charge indication is not yet present after 19 hours of charging, the test shall continue until 5 hours after the indication is present.

(2) If there is no indicator, but the manufacturer's instructions indicate that charging this battery or this capacity of battery should be complete within 19 hours, the test shall be for 24 hours. If the instructions indicate that charging may take longer than 19 hours, the test shall be run for the longest estimated charge time plus 5 hours.

(3) If there is no indicator and no time estimate in the instructions, but the charging current is stated on the charger or in the

instructions, calculate the test duration as the longer of 24 hours or:

$$Duration = 1.4 \cdot \frac{RatedChargeCapacity\,(\mathrm{Ah})}{ChargeCurrent\,(\mathrm{A})} + 5\mathrm{h}$$

(b) If none of the above applies, the duration of the test shall be 24 hours.

3.3.3. Battery Conditioning

(a) No conditioning is to be done on lithium-ion batteries. The test technician shall proceed directly to battery preparation, section 3.3.4 of this appendix, when testing chargers for these batteries.

(b) Products with integral batteries will have to be disassembled per the instructions in section 3.2.5 of this appendix, and the battery disconnected from the charger for discharging.

(c) Batteries of other chemistries that have not been previously cycled are to be conditioned by performing two charges and two discharges, followed by a charge, as below. No data need be recorded during battery conditioning.

(1) The test battery shall be fully charged for the duration specified in section 3.3.2 of this appendix or longer using the UUT.

(2) The test battery shall then be fully discharged using either:

(i) A battery analyzer at a rate not to exceed 1 C, until its average cell voltage under load reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix for the relevant battery chemistry; or

(ii) The UUT, until the UUT ceases operation due to low battery voltage.

(3) The test battery shall again be fully charged as in step (c)(1) of this section.

(4) The test battery shall again be fully discharged as per step (c)(2) of this section.

(5) The test battery shall be again fully charged as in step (c)(1) of this section.

(d) Batteries of chemistries, other than lithium-ion, that are known to have been through at least two previous full charge/discharge cycles shall only be charged once per step (c)(5), of this section.

3.3.4. Preparing the Battery for Charge Testing

Following any conditioning prior to beginning the battery charge test (section 3.3.6 of this appendix), the test battery shall be fully discharged for the duration specified in section 3.3.2 of this appendix, or longer using a battery analyzer.

3.3.5. Resting the Battery

The test battery shall be rested between preparation and the battery charge test. The rest period shall be at least one hour and not exceed 24 hours. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended longer than 24 hours.

3.3.6. Testing Charge Mode and Battery Maintenance Mode

(a) The Charge and Battery Maintenance Mode test measures the energy consumed during charge mode and some time spent in the maintenance mode of the UUT. Functions required for battery conditioning that happen only with some user-selected switch or other control shall not be included in this measurement. (The technician shall manually turn off any battery conditioning cycle or setting.) Regularly occurring battery conditioning or maintenance functions that are not controlled by the user will, by default, be incorporated into this measurement.

(b) During the measurement period, input power values to the UUT shall be recorded at least once every minute.

(1) If possible, the technician shall set the data logging system to record the average power during the sample interval. The total energy is computed as the sum of power samples (in watts) multiplied by the sample interval (in hours).

(2) If this setting is not possible, then the power analyzer shall be set to integrate or accumulate the input power over the measurement period and this result shall be used as the total energy.

(c) The technician shall follow these steps:

(1) Ensure that the user-controllable device functionality not associated with battery charging and any battery conditioning cycle or setting are turned off, as instructed in section 3.2.4 of this appendix;

(2) Ensure that the test battery used in this test has been conditioned, prepared, discharged, and rested as described in sections 3.3.3 through 3.3.5 of this appendix;

(3) Connect the data logging equipment to the battery charger;

(4) Record the start time of the measurement period, and begin logging the input power;

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or wall adapter within 3 minutes of beginning logging;

(6) After the test battery is connected, record the initial time and power (W) of the input current to the UUT. These measurements shall be taken within the first 10 minutes of active charging;

(7) Record the input power for the duration of the ''Charging and Maintenance Mode Test'' period, as determined by section 3.3.2 of this appendix. The actual time that power is connected to the UUT shall be within ±5 minutes of the specified period; and

(8) Disconnect power to the UUT, terminate data logging, and record the final time.

3.3.7. Resting the Battery

The test battery shall be rested between charging and discharging. The rest period shall be at least 1 hour and not more than 4 hours, with an exception for flooded cells. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended beyond 4 hours.

3.3.8. Battery Discharge Energy Test

(a) If multiple batteries were charged simultaneously, the discharge energy is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger, batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger, batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

(b) During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

(c) For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to the procedures above.

(2) Set the battery analyzer for a constant discharge rate and the end-of-discharge voltage in Table 3.3.2 of this appendix for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

(d) If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

3.3.9. Determining the Maintenance Mode Power

After the measurement period is complete, the technician shall determine the average maintenance mode power consumption by examining the power-versus-time data from the charge and maintenance test and:

(a) If the maintenance mode power is cyclic or shows periodic pulses, compute the average power over a time period that spans a whole number of cycles and includes at least the last 4 hours.

(b) Otherwise, calculate the average power value over the last 4 hours.

3.3.10. Determining the 24-Hour Energy Consumption

The accumulated energy or the average input power, integrated over the test period

from the charge and maintenance mode test, shall be used to calculate 24-hour energy consumption.

TABLE 3.3.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate (C)	End-of-discharge voltage * (volts per cell)
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium Ion (Li-Ion)	0.2	2.5
Lithium Polymer	0.2	2.5
Rechargeable Alkaline	0.2	0.9
Nanophosphate Lithium Ion	0.2	2.0
Silver Zinc	0.2	1.2

* If the presence of protective circuitry prevents the battery cells from being discharged to the end-of-discharge voltage specified, then discharge battery cells to the lowest possible voltage permitted by the protective circuitry.

3.3.11. Standby Mode Energy Consumption Measurement

The standby mode measurement depends on the configuration of the battery charger, as follows.

(a) Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

(b) Standby mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

(c) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(d) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

3.3.12. Off Mode Energy Consumption Measurement

The off mode measurement depends on the configuration of the battery charger, as follows.

(a) If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

(b) Off mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

(c) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(d) Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

3.3.13. Unit Energy Consumption Calculation

Unit energy consumption (UEC) shall be calculated for a battery charger using one of the two equations (equation (i) or equation (ii)) listed in this section. If a battery charger is tested and its charge duration as determined in section 3.3.2 of this appendix minus 5 hours is greater than the threshold charge time listed in table 3.3.3 of this appendix (*i.e.* $(t_{cd} - 5) * n > t_{a\&m}$), equation (ii) shall be used to calculate UEC; otherwise a battery charger's UEC shall be calculated using equation (i).

$$\text{(i) } UEC = 365\left(n\left(E_{24} - 5P_m - E_{batt}\right)\frac{24}{t_{cd}} + \left(P_m\left(t_{a\&m} - (t_{cd} - 5)n\right)\right) + \left(P_{sb}t_{sb}\right) + \left(P_{off}t_{off}\right)\right) \text{ or,}$$

$$\text{(ii) } UEC = 365\left(n\left(E_{24} - 5P_m - E_{batt}\right)\frac{24}{(t_{cd}-5)} + \left(P_{sb}t_{sb}\right) + \left(P_{off}t_{off}\right)\right)$$

Where:

E_{24} = 24-hour energy as determined in section 3.3.10 of this appendix,

E_{batt} = Measured battery energy as determined in section 3.3.8 of this appendix,

P_m = Maintenance mode power as determined in section 3.3.9 of this appendix,

P_{sb} = Standby mode power as determined in section 3.3.11 of this appendix,

P_{off} = Off mode power as determined in section 3.3.12 of this appendix,

t_{cd} = Charge test duration as determined in section 3.3.2 of this appendix, and

$t_{a\&m}$, n, t_{sb}, and t_{off}, are constants used depending upon a device's product class and found in the following table:

TABLE 3.3.3—BATTERY CHARGER USAGE PROFILES

Product class				Hours per day ***			Charges (n)	Threshold charge time *
Number	Description	Rated battery energy (ebatt) **	Special characteristic or battery voltage	Active + maintenance ($t_{a\&m}$)	Standby (t_{sb})	Off (t_{off})	Number per day	Hours
1	Low-Energy	≤5 Wh	Inductive Connection ****.	20.66	0.10	0.00	0.15	137.73
2	Low-Energy, Low-Voltage	<100 Wh	<4 V	7.82	5.29	0.00	0.54	14.48
3	Low-Energy, Medium-Voltage.		4–10 V	6.42	0.30	0.00	0.10	64.20
4	Low-Energy, High-Voltage		>10 V	16.84	0.91	0.00	0.50	33.68
5	Medium-Energy, Low-Voltage.	100–3000 Wh	<20 V	6.52	1.16	0.00	0.11	59.27
6	Medium-Energy, High-Voltage.		≥20 V	17.15	6.85	0.00	0.34	50.44
7	High-Energy	>3000 Wh		8.14	7.30	0.00	0.32	25.44

* If the duration of the charge test (minus 5 hours) as determined in section 3.3.2 of appendix Y to subpart B of this part exceeds the threshold charge time, use equation (ii) to calculate UEC otherwise use equation (i).

** E_{batt} = Rated battery energy as determined in 10 CFR part 429.39(a).

*** If the total time does not sum to 24 hours per day, the remaining time is allocated to unplugged time, which means there is 0 power consumption and no changes to the UEC calculation needed.

**** Inductive connection and designed for use in a wet environment (*e.g.* electric toothbrushes).

4. Testing Requirements for Uninterruptible Power Supplies

4.1. Standard Test Conditions

4.1.1. Measuring Equipment

(a) The power or energy meter must provide true root mean square (r. m. s) measurements of the active input and output measurements, with an uncertainty at full rated load of less than or equal to 0.5% at the 95% confidence level notwithstanding that voltage and current waveforms can include harmonic components. The meter must measure input and output values simultaneously.

(b) All measurement equipment used to conduct the tests must be calibrated within the measurement equipment manufacturer specified calibration period by a standard traceable to International System of Units such that measurements meet the uncertainty requirements specified in section 4.1.1(a) of this appendix.

4.1.2. Test Room Requirements

All portions of the test must be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s in all directions. Maintain the ambient temperature in the range of 20.0 °C to 30.0 °C, including all inaccuracies and uncertainties introduced by the temperature measurement equipment, throughout the test. No intentional cooling of the UUT, such as by use of separately powered fans, air conditioners, or heat sinks, is permitted. Test the UUT on a thermally non-conductive surface.

4.1.3. Input Voltage and Input Frequency

The AC input voltage and frequency to the UPS during testing must be within 3 percent of the highest rated voltage and within 1 percent of the highest rated frequency of the device.

4.2. Unit Under Test Setup Requirements

4.2.1. General Setup

Configure the UPS according to Annex J.2 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3) with the following additional requirements:

(a) *UPS Operating Mode Conditions.* If the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the lowest possible input dependency, followed by VI and then VFI.

(b) *Energy Storage System.* The UPS must not be modified or adjusted to disable energy storage charging features. Minimize the transfer of energy to and from the energy storage system by ensuring the energy storage system is fully charged (at the start of testing) as follows:

(1) If the UUT has a battery charge indicator, charge the battery for 5 hours after the UUT has indicated that it is fully charged.

(2) If the UUT does not have a battery charge indicator but the user manual shipped with the UUT specifies a time to reach full charge, charge the battery for 5 hours longer than the time specified.

(3) If the UUT does not have a battery charge indicator or user manual instructions, charge the battery for 24 hours.

(c) *DC output port(s).* All DC output port(s) of the UUT must remain unloaded during testing.

4.2.2. Additional Features

(a) Any feature unrelated to maintaining the energy storage system at full charge or delivery of load power (*e.g.,* LCD display) shall be switched off. If it is not possible to switch such features off, they shall be set to their lowest power-consuming mode during the test.

(b) If the UPS takes any physically separate connectors or cables not required for maintaining the energy storage system at full charge or delivery of load power but associated with other features (such as serial or USB connections, Ethernet, etc.), these connectors or cables shall be left disconnected during the test.

(c) Any manual on-off switches specifically associated with maintaining the energy storage system at full charge or delivery of load power shall be switched on for the duration of the test.

4.3. Test Measurement and Calculation

Efficiency can be calculated from either average power or accumulated energy.

4.3.1. Average Power Calculations

If efficiency calculation are to be made using average power, calculate the average power consumption (P_{avg}) by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test as follows:

$$P_{avg} = \frac{1}{n}\sum_{i=1}^{n} P_i \quad (1)$$

Where:

P_{avg} = average power

P_i = power measured during individual measurement (i)

n = total number of measurements

4.3.2. Steady State

Operate the UUT and the load for a sufficient length of time to reach steady state conditions. To determine if steady state conditions have been attained, perform the following steady state check, in which the difference between the two efficiency calculations must be less than 1 percent:

(a)(1) Simultaneously measure the UUT's input and output power for at least 5 minutes, as specified in section 4.3.1 of this appendix, and record the average of each over the duration as P_{avg_in} and P_{avg_out}, respectively. Or,

(2) Simultaneously measure the UUT's input and output energy for at least 5 minutes and record the accumulation of each over the duration as E_{in} and E_{out}, respectively.

(b) Calculate the UUT's efficiency, Eff_1, using one of the following two equations:

$$Eff = \frac{P_{avg_out}}{P_{avg_in}} \quad (2)$$

Where:

Eff is the UUT efficiency

P_{avg_out} is the average output power in watts

P_{avg_in} is the average input power in watts

$$Eff = \frac{E_{out}}{E_{in}}$$

Where:

Eff is the UUT efficiency

E_{out} is the accumulated output energy in watt-hours

E_{in} in the accumulated input energy in watt-hours

(c) Wait a minimum of 10 minutes.

(d) Repeat the steps listed in paragraphs (a) and (b) of section 4.3.2 of this appendix to calculate another efficiency value, Eff_2.

(e) Determine if the product is at steady state using the following equation:

$$Percentage\ difference = \frac{|Eff_1 - Eff_2|}{Average(Eff_1, Eff_2)}$$

If the percentage difference of Eff_1 and Eff_2 as described in the equation, is less than 1 percent, the product is at steady state.

(f) If the percentage difference is greater than or equal to 1 percent, the product is not at steady state. Repeat the steps listed in paragraphs (c) to (e) of section 4.3.2 of this appendix until the product is at steady state.

4.3.3. Power Measurements and Efficiency Calculations

Measure input and output power of the UUT according to Section J.3 of Annex J of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3), or measure the input and output energy of the UUT for efficiency calculations with the following exceptions:

(a) Test the UUT at the following reference test load conditions, in the following order: 100 percent, 75 percent, 50 percent, and 25 percent of the rated output power.

(b) Perform the test at each of the reference test loads by simultaneously measuring the UUT's input and output power in Watts (W), or input and output energy in Watt-Hours (Wh) over a 15 minute test period at a rate of at least 1 Hz. Calculate the efficiency for that reference load using one of the following two equations:

$$Eff_{n\%} = \frac{P_{avg_out\ n\%}}{P_{avg_in\ n\%}} \quad (1)$$

Where:

$Eff_{n\%}$ = the efficiency at reference test load n%

$P_{avg_out\ n\%}$ = the average output power at reference load n%

$P_{avg_in\ n\%}$ = the average input power at reference load n%

$$Eff_{n\%} = \frac{E_{out\ n\%}}{E_{in\ n\%}} \quad (2)$$

Where:

$Eff_{n\%}$ = the efficiency at reference test load n%

$E_{out\ n\%}$ = the accumulated output energy at reference load n%

$E_{in\ n\%}$ = the accumulated input energy at reference load n%

4.3.4. UUT Classification

Optional Test for determination of UPS architecture. Determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI (sections 2.28.1 through 2.28.3 of this appendix).

4.3.5. Output Efficiency Calculation

(a) Use the load weightings from Table 4.3.1 to determine the average load adjusted efficiency as follows:

$$Eff_{avg} = (t_{25\%} \times Eff|_{25\%}) + (t_{50\%} \times Eff|_{50\%}) + (t_{75\%} \times Eff|_{75\%}) + (t_{100\%} \times Eff|_{100\%})$$

Where:

Eff_{avg} = the average load adjusted efficiency

$t_{n\%}$ = the portion of time spent at reference test load n% as specified in Table 4.3.1

$Eff|_{n\%}$ = the measured efficiency at reference test load n%

TABLE 4.3.1—LOAD WEIGHTINGS

Rated output power (W)	UPS architecture	Portion of time spent at reference load			
		25%	50%	75%	100%
P ≤ 1500 W	VFD	0.2	0.2	0.3	0.3
	VI or VFI	0*	0.3	0.4	0.3
P > 1500 W	VFD, VI, or VFI	0*	0.3	0.4	0.3

* Measuring efficiency at loading points with 0 time weighting is not required.

(b) Round the calculated efficiency value to one tenth of a percentage point.

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H.R. 5785/P.L. 114–251
To amend title 5, United States Code, to provide for an annuity supplement for certain air traffic controllers. (Dec. 8, 2016; 130 Stat. 1002)

H.R. 5873/P.L. 114–252
To designate the Federal building and United States courthouse located at 511 East San Antonio Avenue in El Paso, Texas, as the ''R.E. Thomason Federal Building and United States Courthouse''. (Dec. 8, 2016; 130 Stat. 1003)

S. 2754/P.L. 114–253
To designate the Federal building and United States courthouse located at 300 Fannin Street in Shreveport, Louisiana, as the ''Tom Stagg United States Court House''. (Dec. 8, 2016; 130 Stat. 1004)

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