



# FEDERAL REGISTER

---

Vol. 80

Friday,

No. 224

November 20, 2015

Pages 72555–72898

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.ofr.gov](http://www.ofr.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.fdsys.gov](http://www.fdsys.gov), a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpocusthelp.com](mailto:gpocusthelp.com).

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 80 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Assistance with Federal agency subscriptions:

Email [FRSubscriptions@nara.gov](mailto:FRSubscriptions@nara.gov)  
Phone 202-741-6000



# Contents

Federal Register

Vol. 80, No. 224

Friday, November 20, 2015

## Administrative Conference of the United States

### NOTICES

Meetings:

Assembly of the Administrative Conference of the United States, 72680

## Agency for International Development

### NOTICES

Meetings:

President's Global Development Council, 72680–72681

## Agriculture Department

*See* Economic Research Service

*See* Food and Nutrition Service

*See* Forest Service

## Air Force Department

### NOTICES

Exclusive Patent License Approvals, 72711–72712

## Bonneville Power Administration

### NOTICES

Bonneville Purchasing Instructions and Bonneville Financial Assistance Instructions, 72715–72716

## Bureau of Consumer Financial Protection

### NOTICES

Fair Credit Reporting Act Disclosures, 72711

## Centers for Medicare & Medicaid Services

### NOTICES

Medicare Program:

Request for Information to Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences with Care Received in Inpatient Rehabilitation Facilities, 72725–72727

Request for Information to Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences with Care Received in Long-Term Care Hospitals, 72722–72725

## Civil Rights Commission

### NOTICES

Meetings:

Hawai'i State Advisory Committee, 72683–72684

## Coast Guard

### RULES

Drawbridge Operations:

Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake (Great Bridge), VA, 72592

### PROPOSED RULES

Regulated Navigation Areas:

Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events, Biscayne Bay, Miami, FL, 72663–72665

## Commerce Department

*See* International Trade Administration

*See* National Institute of Standards and Technology

*See* National Oceanic and Atmospheric Administration

*See* Patent and Trademark Office

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72684–72685

## Committee for Purchase From People Who Are Blind or Severely Disabled

### NOTICES

Procurement List; Additions and Deletions, 72709–72711

## Commodity Futures Trading Commission

### NOTICES

Meetings; Sunshine Act, 72711

## Comptroller of the Currency

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Fiduciary Activities, 72784–72786

Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act, 72783–72784

## Defense Acquisition Regulations System

### RULES

Defense Federal Acquisition Regulation Supplement:

Eliminate Data Collection Requirement, 72606

Photovoltaic Devices from the U.S., 72599–72606

Technical Amendments, 72607

### PROPOSED RULES

Defense Federal Acquisition Regulation Supplement:

Buy American and Balance of Payments Program—Clause Prescription, 72672–72673

Contract Term Limit for Shared Energy Savings Contract Services, 72675–72676

Duty-Free Entry Threshold, 72673–72674

Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units, 72671–72672

Long-Haul Telecommunications, 72674–72675

Promoting Voluntary Post-Award Disclosure of Defective Pricing, 72669–72671

### NOTICES

Meetings:

Industry Implementation Information Day, 72712

## Defense Department

*See* Air Force Department

*See* Defense Acquisition Regulations System

*See* Engineers Corps

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72714

Meetings:

Defense Advisory Committee on Women in the Services, 72713–72714

Reserve Forces Policy Board, 72712–72713

## Economic Research Service

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72681

**Energy Department**

See Bonneville Power Administration

**PROPOSED RULES**

Energy Conservation Standards for Commercial Prerinse Spray Valves:  
Availability of Provisional Analysis Tools, 72608–72616

**NOTICES**

Environmental Impact Statements; Availability, etc.:  
Draft Northern Pass Transmission Line Project; Public Hearings, 72716–72717

**Engineers Corps****NOTICES**

Meetings:  
Chief of Engineers Environmental Advisory Board, 72714–72715

**Environmental Protection Agency****RULES**

National Emission Standards for Hazardous Air Pollutants for Major Sources:  
Industrial, Commercial, and Institutional Boilers and Process Heaters, 72790–72837  
Significant New Use Rules on Certain Chemical Substances; Withdrawal, 72592–72593

**Tolerance Actions:**

Amitraz, Carfentrazone-ethyl, Ethephon, Malathion, Mancozeb, et al., 72593–72599

**PROPOSED RULES**

Treatment of Data Influenced by Exceptional Events, 72840–72897

**NOTICES**

Environmental Impact Statements; Availability, etc.:  
Weekly Receipts, 72719  
Pesticide Registration Reviews:  
Draft Human Health and Ecological Risk Assessments for Certain Organophosphates, 72717  
Draft Human Health and Ecological Risk Assessments for Sulfonylureas, 72717–72719

**Federal Aviation Administration****RULES**

Airworthiness Directives:  
Airbus Airplanes, 72569–72573  
Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes, 72565–72569  
REIMS AVIATION S.A. Airplanes, 72563–72565  
The Boeing Company Airplanes, 72573–72576, 72579–72581  
Zodiac Aerotechnics (Formerly Intertechnique Aircraft Systems), 72576–72579  
Special Conditions:  
Associated Air Center, Boeing Model 747–8 Airplane; Shoulder-Belt Airbags for Side-Facing Seats, 72555–72560  
CFM International, LEAP 1B Engine Models; Incorporation of Woven Composite Fan Blades, 72561–72563  
Flight Structures, Inc., Boeing Model 777–200 Dynamic Test Requirements for Single-Occupant, Oblique (Side-Facing) Seats With Airbag Devices; Correction, 72561

**PROPOSED RULES**

Airworthiness Directives:  
The Boeing Company Airplanes, 72621–72624  
Special Conditions:  
Gulfstream Aerospace Corporation, Gulfstream GVI Airplane; Non-Rechargeable Lithium Battery Installations, 72618–72620

**Federal Communications Commission****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72720–72721  
Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction; Revised Filing Window Dates, 72721–72722  
Meetings:  
Communications Security, Reliability, and Interoperability Council, 72719–72720

**Federal Election Commission****PROPOSED RULES**

Candidate Debates, 72616–72618

**Federal Highway Administration****PROPOSED RULES**

Environmental Impact and Related Procedures, 72624–72642

**NOTICES**

Final Federal Agency Actions on Proposed Highway in Minnesota, 72779

**Federal Railroad Administration****NOTICES**

Guidance:  
Inspection, Testing, and Maintenance of Emergency Window Exits on Railroad Passenger Cars, 72779–72781

**Federal Reserve System****NOTICES**

Changes in Bank Control:  
Acquisitions of Shares of a Bank or Bank Holding Company, 72722  
Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction, 72722

**Federal Transit Administration****PROPOSED RULES**

Environmental Impact and Related Procedures, 72624–72642

**Food and Drug Administration****RULES**

Artificially Sweetened Fruit Jelly and Artificially Sweetened Fruit Preserves and Jams; Revocation of Standards of Identity, 72581–72585  
Dental Devices:  
Reclassification of Electrical Salivary Stimulator System, 72585–72586  
Medical Devices:  
Exemption from Premarket Notification; Class II Devices; Electric Positioning Chair, 72589–72591  
Medical Devices; General Hospital and Personal Use Devices:  
Classification of the Ultraviolet Radiation Chamber Disinfection Device, 72587–72589

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Improving Food Safety and Defense Capacity of the State and Local Level—Review of State and Local Capacities, 72727–72728  
Determinations that Products Were Not Withdrawn from Sale for Reasons of Safety or Effectiveness:  
LIPTRUZET (Ezetimibe and Atorvastatin) Tablets, 72728–72729

**Food and Nutrition Service****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Generic Clearance for the Special Nutrition Programs Quick Response Surveys, 72681–72683

**Foreign Claims Settlement Commission****NOTICES**

Completion of Iraq Claims Adjudication Program, 72738–72739

**Forest Service****PROPOSED RULES**

Roadless Area Conservation; National Forest System Lands in Colorado, 72665–72669

**Health and Human Services Department**

See Centers for Medicare & Medicaid Services  
See Food and Drug Administration  
See National Institutes of Health

**Homeland Security Department**

See Coast Guard  
See U.S. Immigration and Customs Enforcement

**Housing and Urban Development Department****PROPOSED RULES**

Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs, 72642–72649

**NOTICES**

Federal Property Suitable as Facilities to Assist the Homeless, 72731–72732

**Interior Department**

See Land Management Bureau

**Internal Revenue Service****PROPOSED RULES**

Relief from Joint and Several Liability, 72649–72663

**International Trade Administration****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan, 72685–72686

Export Trade Certificate of Review by United States Surimi Commission; Amended Application, 72686

International Trade Data System Test:

Electronic Submission of Certain Documentation Required for Imports of Uranium from the Russian Federation Using the Document Imaging System, 72686–72688

**International Trade Commission****NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same, 72738

Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same, 72735–72736

Trans-Pacific Partnership Agreement—Likely Impact on the U.S. Economy and on Specific Industry Sectors, 72736–72738

Welded Stainless Steel Pressure Pipe from India, 72735

**Justice Department**

See Foreign Claims Settlement Commission

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Survey—Death in Custody Reporting Program; Annual Survey of Jails; Survey of Jails in Indian Country, 72741–72744

Survey—Death in Custody Reporting Program—Prisons, 72740–72741

Proposed Consent Decrees under CERCLA, 72739–72740

Proposed Consent Decrees under the Clean Air Act, 72739

**Labor Department****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Consumer Price Index Housing Survey, 72744–72745

**Land Management Bureau****NOTICES**

Environmental Impact Statements; Availability, etc.:

Oil and Gas Leases in the White River National Forest, CO, 72733–72734

Roan Plateau Planning Area, CO; Draft Resource Management Plan Amendment, 72732–72733

Meetings:

Alaska Resource Advisory Council, 72734–72735

**National Aeronautics and Space Administration****NOTICES**

Privacy Act; Systems of Records, 72745–72750

**National Institute of Standards and Technology****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72688

**National Institutes of Health****NOTICES**

Grants of Exclusive Licenses:

Development of in Vitro Diagnostics for the Detection of Diseases or Pathogenic Agents, 72729–72730

**National Oceanic and Atmospheric Administration****PROPOSED RULES**

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries:

Multi-Year Specifications for Monitored and Prohibited Harvest Species Stock Categories, 72676–72679

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72708–72709

Takes of Marine Mammals Incidental to Specified Activities:

Operation, Maintenance, and Repair of the Northeast Gateway Liquefied Natural Gas Port and the Algonquin Pipeline Lateral Facilities in Massachusetts Bay, 72688–72708

**National Science Foundation****NOTICES**

Meetings:

Advisory Committee for Social, Behavioral and Economic Sciences, 72750

Proposal Review, 72750

Meetings; Sunshine Act, 72750–72751

### **Nuclear Regulatory Commission**

#### **NOTICES**

Early Site Permit for the PSEG Site, 72751

### **Overseas Private Investment Corporation**

#### **NOTICES**

Meetings; Sunshine Act, 72751–72752

### **Patent and Trademark Office**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Practitioner Conduct and Discipline, 72709

### **Personnel Management Office**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Health Benefits Election Form, 72752

Meetings:

President's Commission on White House Fellowships Advisory Committee, 72752

Senior Executive Service Performance Review Board, 72752–72753

### **Postal Regulatory Commission**

#### **NOTICES**

International Mail Contracts, 72753–72754

Meetings; Sunshine Act, 72754

### **Railroad Retirement Board**

#### **NOTICES**

2016 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations, 72754–72755

### **Saint Lawrence Seaway Development Corporation**

#### **NOTICES**

Meetings:

Advisory Board, 72781–72782

### **Science and Technology Policy Office**

#### **NOTICES**

Meetings:

U.S.-EU Communities of Research on Environmental, Health, and Safety Issues Related to Nanomaterials, 72755–72756

### **Securities and Exchange Commission**

#### **NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:

BOX Options Exchange, LLC, 72758–72761

Chicago Board Options Exchange, Inc., 72761–72763

Financial Industry Regulatory Authority, Inc., 72775

Municipal Securities Rulemaking Board, 72756–72758

NASDAQ OMX PHLX, LLC, 72768–72775

NASDAQ Stock Market, LLC, 72763–72767

### **Social Security Administration**

#### **NOTICES**

Privacy Act; Systems of Records, 72775–72777

### **State Department**

#### **RULES**

Elimination of Visa Page Insert Service for U.S. Passport Book Holders, 72591–72592

### **Surface Transportation Board**

#### **NOTICES**

Freight Easements; Abandonments:

Union Pacific Railroad Co., Adams County, CO, 72782–72783

Lease and Operation Exemptions:

Motive Rail, Inc. d/b/a Missouri North Central Railroad; Illinois Central Railroad Co., 72783

### **Susquehanna River Basin Commission**

#### **NOTICES**

Projects Approved for Consumptive Uses of Water, 72777–72779

### **Transportation Department**

*See* Federal Aviation Administration

*See* Federal Highway Administration

*See* Federal Railroad Administration

*See* Federal Transit Administration

*See* Saint Lawrence Seaway Development Corporation

*See* Surface Transportation Board

### **Treasury Department**

*See* Comptroller of the Currency

*See* Internal Revenue Service

### **U.S. Immigration and Customs Enforcement**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72730

### **Veterans Affairs Department**

#### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Direct Deposit Enrollment and International Direct

Deposit Enrollment, 72787

Statement of Accredited Representative in Appealed Case, 72787–72788

VA Survey of Veteran Enrollees' Health and Use of Health Care, 72786–72787

### **Separate Parts In This Issue**

#### **Part II**

Environmental Protection Agency, 72790–72837

#### **Part III**

Environmental Protection Agency, 72840–72897

### **Reader Aids**

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

To subscribe to the Federal Register Table of Contents

LISTSERV electronic mailing list, go to [http://](http://listserv.access.gpo.gov)

[listserv.access.gpo.gov](http://listserv.access.gpo.gov) and select Online mailing list

archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

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

**10 CFR****Proposed Rules:**

429 .....72608  
431 .....72608

**11 CFR****Proposed Rules:**

110 .....72616

**14 CFR**

25 (2 documents) .....72555,  
72561  
33 .....72561  
35 .....72561  
39 (6 documents) .....72563,  
72565, 72569, 72573, 72576,  
72579

**Proposed Rules:**

25 .....72618  
39 .....72621

**21 CFR**

150 .....72581  
872 .....72585  
880 .....72587  
890 .....72589

**22 CFR**

22 .....72591  
51 .....72591

**23 CFR****Proposed Rules:**

771 .....72624  
774 .....72624

**24 CFR****Proposed Rules:**

5 .....72642

**26 CFR****Proposed Rules:**

1 .....72649

**33 CFR**

117 .....72592

**Proposed Rules:**

165 .....72663

**36 CFR****Proposed Rules:**

294 .....72665

**40 CFR**

9 .....72592  
63 .....72790  
180 .....72593  
721 .....72592

**Proposed Rules:**

50 .....72840

**48 CFR**

212 .....72599  
216 .....72606  
217 .....72607  
225 (2 documents) .....72599,  
72607  
252 .....72599

**Proposed Rules:**

215 .....72669  
217 .....72671  
225 (2 documents) .....72672,  
72673  
234 .....72671  
239 .....72674  
241 .....72675  
252 .....72673

**49 CFR****Proposed Rules:**

622 .....72624

**50 CFR****Proposed Rules:**

660 .....72676

# Rules and Regulations

Federal Register

Vol. 80, No. 224

Friday, November 20, 2015

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

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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2015-3369; Special Conditions No. 25-606-SC]

#### Special Conditions: Associated Air Center, Boeing Model 747-8 Airplane; Shoulder-Belt Airbags for Side-Facing Seats

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing Model 747-8 airplane. This airplane, as modified by Associated Air Center, will have novel or unusual design features associated with side-facing seats and airbag-equipped shoulder belts for these side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 20, 2015. We must receive your comments by January 4, 2016.

**ADDRESSES:** Send comments identified by docket number FAA-2015-3369 using any of the following methods:

*Federal eRegulations 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:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

*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 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:** Jayson Claar, Airframe and Cabin Safety, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2194; facsimile 425-227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On March 1, 2013, Associated Air Center applied for a supplemental type certificate, project no. AAC-12-04-ODA, for side-facing seats with airbag-equipped shoulder belts to be installed in Boeing Model 747-8 airplanes.

The Boeing Model 747-8 airplane, as modified by Associated Air Center, includes a head-of-state interior with a maximum passenger-seating capacity of 112. Twelve of the passenger-seating positions will be single-passenger, side-facing seats, each of which will be outfitted with an airbag system in the shoulder belts.

### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Associated Air Center must show that the Boeing Model 747-8 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in type certificate no. A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in type certificate no. A20WE are as follows:

The certification basis for areas changed or affected by the Associated Air Center STC is 14 CFR part 25, as amended by Amendment 25-1 through Amendment 25-120, with exceptions permitted by § 21.101. The certification basis includes special conditions and exemptions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards



for the Boeing Model 747–8 airplane, as modified by Associated Air Center, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–8 airplane, as modified by Associated Air Center, must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

#### Novel or Unusual Design Features

The Boeing Model 747–8 airplane, as modified by Associated Air Center, will incorporate the following novel or unusual design features:

These airplanes will have interior configurations with multiple-place side-facing seats and single-place side-facing seats that include airbag systems in the shoulder belts. Side-facing seats are considered a novel or unusual design for transport-category airplanes that include Amendment 25–64 in their certification basis, and were not anticipated when those airworthiness standards were issued. Therefore, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. The airbag systems in the shoulder belts on side-facing seats are designed to limit occupant forward excursion in the event of an accident. These airbag systems are novel or unusual for commercial aviation.

#### Discussion

The FAA has been conducting research to develop an acceptable method of compliance with § 25.785(b) for side-facing seat installations. That research has identified additional injury considerations and evaluation criteria. See published report DOT/FAA/AR–09/41, July 2011.

Before this research, the FAA had been granting exemptions for the multiple-place side-facing seat

installations because an adequate method of compliance was not available to produce an equivalent level of safety to that level of safety provided for the forward- and aft-facing seats. These exemptions were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of the exemption issuance. The FAA has developed a methodology to address all fully side-facing seats (*i.e.*, seats oriented in the airplane with the occupant facing 90 degrees to the direction of airplane travel) and is documenting those requirements in these special conditions. Some of the previous conditions issued for exemptions are still relevant and are included in these new special conditions. However, many of the conditions for exemption have been replaced by different criteria that reflect current research findings.

The FAA had been issuing special conditions to address single-place side-facing seats; however, application of the current research findings has allowed issuing special conditions that are applicable to all fully side-facing seats, both multiple-place and single-place.

Neck-injury evaluation methods applicable to the most common side-facing seat configurations were identified during recent FAA research. The scope of that research, however, did not include deriving specific injury criteria for all possible loading scenarios that could occur to occupants of fully side-facing seats. To limit the injury risk in those cases, these special conditions provide conservative injury-evaluation means that are derived from past practice and applicable scientific literature.

Serious leg injuries, such as femur fractures, can occur in aviation side-facing seats that could threaten the occupants' lives directly or reduce their ability to evacuate. Limiting upper-leg axial rotation to a conservative limit of 35 degrees (approximately the 50 percentile range of motion) should also limit the risk of serious leg injuries. It is believed that the angle of rotation can be determined by observing lower-leg flailing in typical high-speed video of the dynamic tests. This requirement complies with the intent of the § 25.562 (b)(6) injury criteria in preventing serious leg injury.

The requirement to provide support for the pelvis, upper arm, chest, and head contained in previous special conditions for single-place side-facing seats has been replaced in the new special conditions applicable to all fully side-facing seats with requirements for neck-injury evaluation, leg-flail limits,

pelvis-excursion limits, head-excursion limits, and torso lateral-bending limits that directly assess the effectiveness of the support provided by the seat and restraint system.

To protect occupants in aft-facing seats, those seats must have sufficient height and stiffness to support occupants' heads and spines. Providing this support is intended to reduce spinal injuries when occupant inertial forces cause their heads and spines to load against the seat backs. If, during a side-facing-seat dynamic test, the flailing of the occupants causes their heads to translate beyond the planes of the seat backs, then this lack of support would not comply with the intent of the requirement to prevent spine injuries, and would not provide the same level of safety afforded occupants of forward- and aft-facing seats.

Results from tests that produced lateral flailing over an armrest indicate that serious injuries, including spinal fractures, would likely occur. While no criteria currently relates the amount of lateral flail to a specific risk of injury, if lateral flexion is limited to the normal static range of motion, then the risk of injury should be low. This range of motion is approximately 40 degrees from the upright position. Ensuring that lateral flexion does not create a significant injury risk is consistent with the goal of providing an equivalent level of safety to that provided by forward- or aft-facing seats, because that type of articulation of those seats does not occur during forward impacts.

Section 25.562 requires that the restraints remain on the shoulders and pelvises of the occupants during impact. Advisory Circular (AC) 25.562–1B, “Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes,” dated January 10, 2006, clarifies this requirement by stating that restraints must remain on the shoulders and pelvises when loaded by the occupants. This criterion is necessary to protect the occupants from serious injuries that could be caused by lap-belt contact forces applied to soft tissue, or by ineffectively restraining the upper torsos in the event the upper-torso restraints slide off the shoulders. In forward-facing seats (the type specifically addressed in that AC), occupant motion during rebound, and any subsequent re-loading of the belts, is limited by interaction with the seat backs. However, in side-facing seats subjected to a forward impact, the restraint systems may be the only means of limiting the occupants' rearward (rebound) motion. Likewise, to limit abdominal-injury risk in side-facing seats, the lap belts must remain on the

pelvis throughout the impact event, including rebound.

During side-facing-seat dynamic tests, the risk for head injury is assessed with only one occupant size (the 50th percentile male as represented by the ES-2re, as defined in 49 CFR part 572, subpart U). However, protection for a range of occupant statures can be provided if the impacted surface is homogenous in the area contactable by that range of occupants.

The FAA has issued special conditions in the past for airbag systems on lap belts for some forward-facing seats. These special conditions for the airbag systems in the shoulder belts are based on the previous special conditions for airbag systems on lap belts, with some changes to address the specific issues of side-facing seats. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

The FAA has considered the installation of airbag systems in the shoulder belts to have two primary safety concerns: First, that the systems perform properly under foreseeable operating conditions, and second, that the systems do not perform in a manner or at such times as would constitute a hazard to the occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

#### Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747-8 airplane as modified by Associated Air Center. Should the applicant apply at a later date for a supplemental type certificate to modify any other model included on type

certificate no. A20WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice-and-comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### The Special Conditions

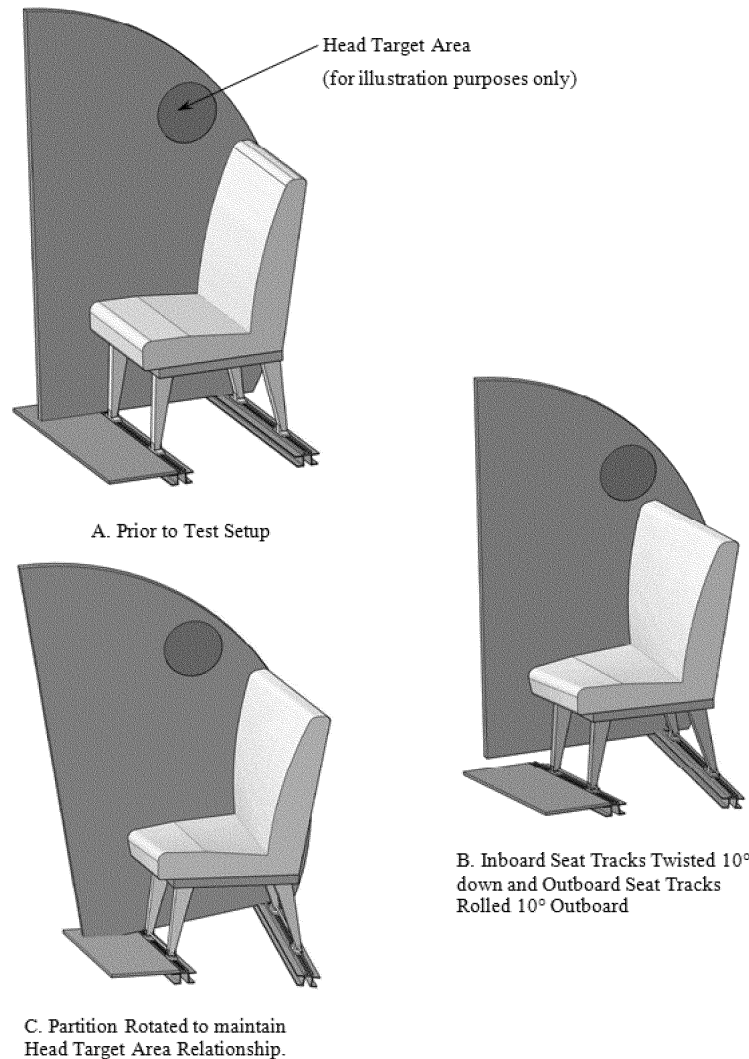
■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747-8 airplanes as modified by Associated Air Center.

In addition to the requirements of §§ 25.562 and 25.785, the following special condition numbers 1 and 2 are part of the type certification basis of the

Boeing Model 747-8 airplane with side-facing-seat installations, as modified by Associated Air Center. For seat places equipped with airbag systems in the shoulder belts, additional special condition numbers 3 through 16 are part of the type certification basis.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

(a) The longitudinal test(s) conducted in accordance with § 25.562(b)(2) to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8) and these special conditions must have an ES-2re anthropomorphic test dummy (ATD) (49 CFR part 572, subpart U) or equivalent, or a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent occupying each seat position and including all items contactable by the occupant (*e.g.*, armrest, interior wall, or furnishing) if those items are necessary to restrain the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable item 8 degrees clockwise about the airplane x-axis, then the item and floor representations must be rotated by 8 degrees clockwise also to maintain the same relative position to the seat place, as shown in Figure 1 of these special conditions. Each ATD's relative position to the seat after application of floor misalignment must be the same as before misalignment is applied. To ensure proper occupant loading of the seat, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.



**Figure 1: Head Target Areas Relative to Seat Position**

(b) The longitudinal test(s) conducted in accordance with § 25.562(b)(2), to show compliance with the injury assessments required by § 25.562(c) and these special conditions, may be conducted separately from the test(s) to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1(a) of these special conditions, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES-2re ATD (49 CFR part 572, subpart U) or equivalent at all places. Alternatively, these assessments may be accomplished by multiple tests that use an ES-2re at the seat place being evaluated and a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed to evaluate occupant

interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be assessed. To make this assessment, tests may be conducted that include the actual item located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

(c) If a seat is installed aft of a structure (e.g., an interior wall or furnishing) that does not have a homogeneous surface contactable by the occupant, additional analysis and/or test(s) may be required to demonstrate

that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different injury considerations and may require additional analysis or separate test(s) to evaluate.

(d) To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male size ATD's head during the longitudinal test(s) conducted in accordance with paragraphs 1(a), 1(b), and 1(c) of these special conditions. Otherwise, additional head-injury criteria (HIC) assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that

support in a consistent manner regardless of occupant stature. For example, if an inflatable shoulder belt is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after

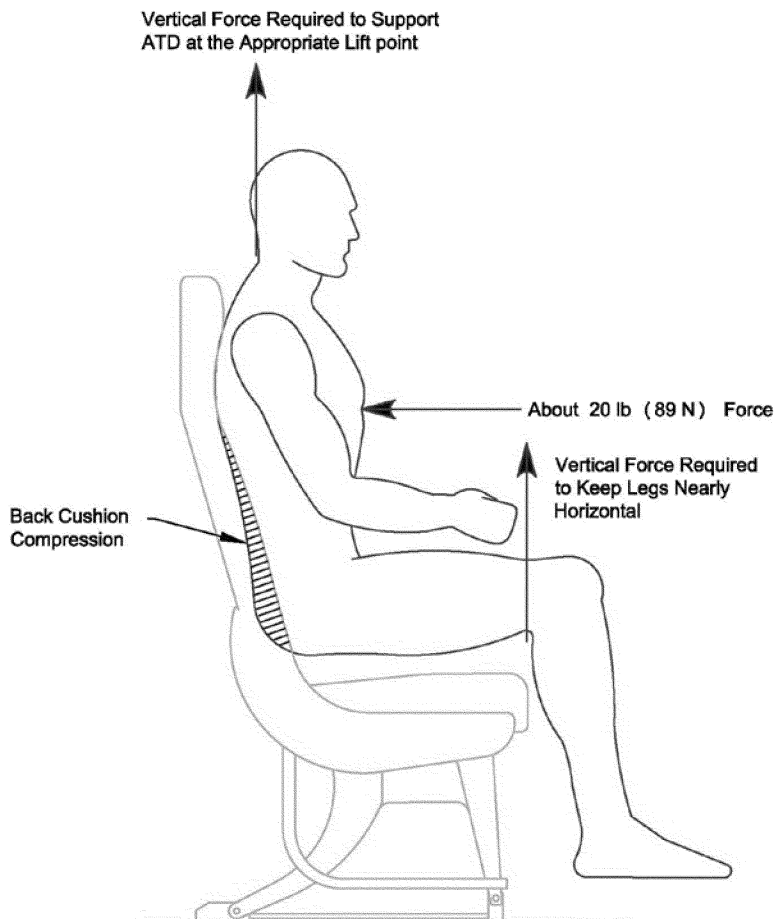
inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

(e) For longitudinal test(s) conducted in accordance with § 25.562(b)(2) and

these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

(1) ATD positioning:

(i) Lower the ATD vertically into the seat while simultaneously (see Figure 2 of these special conditions):



**Figure 2: ATD Positioning**

(A) Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

(B) Applying a horizontal x-axis direction (in the ATD coordinate system) force of about 20 pounds (lbs) (89 Newtons [N]) to the torso at approximately the intersection of the midsagittal plane and the bottom rib of the ES-2re or lower sternum of the Hybrid-II at the midsagittal plane, to compress the seat back cushion.

(C) Keeping the upper legs nearly horizontal by supporting them just behind the knees.

(ii) Once all lifting devices have been removed from the ATD:

(A) Rock it slightly to settle it in the seat.

(B) Separate the knees by about 4 inches (100 mm).

(C) Set the ES-2re's head at approximately the midpoint of the available range of z-axis rotation (to align the head and torso midsagittal planes).

(D) Position the ES-2re's arms at the joint's mechanical detent that puts them at approximately a 40-degree angle with respect to the torso. Position the Hybrid-II ATD hands on top of its upper legs.

(E) Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the airplane coordinate system).

(2) ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E) weighing about 2.5 lb (1.1 kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES-2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

(3) ES-2re ATD lateral instrumentation: The rib-module linear slides are directional, *i.e.*, deflection occurs in either a positive or negative ATD y-axis direction. The modules must be installed such that the moving end of the rib module is toward the front of the airplane. The three abdominal-force sensors must be installed such that they

are on the side of the ATD toward the front of the airplane.

(f) The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572, subpart B, as specified in § 25.562), or equivalent, occupying each seat position.

(g) Restraint systems:

(1) If inflatable restraint systems are used, they must be active during all dynamic tests conducted to show compliance with § 25.562.

(2) The design and installation of seat-belt buckles must prevent unbuckling due to applied inertial forces or impact of the hands/arms of the occupant during an emergency landing.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

(a) Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

(b) Thoracic: The deflection of any of the ES-2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

(c) Abdominal: The sum of the measured ES-2re ATD front, middle, and rear abdominal forces must not exceed 562 lb (2,500 N). Data must be processed as defined in FMVSS 571.214.

(d) Pelvic: The pubic symphysis force measured by the ES-2re ATD must not exceed 1,350 lb (6,000 N). Data must be processed as defined in FMVSS 571.214.

(e) Leg: Axial rotation of the upper-leg (femur) must be limited to 35 degrees in either direction from the nominal seated position.

(f) Neck: As measured by the ES-2re ATD and filtered at channel frequency class (CFC) 600 as defined in SAE J211:

(1) The upper-neck tension force at the occipital condyle location must be less than 405 lb (1,800 N).

(2) The upper-neck compression force at the occipital condyle location must be less than 405 lb (1,800 N).

(3) The upper-neck bending torque about the ATD x-axis at the occipital condyle location must be less than 1,018 in-lb (115 Nm).

(4) The upper-neck resultant shear force at the occipital condyle location must be less than 186 lb (825 N).

(g) Occupant (ES-2re ATD) retention: The pelvic restraint must remain on the

ES-2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

(h) Occupant (ES-2re ATD) support:

(1) Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

(2) Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with airbag systems in the shoulder belts, show that the airbag systems in the shoulder belts will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th percentile male. The airbag systems in the shoulder belts must provide a consistent approach to energy absorption throughout that range of occupants. When the seat systems include airbag systems, the systems must be included in each of the certification tests as they would be installed in the airplane. In addition, the following situations must be considered:

(a) The seat occupant is holding an infant.

(b) The seat occupant is pregnant.

4. The airbag systems in the shoulder belts must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active airbag systems in the shoulder belts.

5. The design must prevent the airbag systems in the shoulder belts from being either incorrectly buckled or incorrectly installed, such that the airbag systems in the shoulder belts would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required injury protection.

6. It must be shown that the airbag systems in the shoulder belts are not susceptible to inadvertent deployment as a result of wear and tear, inertial loads resulting from in-flight or ground maneuvers (e.g., including gusts and hard landings), and other operating and environmental conditions (e.g., vibrations and moisture) likely to occur in service.

7. Deployment of the airbag systems in the shoulder belts must not introduce injury mechanisms to the seated occupants or result in injuries that could impede rapid egress. This assessment should include an occupant whose shoulder belt is loosely fastened.

8. It must be shown that inadvertent deployment of the airbag systems in the shoulder belts, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants.

9. It must be shown that the airbag systems in the shoulder belts will not impede rapid egress of occupants 10 seconds after airbag deployment.

10. The airbag systems must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lightning, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

11. The airbag systems in the shoulder belts must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag systems in the shoulder belts does not have to be considered.

12. It must be shown that the airbag systems in the shoulder belts will not release hazardous quantities of gas or particulate matter into the cabin.

13. The airbag systems in the shoulder-belt installations must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crew member to verify the integrity of the airbag systems in the shoulder-belt activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (i.e., independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

16. Once deployed, the airbag systems in the shoulder belts must not adversely affect the emergency-lighting system (e.g., block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on November 12, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-29625 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. FAA-2015-3367; Special Conditions No. 25-596-SC]

**Special Conditions: Flight Structures, Inc., Boeing Model 777-200 Dynamic Test Requirements for Single-Occupant, Oblique (Side-Facing) Seats With Airbag Devices**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments; correction.

**SUMMARY:** This document corrects an error that appeared in Docket No. FAA-2015-3367, Special Conditions No. 25-596-SC, which was published in the *Federal Register* on September 30, 2015 (80 FR 58597). The error is in a reference to Boeing in a note preceding a section titled, *Inflatable Lap Belt Special Conditions*. It is being corrected herein.

**DATES:** The effective date of this correction is November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Shelden, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2785; facsimile 425-227-1149.

**SUPPLEMENTARY INFORMATION:** The document designated as "Docket No. FAA-2015-3367, Special Conditions No. 25-596-SC" was published in the *Federal Register* on September 30, 2015 (80 FR 58597). The document issued special conditions pertaining to dynamic test requirements for single-occupant, oblique (side-facing) seats with airbag devices on Boeing Model 777-200 airplanes.

As published, the document contained one error in a note that refers to Boeing rather than Flight Structures, Inc.

Because no other part of the regulatory information has been changed, the Special Conditions are not being re-published.

**Correction**

In the Final Special Conditions, Request for Comments document [FR Doc. 2015-24727 filed 9-29-15; 8:45 a.m.] published on September 30, 2015 (80 FR 58597), make the following correction:

On page 58599, column 3, the paragraph marked "Note:" should read:

**Note:** Flight Structures, Inc., must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS-ANM-100-2000-00123, dated February 2, 2000, titled "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets," is acceptable to the FAA.

Issued in Renton, Washington, on November 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-29624 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 33 and 35**

[Docket No. FAA-2015-4220; Special Conditions No. 33-017-SC]

**Special Conditions: CFM International, LEAP-1B Engine Models; Incorporation of Woven Composite Fan Blades**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the CFM International (CFM), LEAP-1B engine models. This engine model will have a novel or unusual design feature associated with the engine: woven composite fan blades. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is December 21, 2015.

We must receive your comments by December 7, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2015-4220 using any of the following methods:

- Federal eRegulations 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: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the *Federal Register* published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

*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:** Alan Strom, Federal Aviation Administration Engine and Propeller Directorate, Aircraft Certification Service, ANE-112, 12 New England Executive Park, Burlington, Massachusetts, 01803-5213; telephone (781) 238-7143; fax (781) 238-7199; email [alan.strom@faa.gov](mailto:alan.strom@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comment History**

The FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because the substance of these special conditions was subject to the public comment process in a prior instance, with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Special condition No.	Company/Airplane model
33-14-02-SC .....	CFM/LEAP-1A CFM/LEAP-1C

## Comments Invited

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

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

## Background

On May 9, 2013, CFM International (CFM) applied for a type certificate for their new LEAP-1B engine model(s). The high-bypass-ratio LEAP-1B engine models incorporate woven composite fan blades, a novel or unusual design feature. These fan blades have:

- Significant material property characteristic differences from conventional, single-load path, metallic fan blades.
- Multiple load path feature and/or crack arresting feature capabilities that, during blade life, may prevent delamination, crack propagation, and/or blade failure.

Because of their novel or unusual design, these fan blades:

- Require additional airworthiness standards for LEAP-1B engine type certification, to account for material property and failure mode differences with conventional fan blades. The applicable airworthiness regulations that exist do not contain appropriate safety standards for these new blades.
- May allow for application of different fan blade containment requirements, if CFM demonstrates improved load path features and/or crack arresting feature capabilities of the new blade design, below the inner annulus flow path line.

## Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, CFM must show that the LEAP-1B engine models meet the applicable provisions of the applicable regulations in effect on the date of application, except as detailed in paragraph 21.101(b) and paragraph 21.101(c).

The FAA has determined the following certification basis for the LEAP-1B engine models: 14 CFR part 33, "Airworthiness Standards: Aircraft Engines," dated February 1, 1965, with Amendments 33-1 through 33-33, dated September 20, 2012.

If the FAA finds that the regulations in effect on the date of the application for the change do not provide adequate or appropriate safety standards for the LEAP-1B engine model(s) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the engine model(s) for which they are issued. Should the type certificate for that engine model be amended later to include any other engine model(s) that incorporates the same novel or unusual design feature, the special conditions would also apply to the other engine model(s) under § 21.101.

In addition to complying with the applicable product airworthiness regulations and special conditions, the LEAP-1B engine model(s) must comply with the fuel venting and exhaust emission requirements of 14 CFR part 34.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

## Novel or Unusual Design Features

The LEAP-1B engine models incorporate a novel or unusual design feature: Woven composite fan blades.

## Discussion

As discussed in the summary section, the LEAP-1B engine model(s) incorporate woven composite fan blades instead of conventional, single-load path, metallic fan blades, which is a novel or unusual design feature for aircraft engines. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

## Applicability

As discussed above, these special conditions are applicable to the LEAP-1B engine model(s). Should CFM apply at a later date for a change to the type

certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

## Conclusion

This action affects only certain novel or unusual design features on LEAP-1B models of engine(s). It is not a rule of general applicability and applies only to CFM, who requested FAA approval of this engine feature.

## List of Subjects in 14 CFR Parts 33 and 35

Aircraft, Engines, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for CFM LEAP-1B engine model(s).

Special Conditions: CFM International LEAP-1B Model Turbofan Engines

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for the CFM, LEAP-1B turbofan engines.

Part 33, Requirements. In addition to the airworthiness standards in 14 CFR part 33, effective February 1, 1965, with Amendments 33-1 through 33-33 applicable to the CFM, LEAP-1B engine models:

(a) Conduct an engine fan blade containment test with the fan blade failing at the inner annulus flow path line instead of at the outermost retention groove.

(b) Substantiate by test and analysis, or other methods acceptable to the FAA, that a fan disk and fan blade retention system with minimum material properties can withstand, without failure, a centrifugal load equal to two times the maximum load the retention system could experience within approved engine operating limitations. The fan blade retention system includes the portion of the fan blade from the inner annulus flow path line inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(c) Using a procedure approved by the FAA, establish an operating limitation that specifies the maximum allowable

number of start-stop stress cycles for the fan blade retention system. The life evaluation must include the combined effects of high-cycle and low-cycle fatigue. If the operating limitation is less than 100,000 cycles, that limitation must be specified in Chapter 5 of the Engine Manual Airworthiness Limitation Section. The procedure used to establish the maximum allowable number of start-stop stress cycles for the fan blade retention system will incorporate the integrity requirements in paragraphs (c)(1), (c)(2), and (c)(3) of these special conditions for the fan blade retention system.

(1) An engineering plan, which establishes and maintains that the combinations of loads, material properties, environmental influences, and operating conditions, including the effects of parts influencing these parameters, are well known or predictable through validated analysis, test, or service experience.

(2) A manufacturing plan that identifies the specific manufacturing constraints necessary to consistently produce the fan blade retention system with the attributes required by the engineering plan.

(3) A service management plan that defines in-service processes for maintenance and repair of the fan blade retention system, which will maintain attributes consistent with those required by the engineering plan.

(d) Substantiate by test and analysis, or other methods acceptable to the FAA, that the blade design below the inner annulus flow path line provides multiple load paths and/or crack arresting features that prevent delamination or crack propagation to blade failure during the life of the blade.

(e) Substantiate that during the service life of the engine, the total probability of an individual blade retention system failure resulting from all possible causes, as defined in § 33.75, will be extremely improbable with a cumulative calculated probability of failure of less than 10E-9 per engine flight hour.

(f) Substantiate by test or analysis that not only will the engine continue to meet the requirements of § 33.75 following a lightning strike on the composite fan blade structure, but that the lightning strike will not cause damage to the fan blades that would prevent continued safe operation of the affected engine.

(g) Account for the effects of in-service deterioration, manufacturing variations, minimum material properties, and environmental effects during the tests and analyses required

by paragraphs (a), (b), (c), (d), (e), and (f) of these special conditions.

(h) Propose fleet leader monitoring and field sampling programs that will monitor the effects of engine fan blade usage and fan blade retention system integrity.

(i) Mark each fan blade legibly and permanently with a part number and a serial number.

Issued in Burlington, Massachusetts, on October 30, 2015.

**Colleen D'Alessandro,**

*Manager, Engine & Propeller Directorate,  
Aircraft Certification Service.*

[FR Doc. 2015-29589 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-3398; Directorate Identifier 2015-CE-031-AD; Amendment 39-18328; AD 2015-16-07 R1]

RIN 2120-AA64

#### Airworthiness Directives; REIMS AVIATION S.A. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for REIMS AVIATION S.A. Model F406 airplanes. This AD revises AD 2015-16-07, which required inspection of the left-hand and right-hand rudder control pedal torque tubes, and, depending on findings, replacement with a serviceable part. This AD retains the actions of AD 2015-16-07 and adds additional acceptable serviceable replacement parts. The AD was prompted by reports of detachment of the pilot's rudder control pedal in flight. We are issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 18, 2015 (80 FR 49127).

We must receive comments on this AD by January 4, 2016.

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

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

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact ASI Aviation, A rodrome de Reims Prunay, 51360 Prunay, FRANCE; telephone: +33 3 26 48 46 65; fax: +33 3 26 49 18 57; email: none; Internet: <http://asi-aviation.fr/asi-aviation-support/1.html> (requires user name and password). You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for locating Docket No. FAA-2015-3398.

#### 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-2015-3398; 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4119; fax: (816) 329-4090; email: [albert.mercado@faa.gov](mailto:albert.mercado@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On August 6, 2015, we issued AD 2015-16-07, Amendment 39-18322 (80 FR 49127, August 17, 2015). That AD required actions intended to address an unsafe condition on REIMS AVIATION S.A. Model F406 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2015-16-07, Amendment 39-18322 (80 FR 49127,



August 17, 2015), we received a comment from Hageland Aviation Services, Inc. requesting that we expand what is allowable to use as a replacement part for the rudder control pedal torque tube as defined in paragraph (f)(4) of AD 2015–16–07. The commenter requested that we include a brand new rudder control pedal that has never been installed on an airplane because it would have been inspected during manufacturing. In addition, EASA revised AD 2015–0159–E (2015–0159R1) to incorporate the above change.

We agreed with the commenter and have revised this AD to add “a new rudder control pedal that has never been installed on an airplane” to the definition of serviceable part.

#### Related Service Information Under 1 CFR Part 51

ASI AVIATION has issued Service Bulletin No.: F406–104, dated July 28, 2015. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The service information describes procedures for inspection of the left-hand and right-hand rudder control pedal torque tubes, and, depending on findings, replacement with a serviceable part. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this AD.

#### FAA’s Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### FAA’s Determination of the Effective Date

An unsafe condition exists that allows for the immediate adoption of this AD. The FAA has found there is justification to waive notice and comment prior to adoption of this rule because it only changes the definition of a serviceable part to give the option of installing a new part without inspecting it since it already has been inspected at

manufacture. Therefore, we determine that notice and opportunity for public comment before issuing this AD are unnecessary.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the ADDRESSES section. Include “Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

#### Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 5 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 the AD on U.S. operators to be \$2,975, or \$425 per product.

In addition, we estimate that any necessary follow-on actions will take about 20 work-hours and require parts costing \$10,000, for a cost of \$11,700 per product. We have no way of determining the number of products that may need these actions.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this 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 removing airworthiness directive (AD) 2015–16–07 (80 FR 49127, August 17, 2015) and adding the following new AD:
 

**2015–16–07 R1 Reims Aviation S.A.:**  
Amendment 39–18328; Docket No. FAA–2015–3398; Directorate Identifier 2015–CE–031–AD.

#### (a) Effective Date

This airworthiness directive (AD) becomes effective December 28, 2015.

#### (b) Affected ADs

This AD replaces AD 2015–16–07, Amendment 39–18232 (80 FR 49127, August 17, 2015) (“AD 2015–16–07”).

**(c) Applicability**

This AD applies to Reims Aviation S.A. Model F406 airplanes, serial numbers 0001 through 0098, certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 27: Flight Controls.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as detachment of the pilot's rudder control pedal in flight. We are issuing this AD to detect and correct cracking of the pilot rudder control pedal which, if not corrected, could result in detachment of the pedal with possible loss of airplane directional control.

**(f) Actions and Compliance**

Unless already done, do the actions in paragraphs (f)(1) through (f)(4) of this AD.

(1) Before further flight after August 18, 2015 (the effective date retained from AD 2015-16-07), do a visual inspection and a dye or fluorescent penetrant inspection of the rudder control pedal torque tubes, LH (Part Number (P/N) 5115260-1) and RH (P/N 5115260-2), following the instructions of PART A of ASI AVIATION Service Bulletin No.: F406-104, dated July 28, 2015.

(2) If no crack is detected during the inspection required by paragraph (f)(1) of this AD, within 100 hours time-in-service (TIS) after August 18, 2015 (the effective date retained from AD 2015-16-07), do a magnetic particle inspection of the rudder control pedal torque tubes, LH (P/N 5115260-1) and RH (P/N 5115260-2), following the instructions of PART B of ASI AVIATION Service Bulletin No.: F406-104, dated July 28, 2015.

(3) If any crack is detected on a rudder control pedal torque tube during the inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, replace the affected part with a serviceable part following the instructions of ASI AVIATION Service Bulletin No.: F406-104, dated July 28, 2015.

(4) For the purpose of this AD, a serviceable part is:

(i) A rudder control pedal torque tube (LH P/N 5115260-1 or RH P/N 5115260-2) that has had a magnetic particle inspection following the instructions of PART B of ASI AVIATION Service Bulletin No.: F406-104, dated July 28, 2015, and no cracks were found; or

(ii) A new rudder control pedal torque tube (LH P/N 5115260-1 or RH P/N 5115260-2) that has never been installed on an airplane.

(5) You may install a rudder control pedal torque tube P/N 5115260-1 (LH) or P/N 5115260-2 (RH) on an airplane, provided it is a serviceable part.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office,

FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4119; fax: (816) 329-4090; email: [albert.mercado@faa.gov](mailto:albert.mercado@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, 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.

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015-0159-E, dated July 31, 2015, and EASA AD No.: 2015-0159R1, dated August 24, 2015, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-3398.

**(i) 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.

(3) The following service information was approved for IBR on August 18, 2015 (80 FR 49127).

(i) ASI AVIATION Service Bulletin No.: F406-104, dated July 28, 2015.

(ii) Reserved.

(4) For service information identified in this AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, FRANCE; telephone: +33 3 26 48 46 65; fax: +33 3 26

49 18 57; email: none; Internet: <http://asi-aviation.fr/asi-aviation-support/1.html> (requires user name and password).

(5) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for locating Docket No. FAA-2015-3398.

(6) 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 Kansas City, Missouri, on November 6, 2015.

**Melvin Johnson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-29200 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2014-0427; Directorate Identifier 2013-NM-218-AD; Amendment 39-18316; AD 2015-22-11]**

**RIN 2120-AA64**

**Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2011-09-04 for all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes. AD 2011-09-04 required repetitive inspections for damage to the lower surface of the center wing box (CWB), and corrective actions if necessary. This new AD adds related investigative actions, and corrective actions if necessary. This AD was prompted by an evaluation by the design approval holder (DAH) that indicated that the CWB is subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the lower surface of the CWB, which could result in structural failure of the wings.

**DATES:** This AD is effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 22, 2011 (76 FR 28626, May 18, 2011).

**ADDRESSES:** For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P-58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770-494-5444; fax 770-494-5445; email [ams.portal@lmco.com](mailto:ams.portal@lmco.com); Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>. 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-2014-0427.

#### 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-2014-0427; 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:** Carl Gray, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone 404-474-5554; fax 404-474-5605; email: [carl.w.gray@faa.gov](mailto:carl.w.gray@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011). AD 2011-09-04 applied to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes. The NPRM published in the **Federal Register** on July 1, 2014 (79 FR

37248). The NPRM was prompted by an evaluation by the DAH that indicated that the CWB is subject to WFD. The NPRM proposed to continue to require repetitive inspections for any damage of the lower surface of the CWB, and corrective actions if necessary. The NPRM also proposed to require replacement of the CWB, and to add, for the repetitive inspections, concurrent related investigative actions, and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking of the lower surface of the CWB, which could result in structural failure of the wings.

#### Actions Since Issuance of the NPRM (79 FR 37248, July 1, 2014)

The CWB replacement, proposed in the NPRM (79 FR 37248, July 1, 2014), has been removed from this final rule, and is instead required by AD 2015-18-02, Amendment 39-18260 (80 FR 52941, September 2, 2015). We determined that the proposed compliance time for the CWB replacement would not adequately address the unsafe condition, because the risk of undetected WFD rises rapidly for CWBs that have accumulated 50,000 total flight hours. Therefore, for airplanes over the 50,000-flight-hour threshold, AD 2015-18-02 provides a shorter grace period than that proposed in the NPRM. In this AD, we have removed paragraph (k) of the proposed AD and Note 1 to paragraph (k) of the proposed AD, and redesignated subsequent paragraphs accordingly.

#### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments to the NPRM (79 FR 37248, July 1, 2014) related to the proposed inspection requirements, and the FAA's response to those comments. Since this AD does not include the CWB replacement proposed in paragraph (k) of the NPRM, this AD does not address comments regarding the CWB replacement. Those comments are addressed in AD 2015-18-02, Amendment 39-18260 (80 FR 52941, September 2, 2015).

#### Support for the NPRM (79 FR 37248, July 1, 2014)

Lynden Air Cargo (Lynden) stated that it concurs that the proposed inspections are beneficial and enhance safety.

#### Request To Revise Proposed Applicability

Lynden questioned whether the FAA considered the safety risk factor for "restricted category type certificated Model C-130A through H airplanes"

and whether those airplanes should be included in the applicability.

We did consider the safety risk factor for those airplanes. The FAA issued restricted-category type certificates only for Model C-130A and C-130B airplanes, and these are low-usage airplanes. The wings on Model C-130A airplanes are different from those of other models; the CWBs have previously been replaced on all Model C-130A airplanes. There are no civil registered Model C-130B airplanes in service. We might consider further rulemaking for Model C-130 airplanes. We have not changed this AD regarding this issue.

#### Request To Revise Repair Approval Procedures

Safair requested that we revise the NPRM (79 FR 37248, July 1, 2014) to authorize the DAH or designated engineering representative (DER) to develop and approve repairs under international operator support agreements with the state-of-registration civil authorities.

We agree with the commenter's request. We have revised paragraphs (h), (i)(1)(ii), (j), and (k)(1) of this AD to require that certain repairs, alternative compliance times, and inspection methods be approved in accordance with the procedures specified in paragraph (m) of this AD, which allows DER approval for repairs as specified in new paragraph (m)(3) of this AD.

#### Request To Require a Report of Inspection Findings

Noting that the NPRM (79 FR 37248, July 1, 2014) would not require inspection reports, Safair suggested that Lockheed build a database of inspection findings. The commenter asserted that the data would not be collected unless mandated.

It is not necessary to require operators to report inspection findings, as the Atlanta Aircraft Certification Office (ACO) already maintains a database for tracking repairs. The database includes repair reports from the U.S. as well as DER reports for airplanes outside of the U.S. We have not changed this AD in this regard.

#### 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 (79 FR 37248, July 1, 2014) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 37248, July 1, 2014).

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 Lockheed Service Bulletin 382–57–85 (82–790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007. The service information describes procedures for inspecting the lower surface of the CWB. This service

information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

#### Costs of Compliance

We estimate that this AD affects 15 airplanes of U.S. registry.

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
Inspection [retained action from AD 2011–09–04, Amendment 39–16666 (76 FR 28626, May 18, 2011)].	2,000 work-hours × \$85 per hour = \$170,000 per inspection cycle.	N/A	\$170,000 per inspection cycle	\$2,550,000 per inspection cycle.

We have received no definitive data that would enable us to provide cost

estimates for the related investigative actions specified in this AD.

We estimate the following costs to do any necessary repair that would be

required. We have no way of determining the number of aircraft that might need this repair:

#### ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair [retained from AD 2011–09–04, Amendment 39–16666 (76 FR 28626, May 18, 2011)].	1,000 to 3,000 work-hours × \$85 per hour = \$85,000 to \$255,000.	\$30,000	\$115,000 to \$285,000.

#### 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) 2011–09–04, Amendment 39–16666 (76 FR 28626, May 18, 2011), and adding the following new AD:

**2015–22–11 Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company:** Amendment 39–18316; Docket No. FAA–2014–0427; Directorate Identifier 2013–NM–218–AD.

#### (a) Effective Date

This AD is effective December 28, 2015.

#### (b) Affected ADs

This AD replaces AD 2011–09–04, Amendment 39–16666 (76 FR 28626, May 18, 2011).

#### (c) Applicability

This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) that indicated the center wing box (CWB) is subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct

fatigue cracking of the lower surface of the CWB, which could result in structural failure of the wings.

**(f) Compliance**

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

**(g) Retained Inspection, With Revised Service Information**

This paragraph restates the actions required by paragraph (g) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011), with revised service information. At the time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, whichever occurs latest: Do a nondestructive inspection of the lower surface of the CWB for any damage, in accordance with Lockheed Service Bulletin 382-57-85 (82-790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007; or Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007. Repeat the inspections thereafter at intervals not to exceed 10,000 flight hours. As of the effective date of this AD, use only Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, for the actions required by this paragraph.

(1) Prior to the accumulation of 40,000 total flight hours on the center wing.

(2) Within 365 days after June 22, 2011 (the effective date of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011)).

(3) Within 10,000 flight hours on the CWB after the accomplishment of the inspection specified in paragraph (g) of this AD, if done before June 22, 2011 (the effective date of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011)).

**(h) Retained Corrective Action, With Revised Repair Instructions**

This paragraph restates the actions required by paragraph (h) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011), with revised repair instructions. If any damage is found before the effective date of this AD during any inspection required by paragraph (g) of this AD: Before further flight, repair any damage, using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. If any damage is found as of the effective date of this AD, during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

**(i) Retained Exceptions to Service Information Specifications, With Revised Repair Instructions**

(1) This paragraph restates the exception specified in paragraph (i) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011), with revised repair instructions. Lockheed Service Bulletin 382-57-85 (82-

790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies that operators may adjust thresholds and intervals, use alternative repetitive inspection intervals, and use alternative inspection methods, if applicable. However, this AD requires the applicable approval specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD.

(i) Before the effective date of this AD: This AD requires that any alternative methods or intervals be approved by the Manager, Atlanta ACO. For any alternative methods or intervals to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(ii) As of the effective date of this AD, this AD requires that any alternative methods or intervals be approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) This paragraph restates the exception stated in paragraph (j) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011), with no changes. Where Lockheed Service Bulletin 382-57-85 (82-790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies that alternative repetitive inspection intervals may be used for cold-worked holes, this AD does not allow the longer interval. This AD requires that all cold-worked and non-cold-worked holes be reinspected at 10,000-flight-hour intervals.

(3) This paragraph restates the exception stated in paragraph (k) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011), with no changes. Where Lockheed Service Bulletin 382-57-85 (82-790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, describes procedures for submitting a report of any damages, this AD does not require such action.

**(j) New Inspection and Corrective Actions**

As of the effective date of this AD, concurrently with accomplishing the inspection required by paragraph (g) of this AD: Do all applicable related investigative actions, in accordance with Appendix A, Revision 3, dated July 8, 2013, of Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007. If any cracking or damage is found during any related investigative action: Before further flight, repair all cracking and damage, using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

**(k) New Exceptions to Service Information Specifications**

(1) Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies that operators may adjust thresholds

and intervals, use alternative repetitive inspection intervals, and use alternative inspection methods. However, this AD requires that any alternative thresholds, intervals, or inspection methods be approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) Where Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, describes procedures for submitting a report of any damages, this AD does not require such action.

**(l) Credit for Previous Actions**

(1) This paragraph restates the credit provided in paragraph (l) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011). This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before June 22, 2011 (the effective date of AD 2011-09-04), using Lockheed Service Bulletin 382-57-85 (82-790), Revision 1, dated March 8, 2007, which is not incorporated by reference in this AD.

(2) This paragraph restates the credit provided in paragraph (m) of AD 2011-09-04, Amendment 39-16666 (76 FR 28626, May 18, 2011). This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before June 22, 2011 (the effective date of AD 2011-09-04), using Lockheed Service Bulletin 382-57-85 (82-790), dated August 4, 2005, which is not incorporated by reference in this AD.

**(m) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta 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) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Delegated Engineering Representative (DER) for the Lockheed Martin Aeronautics Company who has been authorized by the Manager, Atlanta ACO, to make those findings. For a repair method to be approved, the repair approval must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(n) Related Information**

(1) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone 404-474-5554; fax 404-474-5605; email: [carl.w.gray@faa.gov](mailto:carl.w.gray@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (o)(6) of this AD.

**(o) 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.

(3) The following service information was approved for IBR on December 28, 2015.

(i) Lockheed Service Bulletin 382-57-85 (82-790), Revision 3, dated July 8, 2013, including Appendix A, Revision 3, dated July 8, 2013, and Appendixes B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007.

(ii) Reserved.

(4) The following service information was approved for IBR on June 22, 2011 (76 FR 28626, May 18, 2011).

(i) Lockheed Service Bulletin 382-57-85 (82-790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007.

(ii) Reserved.

(5) For Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company service information identified in this AD, contact Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P-58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770-494-5444; fax 770-494-5445; email [ams.portal@lmco.com](mailto:ams.portal@lmco.com); Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>.

(6) 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.

(7) 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 October 29, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-28464 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2014-1043; Directorate Identifier 2013-NM-079-AD; Amendment 39-18321; AD 2015-23-05]**

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A330-200, A330-200 Freighter, and A330-300 series airplanes; and Model A340-200 and A340-300 series airplanes. This AD was prompted by reports of cracked support strut body ends at a certain frame location of the trimmable horizontal stabilizer (THS). This AD requires repetitive inspections for cracking of the strut ends of the THS support located at a certain frame in the tail cone, and replacement if necessary; and reinstallation or installation of reinforcing clamps on certain strut ends. We are issuing this AD to detect and correct cracked support strut body ends of the THS, which could lead to the loss of all four THS support struts, making the remaining structure unable to carry limit loads, resulting in the loss of the horizontal tail plane.

**DATES:** This AD becomes effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 28, 2015.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2014-1043> or in person at the 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.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.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-2014-1043.

**FOR FURTHER INFORMATION CONTACT:**

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149.

**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 Airbus Model A330-200, A330-200 Freighter, and A330-300 series airplanes; and Model A340-200 and A340-300 series airplanes. The NPRM published in the **Federal Register** on January 23, 2015 (80 FR 3510). The NPRM was prompted by reports of cracked support strut body ends at a certain frame location of the THS. The NPRM proposed to require repetitive inspections for cracking of the strut ends of the THS support located at a certain frame in the tail cone, and replacement if necessary; and reinstallation or installation of reinforcing clamps on certain strut ends. We are issuing this AD to detect and correct cracked support strut body ends of the THS, which could lead to the loss of all four THS support struts, making the remaining structure unable to carry limit loads, resulting in the loss of the horizontal tail plane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0068, dated March 18, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A330-200, A330-200 Freighter, and A330-300 series airplanes; and Model A340-200 and A340-300 series airplanes. The MCAI states:

During scheduled maintenance on A330 aeroplanes, several Trimmable Horizontal Stabilizer (THS) support struts at frame (FR) 91 were found cracked at strut body ends.

The THS is supported and articulated at FR 91 by four struts to fix the hinges (Y-bolts) and keep the structural integrity in lateral direction.

Analysis revealed that cracks can reduce ability of the support struts to carry specified tension loads.

This condition, if not detected and corrected, could lead to the loss of all four

THS support struts at FR91, which would make the remaining structure unable to carry limit loads, resulting in the loss of Horizontal Tail Plane.

A340-500/600 aeroplanes are not affected by this [EASA] AD as different material is used on THS support struts.

To address this potentially unsafe condition, EASA issued AD 2013-0076 [[http://ad.easa.europa.eu/blob/easa\\_ad\\_2013\\_0076\\_superseded.pdf/AD\\_2013-0076\\_1](http://ad.easa.europa.eu/blob/easa_ad_2013_0076_superseded.pdf/AD_2013-0076_1)] to require repetitive special detailed inspections [high frequency eddy current (HFEC) inspections for cracking] of all 8 strut ends of the THS support located at FR91 in the tail cone and, depending on findings, replacement of THS support struts. That [EASA] AD also required, for aeroplanes on which Airbus Modification 203493 had not been embodied in production, or Airbus Service Bulletin (SB) A330-53-3204 or SB A340-53-4199, as applicable, has not been embodied in service, the installation of a clamping device on each support strut end to stop growth of possible cracks (crack stopper function) in order to secure integrity of the struts.

Since issuance of EASA AD 2013-0076 [[http://ad.easa.europa.eu/blob/easa\\_ad\\_2013\\_0076\\_superseded.pdf/AD\\_2013-0076\\_1](http://ad.easa.europa.eu/blob/easa_ad_2013_0076_superseded.pdf/AD_2013-0076_1)], it has been discovered that several aeroplanes are fitted with another strut configuration (SARMA Strut) [Société Anonyme de Recherche Mécanique Appliquée] than the TAC (Technical Airborne Components Industries) strut, which caused the other strut not to be considered. Consequently, Airbus revised Airbus SB A330-53-3206 and SB A340-53-4208, accordingly in order to add a one-time [HFEC] inspection [for cracking] for SARMA struts and in case of finding to replace it with a TAC strut and thereafter to accomplish repetitive inspections and EASA issued AD 2013-0219 [[http://ad.easa.europa.eu/blob/easa\\_ad\\_2013\\_0219\\_superseded.pdf/AD\\_2013-0219\\_1](http://ad.easa.europa.eu/blob/easa_ad_2013_0219_superseded.pdf/AD_2013-0219_1)], which is superseded, and required accomplishment of the instructions as specified in the latest revision of each SB, as applicable.

Since issuance of EASA AD 2013-0219 [[http://ad.easa.europa.eu/blob/easa\\_ad\\_2013\\_0219\\_superseded.pdf/AD\\_2013-0219\\_1](http://ad.easa.europa.eu/blob/easa_ad_2013_0219_superseded.pdf/AD_2013-0219_1)], based on the reporting received from operators, it has been determined that repetitive inspections are also to be accomplished for aeroplanes equipped with SARMA strut. Airbus introduced that inspection in the applicable SB at revision 3.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2013-0219, which is superseded, and requires accomplishment of repetitive [HFEC] inspective inspection [for cracking] for aeroplanes equipped with SARMA strut.

This [EASA] AD is considered as an interim action, pending the development of a terminating action.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2014-1043-0002>.

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 3510, January 23, 2015) and the FAA's response to each comment.

### Request To Add Inspection for Identifying Struts

Delta Air Lines, Inc. (DAL) requested that we add a physical inspection to paragraph (g) of the proposed AD (80 FR 3510, January 23, 2015) to distinguish a Société Anonyme de Recherche Mécanique Appliquée (SARMA) strut from a Technical Airborne Components Industries (TAC) strut. DAL stated that paragraph (g) of the proposed AD only identifies the dimensional diameter of SARMA struts; however, DAL stated that both TAC and SARMA struts have the same manufacturer part numbers but have different rod end diameters. DAL suggested language for doing a physical inspection of the strut end of each support strut for identification purposes.

We agree that a physical inspection is necessary to determine the rod end diameter in order to distinguish between SARMA and TAC struts. However, that inspection is optional. Paragraph (g) of this AD defines SARMA struts as having a diameter that is less than 43 millimeters, and states that all other struts are TAC struts. Paragraph (h) of this AD requires inspecting TAC struts. Thus, operators must inspect all struts unless the strut is inspected to determine the diameter is less than 43 millimeters, *i.e.*, it is a SARMA strut. We have not changed this AD in this regard.

### Request To Include Airbus Modification 203834 for Installing Reinforced Clamps

DAL requested that we revise paragraph (h) of the proposed AD (80 FR 3510, January 23, 2015) to include Airbus Modification 203834 as an optional modification for installation of the reinforced clamps. DAL stated that Airbus has confirmed that Airbus Modification 203834 installs the same reinforced clamps as Airbus Modification 203493 specified in paragraph (h) of the proposed AD.

We agree with the commenter's request. The FAA has approved two Airbus modifications for installing the reinforced clamps into production airplanes: Modification 203493 for airplanes having manufacturer serial number (MSN) 1466 to 1509 inclusive, and Modification 203834 for airplanes having MSN 1510 and on. Modification

203834 supersedes Modification 203493, and the first airplane delivered with Modification 203834 installed was MSN 1511.

Thus, operators may have the two populations of airplanes: Those with Modification 203834 and those with Modification 203493. This AD must address both groups of airplanes accordingly. We have revised paragraph (h) of this AD to specify that, for airplanes on which Airbus Modification 203493 or 203834 has been embodied in production; or on which Airbus Service Bulletin A330-53-3204 or Airbus Service Bulletin A340 53-4199, as applicable; has been embodied in service, remove the clamp from each strut end before accomplishing the inspections required by paragraph (h) of this AD.

### Request To Include Additional Service Information

DAL requested that we revise paragraphs (j)(1), (j)(2), and (l) of the proposed AD (80 FR 3510, January 23, 2015) to include Airbus Service Bulletin A330-53-3204. DAL stated that, when clamps were not previously installed, Airbus Service Bulletin A330-53-3204 becomes the source document for installing the clamps.

We agree that Airbus Service Bulletin A330-53-3204, Revision 03, dated February 28, 2014, is an appropriate source of service information for installing clamps. However, we do not agree to revise this AD because that service information is already referenced in Airbus Service Bulletin A330-53-3206, Revision 03, dated February 28, 2014, which is referred to as one of the appropriate sources of service information for the actions required by paragraphs (j)(1), (j)(2), and (l) of this AD. As specified in the Accomplishment Instructions of Airbus Service Bulletin A330-53-3206, Revision 03, dated February 28, 2014., "if no clamps were previously installed, accomplish Service Bulletin A330-53-3204 before next flight, to install them." Therefore, no change to this AD is necessary in this regard.

### Request To Clarify Flight With Cracking

DAL requested that we clarify/confirm that the NPRM (80 FR 3510, January 23, 2015) will apply more strict replacement criteria when cracks are found than what is currently published in Airbus Service Bulletin A330-53-3206, Revision 03, dated February 28, 2014. DAL stated that Subtask 533206-280-201-001 of Airbus Service Bulletin A330-53-3206, Revision 03, dated February 28, 2014, contains instructions

to allow continued operation of the airplane with small crack findings without immediate strut replacement.

We agree. In the “Differences Between this Proposed AD and the MCAI or Service Information” section of the NPRM (80 FR 3510, January 23, 2015), we stated that “Although EASA Airworthiness Directive 2014–0068, dated March 18, 2014, Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014, and Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014, allow further flight after certain cracks are found during compliance with the proposed action, paragraph (j)(2) of this AD would require that any cracked THS support strut be replaced with a new or serviceable TAC strut before further flight.” No change to this AD is necessary in this regard.

### 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 (80 FR 3510, January 23, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3510, January 23, 2015).

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

### Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

### Related Service Information Under 14 CFR Part 51

We reviewed the following service information.

- Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014. This service information describes procedures for inspections for cracking of the strut ends of the THS support located in the airplane tail cone.
- Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014. This service information describes procedures for inspections for cracking of the strut ends of the THS support located in the airplane tail cone.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means

identified in the **ADDRESSES** section of this AD.

### Costs of Compliance

We estimate that this AD affects 84 airplanes of U.S. registry.

We also estimate that it will take about 9 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 \$64,260, or \$765 per product.

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

We estimate that any necessary follow-on strut reinforcements will take about 2 work-hours and require parts costing \$5,680, for a cost of \$5,850 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this 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 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.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2014-1043>; 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 Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

### 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):

**2015–23–05 Airbus:** Amendment 39–18321. Docket No. FAA–2014–1043; Directorate Identifier 2013–NM–079–AD.

#### (a) Effective Date

This AD becomes effective December 28, 2015.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers.

- (1) Airbus Model A330–201, –202, –203, –223, –223F, –243, and –243F airplanes.



(2) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(3) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by reports of cracked support strut body ends at a certain frame location of the trimmable horizontal stabilizer (THS). We are issuing this AD to detect and correct cracked support strut body ends of the THS, which could lead to the loss of all four THS support struts and which would make the remaining structure unable to carry limit loads, resulting in the loss of the horizontal tail plane.

**(f) Compliance**

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

**(g) Definition of Strut Types**

For the purpose of this AD, a Societé Anonyme de Recherche Mécanique Appliquée (SARMA) strut is a strut on which the diameter of the strut end is less than 43 millimeters. All other struts are Technical Airborne Components Industries (TAC) struts.

**(h) Repetitive Inspections of TAC Strut Ends**

At the applicable time specified in paragraph (i) of this AD, do a high frequency eddy current (HFEC) inspection for cracking of all TAC strut ends of the THS support located at frame (FR) 91 in the tail cone, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; or Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; as applicable. Repeat the inspection thereafter at intervals not to exceed 42 months or 20,000 flight hours, whichever occurs first. For airplanes on which Airbus Modification 203493 or 203834 has been embodied in production, or Airbus Service Bulletin A330–53–3204 or Airbus Service Bulletin A340–53–4199, as applicable, has been embodied in service, remove the clamp from each strut end before accomplishing the inspections required by this paragraph.

**(i) Compliance Times for the Actions Required by Paragraphs (h) and (k) of This AD**

Do the inspections required by paragraphs (h) and (k) of this AD at the applicable times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) For Model A330 series airplanes having manufacturer serial numbers 012 through 209 inclusive, and Model A340 series airplanes having manufacturer serial numbers 002 through 210 inclusive: Within 6 months after the effective date of this AD.

(2) For Model A330 series airplanes having manufacturer serial numbers 211 through 422 inclusive, and Model A340 series airplanes having manufacturer serial numbers 212 through 447 inclusive: Within 24 months after the effective date of this AD.

(3) For Model A330 series airplanes having manufacturer serial numbers 423 and subsequent, and Model A340 series airplanes having manufacturer serial numbers 450 through 955 inclusive: Within 36 months after the effective date of this AD or since the first flight of the airplane, whichever occurs later.

**(j) Corrective Action for TAC Strut Ends and Installation of Reinforcing Clamps**

(1) If, during any inspection required by paragraph (h) of this AD, no cracks are found: Before further flight, reinstall or install, as applicable, reinforcing clamps on the strut ends, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; or Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; as applicable.

(2) If, during any inspection required by paragraph (h) of this AD, any crack is found: Before further flight, replace any affected strut with a new or serviceable TAC strut and install reinforcing clamps on the strut end, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; or Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; as applicable.

**(k) Repetitive Inspections of SARMA Strut Ends**

At the applicable time specified in paragraph (i) of this AD, do an HFEC inspection for cracking of all SARMA strut ends of the THS support located at FR 91 in the tail cone, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; or Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; as applicable. Repeat the inspection thereafter at intervals not to exceed 12 months.

**(l) Corrective Action for SARMA Strut Ends**

If any crack is found on a strut end during the inspection required by paragraph (k) of this AD: Before further flight, replace any affected SARMA strut with a new or serviceable TAC strut and install reinforcing clamps on the strut end, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; or Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; as applicable.

**(m) No Terminating Action**

Replacement of THS struts on an airplane does not constitute terminating action for the repetitive inspections required by this AD.

**(n) No Reporting**

Although Airbus Service Bulletin A330–53–3206, Revision 03, dated February 28, 2014; and Airbus Service Bulletin A340–53–4208, Revision 03, dated February 28, 2014; specify to submit certain information to the manufacturer, this AD does not include that requirement.

**(o) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g), (h), (j), and (k) of

this AD, if those actions were performed before the effective date of this AD using any of the service information identified in paragraphs (n)(1) through (n)(6) of this AD. This service information is not incorporated by reference in this AD.

(1) Airbus Service Bulletin A330–53–3206, dated February 7, 2013.

(2) Airbus Service Bulletin A330–53–3206, Revision 01, dated June 10, 2013.

(3) Airbus Service Bulletin A330–53–3206, Revision 02, dated August 8, 2013.

(4) Airbus Service Bulletin A340–53–4208, dated February 7, 2013.

(5) Airbus Service Bulletin A340–53–4208, Revision 01, dated June 10, 2013.

(6) Airbus Service Bulletin A340–53–4208, Revision 02, dated August 8, 2013.

**(p) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; 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. 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(q) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0068, dated March 18, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2014-1043-0002>.

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

**(r) 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) Airbus Service Bulletin A330-53-3206, Revision 03, dated February 28, 2014.

(ii) Airbus Service Bulletin A340-53-4208, Revision 03, dated February 28, 2014.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.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 October 30, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-28895 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-1266; Directorate Identifier 2014-NM-151-AD; Amendment 39-18327; AD 2015-23-11]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-300, 747SR, and 747SP series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain fuselage skin lap joints are subject to widespread fatigue damage (WFD). This AD requires repetitive post-modification inspections for cracking of the skin or internal doubler along the edge fastener rows of the modification, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which

could result in rapid depressurization of the airplane.

**DATES:** This AD is effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 28, 2015.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1266.

#### 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-2015-1266; 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:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6428; fax: 425-917-6590; email: [nathan.p.weigand@faa.gov](mailto:nathan.p.weigand@faa.gov).

#### 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 The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-300, 747SR, and 747SP series airplanes. The NPRM published in the **Federal Register** on May 5, 2015 (80 FR 25630). The NPRM was prompted by an evaluation by the DAH indicating that certain fuselage

skin lap joints are subject to WFD. The NPRM proposed to require repetitive post-modification inspections for cracking of the skin or internal doubler along the edge fastener rows of the modification, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which could result in rapid depressurization 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 (80 FR 25630, May 5, 2015) and the FAA's response to each comment.

#### Request To Remove Warranty Statement

Boeing requested that we remove the statement that "some of the costs of this proposed AD may be covered under warranty" in the Costs of Compliance section of the NPRM (80 FR 25630, May 5, 2015). Boeing stated that the actions in the NPRM are not covered by warranty.

We agree with the commenter's request. We have revised the Costs of Compliance section of this final rule accordingly.

#### Request To Revise Paragraph Headings

Boeing requested that we revise the headings of paragraphs (g), (h), (j), and (k) of the proposed AD (80 FR 25630, May 5, 2015) by removing reference to the inspections as "repetitive" or "initial." Boeing stated that these revisions will provide consistency among paragraph headings because paragraphs (g), (j), and (k) of the proposed AD do not have an initial inspection program, yet paragraph (h) of the proposed AD has only an initial inspection.

We acknowledge the commenter's concern and agree to clarify the headings. We do not presume that the term "repetitive" necessarily excludes the initial action. An action cannot be repeated without accomplishment of the initial action. In addition, in many ADs we use the term "repetitive" actions for paragraphs that include the initial action and repetitive actions. Paragraphs (g), (j), and (k) of this AD include both a sentence specifying the initial inspection and a sentence specifying the repetitive inspections. We have not changed this AD in this regard.

#### Request To Clarify Compliance Time

Boeing requested that we clarify the compliance time in paragraphs (g), (h), (j), and (k) of the proposed AD (80 FR

25630, May 5, 2015) by revising “at the applicable time” to “at the applicable time and repeat intervals.” Boeing stated that these revisions would clarify that the applicable time also includes the repeat intervals per Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

We do not agree to combine the initial inspection and the repetitive inspection times into one statement because ADs typically call out initial inspections and repetitive inspections in separate sentences. Paragraph (h) of this AD specifies only an initial inspection. Paragraphs (g), (j), and (k) of this AD specifies an initial inspection and states that the repetitive inspections are for the unrepaired areas, which are to be done at the applicable times specified in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. We have not changed this AD in this regard.

**Request To Delete the Unrepaired Area Statement From Paragraphs (g) (j) and (k) of the Proposed AD (80 FR 25630, May 5, 2015)**

Boeing requested that we delete the last sentence in paragraphs (g), (j), and (k) of the proposed AD (80 FR 25630, May 5, 2015), which states “In unrepaired areas, repeat the . . . inspections for cracks . . . .” Boeing stated that the sentence is confusing as the unrepaired area case is actually for no cracks found in the modification area after doing the inspection as specified in the applicable tables 3, 5, and 6 of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. Boeing explained that the proposed AD wording may cause confusion when information is provided in a different format than the service bulletin tables.

We do not agree with the commenter’s request because the text “in unrepaired areas” matches the text in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. Paragraphs (g), (j), and (k) of this AD specify doing actions at the applicable time specified in tables 3, 5, and 6 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. In these tables, the compliance time is specified for the actions required for the unrepaired area. We have not revised this AD in this regard.

**Request To Combine Paragraphs**

Boeing requested that we combine paragraphs (h) and (i) of the proposed AD (80 FR 25630, May 5, 2015) by deleting paragraph (i) of the proposed AD and revising paragraph (h) of the proposed AD from “at the applicable

time” to “at the applicable time and repeat intervals.” Boeing explained that it is confusing to have separate paragraphs address initial and repetitive inspections for a particular aircraft as both initial and repetitive inspections are addressed within table 4 of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

We acknowledge that table 4 of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, contains compliance times for both initial and repetitive inspections. However, we do not agree with the commenter’s request because the AD includes separate paragraphs in order to clarify the repetitive inspection intervals. For the initial inspections, table 4 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, specifies two crack conditions, which are based on the number of flight cycles on the airplane since stringer 6 external doublers were installed. To aid the operators in determining which repetitive inspection(s) they are required to do, this AD provides the repetitive inspections (as restated from the NPRM (80 FR 25630, May 5, 2015)), depending on the applicable condition, in separate repetitive inspection paragraphs (paragraphs (i)(1) and (i)(2) of this AD). We have not changed this AD in this regard.

**Request To Revise External Inspection Wording**

Boeing requested that we remove the word “external” from paragraph (h) of the proposed AD (80 FR 25630, May 5, 2015), which specified “external detailed, low frequency eddy current, and high frequency eddy current inspections.” Boeing explained that if paragraphs (h) and (i) of the proposed AD are combined, both external and internal detailed inspections are required. Boeing stated that removing “external” from the inspection direction would therefore cover all airplane conditions.

As stated previously, we do not agree to combine paragraphs (h) and (i) of this AD into one paragraph. Therefore, the terminology in paragraph (h) of this AD matches Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, which specifies doing external detailed, low frequency eddy current (LFEC), and high frequency eddy current (HFEC) inspections for cracks. We have not changed this AD in this regard.

**Request To Revise Headings of Paragraphs (h), (i), and (j) of the Proposed AD (80 FR 25630, May 5, 2015)**

Boeing requested that we revise the headings of paragraphs (h), (i), and (j) of the proposed AD (80 FR 25630, May 5, 2015) by adding a reference to the applicable service information. Boeing stated that these changes will add consistency among paragraphs (h), (i), and (j) of the proposed AD in identifying an installed external doubler modification.

We agree with the commenter’s request. We have revised the headings of paragraphs (h), (i), and (j) of this AD accordingly.

**Request To Correct Typographical Error**

Boeing noted that a phrase describing the major action in paragraph (j) of the proposed AD (80 FR 25630, May 5, 2015) was duplicated and asked that we correct this.

We agree with the commenter’s request. We have revised paragraph (j) 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 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 (80 FR 25630, May 5, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 25630, May 5, 2015).

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 747–53A2367, Revision 5, dated July 8, 2014. This service information describes procedures for inspections and repair for cracks in the skin and doublers along the edge fastener rows of modifications in the fuselage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this AD.

**Costs of Compliance**

We estimate that this AD affects 50 airplanes of U.S. registry.

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
Post-modification inspection .....	124 work-hours × \$85 per hour = \$10,540 per inspection cycle.	\$0	\$10,540 per inspection cycle.	\$527,000 per inspection cycle.

We have received no definitive data that would 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**

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 adding the following new airworthiness directive (AD):

**2015–23–11 The Boeing Company:**  
Amendment 39–18327; Docket No. FAA–2015–1266; Directorate Identifier 2014–NM–151–AD.

**(a) Effective Date**

This AD is effective December 28, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by an evaluation by the design approval holder indicating that certain fuselage skin lap joints are subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking in certain fuselage skin lap joints, which could result in rapid depressurization of the airplane.

**(f) Compliance**

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

**(g) Repetitive Post-Modification Inspections for Airplane Groups 1 Through 3, 7, and 8**

For airplanes identified as Groups 1 through 3, 7, and 8 in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface high frequency eddy current (HFEC) inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(h) Initial Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 Through 11, With External Doublers Installed as Specified in Boeing Service Bulletin 747–53–2272**

For airplanes identified as Groups 4 through 6, and 9 through 11, in Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, with external doublers installed as specified in Boeing Service Bulletin 747–53–2272: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014, do external detailed, low frequency eddy current (LFEC), and HFEC inspections for cracks in the skin and external doubler, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2367, Revision 5, dated July 8, 2014.

**(i) Repetitive Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 Through 11 With External Doublers Installed as Specified in Boeing Service Bulletin 747–53–2272**

For airplanes with no crack findings during the inspections required by paragraph (h) of this AD: Do the applicable actions required by paragraphs (i)(1) and (i)(2) of this AD.

(1) For airplanes with less than 15,000 flight cycles since stringer 6 external doublers were installed, as specified in Boeing Service Bulletin 747–53–2272: At the applicable intervals specified in table 4 of

paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, in unrepaired areas, repeat the external detailed and LFEC inspections for cracks in the skin, and the external detailed and HFEC inspections for cracks in the external doubler, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014.

(2) For airplanes with 15,000 or more flight cycles since the stringer 6 external doublers were installed, as specified in Boeing Service Bulletin 747-53-2272: At the applicable intervals specified in table 4 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, in unrepaired areas, do external detailed and LFEC inspections for cracks in the skin; and do internal and external detailed and HFEC inspections for cracks in the skin and external doubler; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014.

**(j) Repetitive Post-Modification Inspections for Airplane Groups 4 Through 6, and 9 Through 11 With External Doublers Installed as Specified in Boeing Alert Service Bulletin 747-53A2367**

For airplanes identified as Groups 4 through 6, and 9 through 11, in Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, with external doublers installed as specified in Boeing Alert Service Bulletin 747-53A2367: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface HFEC inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along the edge fastener rows of the modification thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014.

**(k) Repetitive Post-Modification Inspections for Airplane Groups 12 and 13**

For airplanes identified as Groups 12 and 13 in Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014: Except as provided by paragraph (m) of this AD, at the applicable time specified in table 6 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, do internal detailed and surface HFEC inspections for cracks in the skin and internal doubler along the edge fastener rows of the modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014. In unrepaired areas, repeat the internal detailed and surface HFEC inspections for cracks in the skin or internal doubler along

the edge fastener rows of the modification thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014.

**(l) Corrective Actions**

If any cracking is found during any inspection required by this AD: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

**(m) Exception to Boeing Alert Service Bulletin 747-53A2367, Revision 5, Dated July 8, 2014**

Where paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2367, Revision 5, dated July 8, 2014, specifies a compliance time "after the Revision 5 date of this service bulletin," this AD requires compliance within the specified compliance time "after the effective date of this AD."

**(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) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

**(o) Related Information**

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6428; fax: 425-917-6590; email: [nathan.p.weigand@faa.gov](mailto:nathan.p.weigand@faa.gov).

**(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 747-53A2367, Revision 5, dated July 8, 2014.

(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 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 4, 2015.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-28891 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2015-0927; Directorate Identifier 2013-NM-172-AD; Amendment 39-18325; AD 2015-23-09]**

**RIN 2120-AA64**

**Airworthiness Directives; Zodiac Aerotechnics (Formerly Intertechnique Aircraft Systems)**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators as installed on, but not limited to, various transport and small airplanes. This AD was prompted by a report that improper maintenance on oxygen mask regulators was found. This AD requires the identification and replacement of all potentially affected units. This AD also requires installation of a placard and revision of the airplane flight manual to include an operational procedure for use in case of depressurization. We are issuing this AD to detect and correct affected oxygen mask regulators, which could lead to inadequate protection to the affected flightcrew against hypoxia.

Hypoxia can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in terms of airplane controllability.

**DATES:** This AD becomes effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 28, 2015.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-0927>; or in person at the 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.

For service information identified in this AD, contact Zodiac Services, Technical Publication Department, Zodiac Aerotechnics, Oxygen Systems Europe, 61 Rue Pierre Curie—CS20001, 78373 Plaisir Cedex, France; phone: (33) 01 61 24 23 23; fax: (33) 01 30 55 71 61; email: [yann.laine@zodiacaerospace.com](mailto:yann.laine@zodiacaerospace.com); Internet: <http://www.zodiacaerospace.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-2015-0927.

**FOR FURTHER INFORMATION CONTACT:** Ian Lucas, Aerospace Engineer, Boston Aircraft Certification Office (ACO) ANE-150, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7757; fax: 781-238-7170; email: [ian.lucas@faa.gov](mailto:ian.lucas@faa.gov).

**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 Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators as installed on, but not limited to, various transport and small airplanes. The NPRM published in the **Federal Register** on April 22, 2015 (80 FR 22438).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2012-0254R1, dated December 21, 2012 (referred to after this as the

Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators as installed on, but not limited to, various transport and small airplanes. The MCAI states:

In a repair station, improper maintenance on [flightcrew] oxygen mask regulators was reported to Intertechnique: during an inspection of the oxygen test bench by its manufacturer, incorrect settings were noticed. This test bench setting discrepancy on the oxygen mask regulator could cause an improper mask dilution schedule.

This condition, if not detected and corrected, could lead, in case of a diversion above 10,000 feet after a depressurization event, to the inhalation of air with improper content of oxygen, due to the bad dilution settings, thereby providing inadequate protection to the affected flightcrew member against hypoxia, which can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in term of aeroplane controllability.

For the reasons described above, this [EASA] AD requires the identification and replacement of all potentially affected units. This [EASA] AD also requires installation of a placard and [a revision to the airplane flight manual to include] \* \* \* an operational procedure [in case of depressurization] pending replacement of the affected units.

\* \* \* \* \*

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2015-0927-0004>.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 22438, April 22, 2015) and the FAA’s response to each comment. Boeing concurred with the contents of the NPRM.

**Request To Revise the Air Transport Association (ATA) Code**

Horizon Air requested that we change the ATA code specified in paragraph (d) of the proposed AD (80 FR 22438, April 22, 2015) to “35.” The commenter stated that the correct ATA code for oxygen is ATA 35.

We agree with the commenter because this AD addresses an unsafe condition for certain oxygen mask regulators. We have removed the ATA code of “28” and instead we have referred to ATA code “35” in paragraph (d) of this AD.

**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 (80 FR 22438, April 22, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 22438, April 22, 2015).

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**

Zodiac Services has issued Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012. The service information describes procedures for the identification and replacement of all potentially affected units. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

**Costs of Compliance**

We estimate that this AD affects 13 airplanes of U.S. registry.

We also estimate that it will take about 3 work-hours 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 \$225 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$6,240, or \$480 per product.

**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.

## Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-0927>; 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 Operations office (telephone 800-647-5527) is in the **ADDRESSES** section.

## 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):

**2015–23–09 Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems):**  
Amendment 39–18325. FAA–2015–0927; Directorate Identifier 2013–NM–172–AD.

#### (a) Effective Date

This AD becomes effective December 28, 2015.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Zodiac Aerotechnics (formerly Intertechnique Aircraft Systems) flightcrew oxygen mask regulators having part number MC10, MF10, and MF20 series, with serial numbers listed in Appendix 1 of Zodiac Services Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012. These oxygen mask regulators are installed on various transport and small airplanes, certificated in any category, including, but not limited to, the airplanes of the manufacturers specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (c)(7) of this AD. An oxygen mask regulator having part number MC10–04–127 with serial number 48573 is affected only if it is part of part number MSE101–27 with serial number 7521.

- (1) Airbus.
- (2) ATR—GIE Avions de Transport Régional.
- (3) The Boeing Company.
- (4) Bombardier, Inc.
- (5) Cessna Aircraft Company.
- (6) Gulfstream Aerospace Corporation.
- (7) Gulfstream Aerospace LP.

#### (d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

#### (e) Reason

This AD was prompted by a report that improper maintenance on oxygen mask regulators was found. During an inspection of the oxygen test bench, incorrect settings were noticed. This test bench setting discrepancy on the oxygen mask regulator could cause an improper mask dilution schedule. We are issuing this AD to detect and correct affected oxygen mask regulators, which could lead, in case of mask usage at or above 10,000 feet after a depressurization event, to the

inhalation of air with improper content of oxygen, due to the bad dilution settings, thereby providing inadequate protection to the affected flightcrew against hypoxia. Hypoxia can start from a headache and drowsiness and lead eventually to unconsciousness with severe consequence in terms of airplane controllability.

#### (f) Compliance

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

#### (g) Inspection

Within 30 days after the effective date of this AD, inspect each flightcrew oxygen mask regulator to identify the part number and serial number, in accordance with the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012. A review of airplane maintenance records is acceptable to make the determination as specified in this paragraph, provided those records can be relied upon for that purpose, and each flightcrew oxygen mask regulator can be conclusively identified from that review.

#### (h) Action for Affected Regulators

If the part number and serial number, identified as required by paragraph (g) of this AD, are listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012, within 30 days after the effective date of this AD, accomplish the actions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Replace each affected flightcrew oxygen mask regulator with a part identified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) A serviceable part, not having a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(ii) A part that has been tested and passed the test in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF–SBU–35–001, Revision 1, dated December 3, 2012.

(2) Do the actions specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Revise the Emergency Procedures section of the airplane flight manual (AFM) by inserting the statement provided in figure 1 to paragraph (h)(2)(i) of this AD. This may be done by inserting a copy of figure 1 to paragraph (h)(2)(i) of this AD into the AFM.

FIGURE 1 TO PARAGRAPH (h)(2)(i) OF THIS AD

In case of depressurization, both pilots must use the mask regulator on 100% demand or Emergency mode only.

**Note 1 to paragraph (h)(2)(i) of this AD:** For oxygen over-consumption, refer to applicable airplane type certificate holder limitations, if existing, depending on the airplane configuration and/or flight plan.

**Note 2 to paragraph (h)(2)(i) of this AD:** It is the operators' responsibility to assess the operational consequences of the oxygen over-consumption and ensure that the operational requirements with regard to supplemental oxygen and crew protective breathing equipment are still done. Operators are

expected to amend, as applicable, their operations manual(s) accordingly.

(ii) Fabricate and install a placard on the flightcrew oxygen mask container that states: “USE SELECTOR on “100%” OR “EMERGENCY” ONLY.”

**(i) Regulator Replacement**

Within 12 months after the effective date of this AD, unless already accomplished as specified in paragraph (h)(1) of this AD, replace each affected flightcrew oxygen mask regulator identified in paragraph (h) of this AD with a part identified in paragraph (i)(1) or (i)(2) of this AD. After replacement of all affected flightcrew oxygen mask regulators on an airplane, the actions specified in paragraph (h)(2) of this AD are no longer required, the AFM revision specified in paragraph (h)(2)(i) of this AD may be removed from the AFM, and the placard identified in paragraph (h)(2)(ii) of this AD may be removed from the airplane.

(1) A serviceable part, not having a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012.

(2) A part that has been tested and passed the test in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012.

**(j) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g), (h)(1)(ii), and (i)(2) of this AD, if those actions were performed before the effective date of this AD using Zodiac Aerospace Service Bulletin MCF-SBU-35-001, dated October 25, 2012, which is not incorporated by reference in this AD.

**(k) Parts Installation Limitation**

As of the effective date of this AD, no person may install any flightcrew oxygen mask regulator with a part number and serial number listed in Appendix 1 of Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012, on any airplane, unless the regulator has been tested and passed the test, in accordance with paragraph 3.A.(4) of the Accomplishment Instructions of Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012.

**(l) Alternative Methods of Compliance (AMOCs)**

The Manager, Boston Aircraft Certification Office (ACO), ANE-150, 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: Ian Lucas, Aerospace Engineer, Boston Aircraft Certification Office, ANE-150, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7757; fax: 781-238-7170; email: [ian.lucas@faa.gov](mailto:ian.lucas@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. The AMOC approval letter must specifically reference this AD.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012-0254R1, dated December 21, 2012, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov/#/documentDetail;D=FAA-2015-0927-0004>.

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

**(n) 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) Zodiac Aerospace Service Bulletin MCF-SBU-35-001, Revision 1, dated December 3, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Zodiac Services, Technical Publication Department, Zodiac Aerotechnics, Oxygen Systems Europe, 61 Rue Pierre Curie—CS20001, 78373 Plaisir Cedex, France; phone: (33) 01 61 24 23 23; fax: (33) 01 30 55 71 61; email: [yann.laine@zodiacaeospace.com](mailto:yann.laine@zodiacaeospace.com); Internet: <http://www.zodiacaeospace.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 3, 2015.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-28883 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2015-0932; Directorate Identifier 2014-NM-205-AD; Amendment 39-18326; AD 2015-23-10]**

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-8 series airplanes. This AD was prompted by a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings were missing or had moved out of the holes. This AD requires installing a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment. We are issuing this AD to prevent detachment of the quick-release pin, which could result in separation of the lateral support tie rod and subsequent detachment of the module and consequent injuries to passengers or flightcrew.

**DATES:** This AD is effective December 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 28, 2015.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0932.

**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-2015-0932; 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:** Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6585; fax: 425-917-6590; email: *stanley.chen@faa.gov*.

**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 The Boeing Company Model 747-8 airplanes. The NPRM published in the **Federal Register** on April 29, 2015 (80 FR 23739). The NPRM was prompted by a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings were missing or had moved out of the holes. The NPRM proposed to require installing a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment. We are issuing this AD to prevent detachment of the quick-release pin, which could result in

separation of the lateral support tie rod and subsequent detachment of the module and consequent injuries to passengers or flightcrew.

**Comment**

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (80 FR 23739, April 29, 2015) and the FAA’s response to each comment.

**Request To Revise Costs of Compliance Section**

Boeing asked that we add the parts cost to the cost table in the NPRM (80 FR 23739, April 29, 2015). Boeing stated that the parts cost per spacer is \$80, which increases the cost per product to \$1,100, and the cost on U.S. operators to up to \$2,200.

We agree with the commenter for the reason provided. We have included the parts cost and changed the amount of the cost per product and the cost on U.S. operators specified in the “Costs of Compliance” section of this final rule.

**Conclusion**

We reviewed the relevant data, considered the comment 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 (80 FR 23739, April 29, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 23739, April 29, 2015).

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Special Attention Service Bulletin 747-25-3649, dated July 24, 2014. The service information describes procedures for installing a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

**Costs of Compliance**

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

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
Spacer installations .....	Up to 12 work-hours × \$85 per hour = Up to \$1,020.	\$80 per spacer .....	Up to \$1,100 .....	Up to \$2,200

**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**

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 adding the following new airworthiness directive (AD):

**2015-23-10 The Boeing Company:**  
Amendment 39-18326; Docket No.

FAA-2015-0932; Directorate Identifier 2014-NM-205-AD.

**(a) Effective Date**

This AD is effective December 28, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747-8 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747-25-3649, dated July 24, 2014.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

**(e) Unsafe Condition**

This AD was prompted by a report of improperly installed outboard stowage bin modules in the passenger compartment found during maintenance. Further investigation revealed that certain attachment bracket bushings were missing or had moved out of the holes. We are issuing this AD to prevent detachment of the quick-release pin, which could result in separation of the lateral support tie rod and subsequent detachment of the module and consequent injuries to passengers or flightcrew.

**(f) Compliance**

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

**(g) Installation**

Within 36 months after the effective date of this AD: Install a spacer on the end of each quick-release pin that attaches the outboard stowage bin module to the lateral support tie rods of the main deck passenger compartment, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-25-3649, dated July 24, 2014.

**(h) 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 Seattle ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(3)(i) and (h)(3)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to

comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

**(i) Related Information**

For more information about this AD, contact Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6585; fax: 425-917-6590; email: [stanley.chen@faa.gov](mailto:stanley.chen@faa.gov).

**(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 the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 747-25-3649, dated July 24, 2014.

(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 4, 2015.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-28897 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 150**

[Docket No. FDA-1997-P-0007 (formerly Docket No. 1997P-0142)]

**Artificially Sweetened Fruit Jelly and Artificially Sweetened Fruit Preserves and Jams; Revocation of Standards of Identity**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is revoking the standards of identity for artificially sweetened jelly, preserves, and jams. We are taking this action primarily in response to a citizen petition submitted by the International Jelly and Preserve Association (IJPA). We also are taking this action because these standards are obsolete and unnecessary in light of our regulations for foods named by use of a nutrient content claim and a standardized term. This action will promote honesty and fair dealing in the interest of consumers.

**DATES:** The final rule is effective on November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** Terri Wenger, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2371.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

For more than 50 years, we have maintained standards of identity for fruit jelly (jelly) (§ 150.140 (21 CFR 150.140)) and fruit preserves and jams (preserves and jams) (§ 150.160). The standards establish the common or usual name for these products and provide that these products may contain nutritive sweeteners (e.g., sugar). In 1959, we added new standards of identity for artificially sweetened fruit jelly (artificially sweetened jelly) (§ 150.141) and artificially sweetened fruit preserves and jams (artificially sweetened preserves and jams) (§ 150.161) (24 FR 8896; October 31, 1959) that permit the use of non-nutritive sweeteners (e.g., saccharin). Notably, §§ 150.141 and 150.161 limit the types of non-nutritive sweeteners that can be used in products that are governed by those standards of identity. Under §§ 150.141 and 150.161, such products may only use saccharin,

sodium saccharin, calcium saccharin, or any combination thereof, and may not use newer forms of non-nutritive sweeteners that have been developed since the standard of identity regulations were issued.

The Nutrition Labeling and Education Act (NLEA) of 1990 amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to provide for a number of fundamental changes in food labeling, leading to a new regulatory framework for the naming of foods that do not fully comply with the relevant standards of identity. In response to NLEA, we established in part 101 (21 CFR part 101), among other things, definitions for specific nutrient content claims using terms such as “free”, “low”, “light” or “lite”, and “less”, and provided for their use in food labeling (58 FR 2302; January 6, 1993). We also prescribed, in § 130.10 (21 CFR 130.10), a general definition and standard of identity for foods named by a nutrient content claim defined in part 101, such as “low calorie” or “sugar free”, in conjunction with a traditional standardized food term (58 FR 2431; January 6, 1993). A nutrient content claim applied to the standardized food “grape jelly”, for example, could be “low calorie grape jelly”. Section 130.10(d)(1) allows the addition of safe and suitable ingredients to a food named by use of a nutrient content claim and a standardized term when these ingredients are used to, among other things, add sweetness to ensure that the modified food is not inferior in performance characteristics to the standardized food even if such ingredients are not specifically provided for by the relevant food standard. Thus, under certain circumstances, § 130.10 permits manufacturers to use safe and suitable artificial sweeteners (*e.g.*, sucralose) that are not expressly listed in §§ 150.141 and 150.161 in the manufacture of jelly, fruit preserves, and jams (collectively, “fruit spreads”). Therefore, fruit spread products named with a nutrient content claim (for example, “low calorie grape jelly”) may contain newer artificial sweeteners to add sweetness to fruit spread products so that they are not inferior in their sweetness compared to their standardized counterparts (for example, “grape jelly”). Section 130.10 does not require these products to declare the presence of such non-nutritive sweeteners within the name of these foods. We took this action to help consumers in maintaining healthy dietary practices by providing for a modified version of a traditional standardized food to achieve a nutrition

goal (*e.g.*, reduction in sugar consumption or calories) and that has a descriptive name that is meaningful to consumers. Section 130.10 does not, however, permit the use of nutrient content claims as part of the name of a food for foods governed by standards of identity that established the phrase “artificially sweetened” as part of the standard of identity. Accordingly, jelly, preserves, and jams, that use saccharin, sodium saccharin, calcium saccharin, or any combination thereof as non-nutritive sweeteners must still include the term “artificially sweetened” in their names and are not permitted to bear a nutrient content claim as part of the name. However, similar products that use newer non-nutritive sweeteners are governed by § 130.10 and are not required to include the term “artificially sweetened” in their names.

In the **Federal Register** of December 4, 2012, we proposed to revoke the standards of identity for artificially sweetened jelly, preserves, and jam in §§ 150.141 and 150.161 (77 FR 71746). The proposed rule was in response to a citizen petition submitted by the IJPA requesting such a revocation. In issuing the notice of proposed rulemaking, we stated that we found merit in the argument made in IJPA’s petition that revoking §§ 150.141 and 150.161 would allow manufacturers to more accurately and consistently describe the attributes of the fruit spreads that currently conform to those regulations. We therefore tentatively concluded that revoking the standards of identity for artificially sweetened jelly, preserves, and jams would promote honesty and fair dealing in the interest of consumers and was thus appropriate under section 401 of the FD&C Act (21 U.S.C. 341). We tentatively reached this conclusion because we found that nutrient content claims such as “low calorie” or “reduced sugar” better characterize the nutritional profile of the affected fruit spreads than does the term “artificially sweetened”. Further, we stated that revoking §§ 150.141 and 150.161 would provide manufacturers with the flexibility to use the three non-nutritive sweeteners listed in those standards while also naming their products using FDA-defined nutrient content claims, in accordance with § 130.10. We also noted that other safe and suitable artificial sweeteners that might be developed in the future could be used in these products under § 130.10 without the need to further revise relevant standards of identity, and that the proposed rule was consistent with FDA’s proposed general principles for modernizing food standards (70 FR 29214; May 20, 2005).

## II. Comments to the Proposed Rule and FDA’s Responses

We received 21 comments to the proposed rule. The comments were from trade associations, food companies, and individuals. Two comments were identical, and another comment appeared to have been misdirected because it pertained to blogs. Most of the comments made general remarks supporting or opposing the rule and did not focus on a particular component of the rule.

Six comments supported the proposed rule. One comment stated that the proposed rule would provide flexibility to industry to use artificial sweeteners and to not use the term “artificially sweetened” in the name of their products. The comment also stated that the proposed rule would provide consistency and uniformity in the labeling of fruit spreads. Several comments stated that §§ 150.141 and 150.161 limit the type of non-nutritive sweeteners, and that enactment of the NLEA and FDA’s regulation in § 130.10 allow flexibility. One of the comments also stated that the use of nutrient content claims such as “reduced sugar” in accordance with § 130.10 provides a better way to communicate with consumers to meet their nutritional goals.

In contrast, other comments opposed the proposed rule. Several comments said that the rule would remove transparency that allows consumers to make knowledgeable decisions. Another expressed concern that the non-nutritive sweeteners would not be labeled and that consumers would be cheated. Still others stated that removing the term “artificially sweetened” is deceitful, would allow harmful chemicals to be hidden in food, and would not protect consumers.

The final rule will not result in the declaration of non-nutritive sweeteners being removed from labels and will not result in substances being hidden in food. In accordance with § 101.4(a) (21 CFR 101.4(a)), ingredients (including non-nutritive sweeteners) must be declared by common or usual name on either the principal display panel or the information panel of the label. Thus, for example, the ingredient panel must list any non-nutritive sweeteners, including, for example, the three saccharin products currently subject to §§ 150.141 and 150.161 and any of the newer non-nutritive sweeteners such as sucralose. What the final rule will do is require any food products currently subject to §§ 150.141 and 150.161 to instead be subject to § 130.10. Although § 130.10 does not require products to declare the

presence of non-nutritive sweeteners within the name of these foods (e.g., § 130.10 does not require a jam made with a non-nutritive sweetener to be named “artificially sweetened jam”), it does require foods subject to that provision to be named by use of a nutrient content claim defined in part 101 (e.g., “reduced calorie” or “no sugar added”). Nutrient content claims such as “low calorie” or “no sugar added” better characterize the nutritional profile of the fruit spreads currently subject to §§ 150.141 and 150.161 than does the term “artificially sweetened.” The final rule will also allow better comparison to other jams, jellies, and preserves currently modified under the provisions of § 130.10. For example, under current requirements, a jelly that is sweetened with saccharin must be called “artificially sweetened jelly” (in accordance with § 150.141), whereas a similar jelly sweetened with sucralose may be named as “reduced sugar jelly” (in accordance with § 130.10 and provided it meets the requirements for the nutrient content claim “reduced sugar” in § 101.60(c)(5) to distinguish it from the standardized food (jelly in § 150.140). Revoking the standards will provide consistency and uniformity among such products because all fruit spreads sweetened with non-nutritive sweeteners will be subject to the same requirements. For these reasons, the final rule will promote honesty and fair dealing in the interest of consumers consistent with section 401 of the FD&C Act.

As for the comment that artificial sweeteners are “toxic” or “dangerous,” that comment does not address the merits of revoking §§ 150.141 and 150.161.

### III. Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small

entities. Because we have concluded, as set forth in this document, that this rule will not generate significant compliance costs, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

#### A. Need for This Regulation

We are revoking the standards of identity for artificially sweetened jelly, preserves, and jams because these standards are obsolete and unnecessary. The current standards of identity for artificially sweetened jelly (§ 150.141) and artificially sweetened preserves and jams (§ 150.161) provide that they may be manufactured only with specific, non-nutritive artificial sweeteners: Saccharin, sodium saccharin, calcium saccharin, or any combination thereof. These standards of identity, therefore, do not permit the use of newer, safe, and suitable artificial sweeteners, such as sucralose.

The development of newer artificial sweeteners and the enactment of the NLEA have made the current standards of identity for artificially sweetened jelly, preserves, and jams obsolete. The NLEA and § 130.10 permit the modification of a traditional standardized food to achieve a nutrition goal, such as a reduction in calories. Section 130.10(d)(1) allows the addition of safe and suitable ingredients to a food named by use of a nutrient content claim and a standardized term when these ingredients are used to, among other things, add sweetness to ensure that the modified food is not inferior in performance characteristic to the standardized food, even if such ingredients are not specifically provided for by the relevant food standard.

Standardized jelly and standardized preserves and jams products modified under § 130.10 must use nutrient content claims to communicate the modified standardized product’s

nutritional profile to consumers. Under § 130.10, nonspecific, safe, and suitable artificial sweeteners other than the three named in §§ 150.141 and 150.161 can be used to make reduced calorie or reduced sugar products labeled with a nutrient content claim that is established in FDA regulations. Revoking the standards of identity means that any product subject to §§ 150.141 and 150.161 will instead be subject to § 130.10. This will allow consumers to better compare any fruit spreads currently covered by §§ 150.141 and 150.161 with other spreads that are named and modified under the provisions of § 130.10. Revoking the standards also gives manufacturers the flexibility to use the three non-nutritive sweeteners listed in §§ 150.141 and 150.161, while naming their products under § 130.10 using a defined nutrient content claim.

#### B. Regulatory Options

In assessing our regulatory options, we considered the option of taking no action and the option of implementing this final rule. We conclude that the rule is not an economically significant regulatory action. We are not quantitatively estimating the benefits and costs of the regulatory alternatives to the rule. In the following paragraphs, we qualitatively compare the costs and benefits of the regulatory options to the costs and benefits of the rule.

##### 1. The Option of Taking No Action

By convention, we treat the option of taking no new regulatory action as the baseline for determining the costs and benefits of the other options. Therefore, we associate neither costs nor benefits with this option. The consequences of taking no action are reflected in the costs and benefits associated with taking the action set forth in this rule.

##### 2. The Option of Implementing the Final Rule

By revoking §§ 150.141 and 150.161, products that are currently subject to the requirements of these standards of identity will no longer be required to use the phrase “artificially sweetened” as part of their product name. Furthermore, revoking §§ 150.141 and 150.161 means that these same products will be permitted to bear nutrient content claims along with a standardized term (e.g., “reduced calorie jelly” or “no sugar added jam”), in accordance with § 130.10.

The costs of this rule result from the need to relabel any existing jelly, preserves, and jams that conform with §§ 150.141 and 150.161. Any products currently manufactured in accordance with the standards in §§ 150.141 and

150.161 will have to be relabeled in order to comply with § 130.10. Our review of supermarket scanner data for the years 2001 through 2010, however, revealed that no such products are currently being sold. Sales for products manufactured and labeled in accordance with §§ 150.141 and 150.161 were last reported in 2002. A memorandum summarizing the results of this scanner data can be found in Reference 1. The data support our conclusion that most manufacturers most likely have discontinued production of jelly, preserves, and jams that must be labeled as “artificially sweetened,” presumably because of a perception that the phrase “artificially sweetened” is unattractive to consumers. The data also support our conclusion that it is unlikely that the rule will generate significant compliance costs due to the need to relabel products. In fact, removal of the artificially sweetened standards of identity will allow manufacturers to reintroduce products covered under §§ 150.141 and 150.161 to be sold as products covered by § 130.10. That is, such products would be named by use of a nutrient content claim in conjunction with a standardized term (e.g., “reduced calorie jelly” or “no sugar added jam”), in accordance with § 130.10. Therefore, we conclude that any relabeling compliance costs will be negligible.

We do not classify as anticipated costs of this rule any expenses that firms might voluntarily incur if they choose to change their product formulas or manufacturing practices. Any such costs are not costs that would be required by the rule. Instead, these costs would result from voluntary business decisions made by manufacturers.

We conclude that the principal benefits that will result from the rule derive from increased information and flexibility. Revoking the artificially sweetened standards of identity will provide producers of jelly, preserves, and jams with the flexibility to use saccharin, sodium saccharin, calcium saccharin, or any combination thereof, in their formulations without having to include the term “artificially sweetened” in their product names. Manufacturers could instead name their products in accordance with approved nutrient content claims, as provided for under § 130.10, thus providing consumers with additional information about the nutritional profile of affected products. Additionally, revoking §§ 150.141 and 150.161 will help consumers compare products covered by the standards with other similar jelly, preserves, and jams manufactured in accordance with § 130.10.

Accordingly, while we do not quantify the costs and benefits of the rule, we conclude that potential benefits will outweigh any potential costs associated with the rule.

#### C. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because compliance costs, if any, generated by this rule are expected to be negligible, we conclude that this rule will not have a significant economic impact on a substantial number of small entities. The following analysis, in conjunction with the discussion in this document, constitutes our final regulatory flexibility analysis as required by the Regulatory Flexibility Act.

The rule revokes the standards of identity for artificially sweetened jelly, preserves, and jams. The revocation of these artificially sweetened standards of identity gives small fruit spread firms the flexibility to use the three non-nutritive sweeteners listed in §§ 150.141 and 150.161 and to name their products with FDA-defined nutrient content claims in accordance with § 130.10, as is currently done for fruit spread products manufactured with other non-nutritive sweeteners.

We do not classify as costs of this rule any expenses that some small firms might voluntarily incur because they choose to change their product formulas or manufacturing practices. As discussed in this document, any such costs would not be costs required by this rule.

#### IV. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires Agencies to “construe a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.”

Section 403A of the FD&C Act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the FD&C Act provides that no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce any requirement for a food which is the subject of a standard of identity established under section 401 (of the FD&C Act) that is not

identical to such standard of identity or that is not identical to the requirement of section 403(g) of the FD&C Act (21 U.S.C. 343(g)). The express preemption provision of section 403A(a) of the FD&C Act does not preempt any State or local requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food (section 6(c)(2) of the NLEA, Pub. L. 101–535, 104 Stat. 2353, 2364 (1990)).

This final rule will impose requirements that fall within the scope of section 403A(a) of the FD&C Act.

#### V. Environmental Impact

We have determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VI. Paperwork Reduction Act

This final rule contains no collection of information. Therefore, clearance by Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VII. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <http://www.regulations.gov>. FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. A.C. Nielsen Scantrack data, (2001–2010). The Nielsen Company, 770 Broadway, New York, NY 10003–9595 (<http://www.acnielsen.com/>).

#### List of Subjects in 21 CFR Part 150

Food grades and standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 150 is amended as follows:

#### PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

■ 1. The authority citation for 21 CFR part 150 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 343, 348, 371, 379e.

**§ 150.141 [Removed]**

- 2. Remove § 150.141.

**§ 150.161 [Removed]**

- 3. Remove § 150.161.

Dated: November 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-29631 Filed 11-19-15; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 872

[Docket No. FDA-2014-N-1243]

#### Dental Devices; Reclassification of Electrical Salivary Stimulator System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final order to reclassify the salivary stimulator system, a postamendments Class III device, into class II (special controls) and to rename the device the “electrical salivary stimulator system.” The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** Michael Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993, 301-796-6283.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended, 21 U.S.C. 301 *et seq.*, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section

513(f)(1) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807)).

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified into class I or class II under section 513(f)(3) of the FD&C Act. Section 513(f)(3) provides that FDA acting by order can reclassify the device into class I or class II on its own initiative, or in response to a petition from the manufacturer or importer of the device. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available regulatory authority (see *Bell v. Goddard*, 366 F.2d 177, 181 (7th Cir. 1966); *Ethicon, Inc. v. FDA*, 762 F. Supp. 382, 388-391 (D.D.C. 1991)), or in light of changes in “medical science” (*Upjohn v. Finch*, 422 F.2d 944, 951 (6th Cir. 1970)). Whether data before the Agency are old or new, the “new information” to support reclassification under section 513(f)(3) of the FD&C Act must be “valid scientific evidence”, as defined in section 513(a)(3) and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co. v. FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Mfrs. Assoc. v. FDA*, 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986)).

FDA relies upon “valid scientific evidence” in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the “valid scientific evidence” upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA) (see section 520(c) of the FD&C Act (21 U.S.C. 360j(c))).

On September 18, 2014, FDA published an order in the **Federal Register** to reclassify the device (79 FR 56027) (the “proposed order”). The period for public comment on the proposed order closed on December 17, 2014. FDA received and has considered 20 comments on the proposed order, as discussed in section II.

#### II. Public Comments in Response to the Proposed Order

Of the 20 public comments that FDA received in response to the proposed order, 17 comments supported the proposed reclassification and 3 comments were opposed. All of the commenters were individuals, 12 of whom identified themselves as medical practitioners. Eight of these 12 practitioners claimed prior research experience with the device. Three commenters claimed experience with the device as patients in clinical trials.

All of the practitioners’ and patients’ comments were supportive of the reclassification proposal. All of the practitioners with prior experience administering the device noted favorable results for some of their patients and no adverse events. The other four practitioners who commented either had recommended, or if available would recommend, the device as a non-pharmaceutical option for treating dry mouth conditions.

Five commenters did not claim any prior professional or patient experience with the device. Of these comments, two favored finalization of the proposed reclassification based on the evidence presented in the proposed order.

Three comments opposed the proposed reclassification. None of these commenters claimed prior professional or patient experience with the device. One commenter believed that the proposed order adequately addressed safety concerns but failed to provide convincing evidence of the effectiveness of the device.

FDA disagrees with the comment. The special control requiring documented clinical experience will allow the Agency to require information on each device’s effectiveness in actual clinical use.

Two commenters believed that the devices should undergo further clinical trials to evaluate device and human factors risks, and that electrically powered salivary stimulators are inherently hazardous and subject to misuse and, without conclusive test results, should continue to be classified as Class III devices and be subject to premarket approval.

The Agency disagrees that electrical salivary stimulator systems should

remain class III and subject to premarket approval. The Agency believes that the special controls required in this final order provide a reasonable assurance of safety and effectiveness for these devices. FDA believes it has identified the risks to health (see section VI of the proposed order) and that the mitigation measures described in the final order will be effective in mitigating the risks described in the two comments, including the risks associated with the low-voltage electrical features of the devices. In particular, the special control requiring documented clinical experience will allow the Agency to require information on each device's safety and effectiveness in actual clinical use, including any human factors risks. These devices utilize technology similar to that used in other class II medical devices such as transcutaneous electrical nerve stimulators. The Agency believes that its experience with similar devices and the lack of adverse events for salivary stimulators in FDA's Manufacturer and User Facility Device Experience (MAUDE) database and peer-reviewed literature provide sufficient information to establish special controls that mitigated the risks to health identified for this device type in the proposed order.

The Agency is making a minor modification to the proposed special controls for electrical salivary stimulator systems by replacing the term "geometry" in the first special control with the term "device design." FDA makes this revision to clarify the intent of the special control.

### III. The Final Order

Under section 513(f)(3) of the FD&C Act, FDA is adopting its findings as published in the preamble to the proposed order. FDA is issuing this final order to reclassify salivary stimulator system devices from class III to class II, rename them electrical salivary stimulator systems, and establish special controls by revising part 872 (21 CFR part 872).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of electrical salivary stimulator systems, and therefore, this device type is not exempt from premarket notification requirements.

The device is assigned the generic name electrical salivary stimulator system, and it is identified as a prescription intraoral device intended to electrically stimulate a relative increase in saliva production. FDA is identifying the device under this new name to distinguish it from other devices that stimulate saliva flow via non-electrical means.

Under this final order, the electrical salivary stimulatory system device is a prescription device restricted to patient use only upon the authorization of a dental practitioner or physician licensed by law to administer or use the device (see 21 CFR 801.109 (*Prescription devices*)). Prescription-use restrictions are a type of general control defined in section 513(a)(1)(A)(i) of the FD&C Act. The labeling of the device must bear all information required for the safe and effective use of prescription devices as outlined in § 801.109.

Under section 513(f)(3) of the FD&C Act, FDA is adopting its findings as published in the preamble to the proposed order, with the following correction: FDA stated in the proposed order that the Agency utilized section 520(h)(4) of the FD&C Act to review data contained in premarket approval applications (PMAs) approved 6 or more years before the date of the proposed order. The Agency would like to clarify that this language was included unintentionally, and that the provisions of section 520(h)(4) were not utilized in this rulemaking proceeding.

### IV. Environmental Impact, No Significant Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### V. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other 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 part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

### List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*, as amended) and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

### PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 872.5560 to subpart F to read as follows:

#### § 872.5560 Electrical salivary stimulatory system.

(a) *Identification.* An electrical salivary stimulatory system is a prescription intraoral device that is intended to electrically stimulate a relative increase in saliva production.

(b) *Classification*—Class II (special controls). The special controls for this device are:

(1) The design characteristics of the device must ensure that the device design, material composition, and electrical output characteristics are consistent with the intended use;

(2) Any element of the device that contacts the patient must be demonstrated to be biocompatible;

(3) Appropriate analysis and/or testing must validate electromagnetic compatibility and electrical safety, including the safety of any battery used in the device;

(4) Software validation, verification, and hazard testing must be performed; and

(5) Documented clinical experience must demonstrate safe and effective use for stimulating saliva production by addressing the risks of damage to intraoral tissue and of ineffective treatment and must capture any adverse events observed during clinical use.

Dated: November 13, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–29638 Filed 11–19–15; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 880**

[Docket No. FDA-2015-N-3838]

**Medical Devices; General Hospital and Personal Use Devices; Classification of the Ultraviolet Radiation Chamber Disinfection Device**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is classifying the ultraviolet (UV) radiation chamber disinfection device into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the UV radiation chamber disinfection device classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective November 20, 2015. The classification was applicable on December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Claverie, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2508, Silver Spring, MD 20993-0002, 301-796-6298.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate

device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1) of the FD&C Act. Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of “low-moderate risk” or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device. In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on October 28, 2010, classifying the Vioguard Self-Sanitizing Keyboard into class III, because it was not substantially equivalent to a device that was

introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On November 2, 2010, Vioguard submitted a request for classification of the Vioguard Self-Sanitizing Keyboard under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 20, 2011, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 880.6600.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a UV radiation chamber disinfection device will need to comply with the special controls named in this final order. The device is assigned the generic name UV radiation chamber disinfection device, and it is identified as a UV chamber disinfection device intended for the low-level surface disinfection of non-porous equipment surfaces by dose-controlled UV irradiation. This classification does not include self-contained open chamber UV disinfection devices intended for whole room disinfection in a health care environment.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1.

TABLE 1—ULTRAVIOLET RADIATION CHAMBER DISINFECTION DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Inadequate Equipment Disinfection .....	Performance Testing. Labeling.



TABLE 1—ULTRAVIOLET RADIATION CHAMBER DISINFECTION DEVICE RISKS AND MITIGATION MEASURES—Continued

Identified risks	Mitigation measures
UV Radiation Exposure .....	Performance Testing. Labeling.
Electrical Shock .....	Electrical Safety Testing.
Electromagnetic Interference .....	Electromagnetic Compatibility (EMC) Testing. Labeling.
Ozone Exposure .....	Ozone Generation Limits. Labeling.
Processed Equipment Incompatibility .....	Performance Testing. Labeling.
Contamination of Device .....	Cleaning and Disinfection Validation. Labeling.
Software Malfunction .....	Hazard Analysis of Software. Software Verification and Validation.

FDA believes that the special controls in § 880.6600(b)(1) through (4), in addition to the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the UV radiation chamber disinfection device they intend to market.

## II. Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other 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 part 807, subpart E, regarding premarket notification submissions have been

approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

## IV. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <http://www.regulations.gov>.

1. DEN100013: de novo request per 513(f)(2) from Vioguard, dated November 2, 2010.

## List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

## PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 1. The authority citation for 21 CFR part 880 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 880.6600 is added to subpart G to read as follows:

### § 880.6600 Ultraviolet (UV) radiation chamber disinfection device.

(a) *Identification.* An ultraviolet (UV) radiation chamber disinfection device is intended for the low-level surface disinfection of non-porous equipment surfaces by dose-controlled UV irradiation. This classification does not include self-contained open chamber UV radiation disinfection devices intended for whole room disinfection in a health care environment.

(b) *Classification*—Class II (special controls). The special controls for this device are:

(1) Performance testing must demonstrate the following:

(i) The chamber's ability to control the UV radiation dose during operation.

(ii) The chamber's disinfection performance through microbial challenge testing.

(iii) Evidence that the equipment intended to be processed is UV compatible.

(iv) Validation of the cleaning and disinfection procedures.

(v) The ability of the device to continue to perform to all specification after cleaning and disinfection.

(vi) Whether the device generates ozone (if so, 21 CFR 801.415, Maximum acceptable level of ozone, applies).

(2) Appropriate software verification, validation, and hazard analysis must be performed.

(3) Appropriate analysis and/or testing must validate electrical safety, mechanical safety, and electromagnetic compatibility of the device in its intended use environment.

(4) The labeling must include:

(i) UV hazard warning labels.

(ii) Explanation of all displays and/or labeling on user interface.

(iii) Explanation of device safety interlocks.

(iv) Explanation of all disinfection cycle signals, cautions and warnings.

(v) Device operating procedures.

(vi) Identification of the expected UV lamp operational life and instructions for procedures on replacement of the UV lamp when needed.

(vii) Procedures to follow in case of UV lamp malfunction or failure.

(viii) Procedures for disposing of mercury-containing UV lamps, if applicable.

(ix) Identification of specific equipment that is compatible with the UV radiation dose generated by the device and that can safely undergo UV

radiation low-level disinfection in the chamber device.

(x) Description of the required preparation of equipment for disinfection in the UV radiation chamber device.

(xi) Identification of the specific microbes used in successful performance testing of the device.

(xii) Validated instructions for cleaning and disinfection of the device.

Dated: November 17, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-29660 Filed 11-19-15; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 890

[Docket No. FDA-2015-P-1197]

#### Medical Devices; Exemption From Premarket Notification; Class II Devices; Electric Positioning Chair

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is publishing an order granting a petition requesting exemption from premarket notification requirements for electric positioning chair devices. An electric positioning chair is a device with a motorized positioning control that is intended for medical purposes and that can be adjusted to various positions. These devices are used to provide stability for patients with athetosis (involuntary spasms) and to alter postural positions. This order exempts electric positioning chairs, class II devices, from premarket notification, subject to certain conditions for exemption. This exemption from premarket notification, subject to these conditions (and the limitations in the physical medicine devices limitations of exemptions from premarket notification section of the device regulations), is immediately in effect for electric positioning chairs. FDA is publishing this order in accordance with the exemption from class II premarket notification section of the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

**DATES:** This order is effective November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Marszalek, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1427, Silver Spring, MD 20993, 301-796-7067.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Background

Section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and its implementing regulations (21 CFR part 807) require persons who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use to submit a premarket notification (510(k)) to FDA. The device may not be marketed until FDA finds it “substantially equivalent” within the meaning of section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 206 of FDAMA added section 510(m) to the FD&C Act. Section 510(m)(1) of the FD&C Act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the FD&C Act provides that FDA may exempt a device from premarket notification requirements on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to assure the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

##### II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to assure the safety and effectiveness of a class II device. These factors are discussed in the guidance that the Agency issued on February 19, 1998, entitled “Procedures

for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff” (Class II 510(k) Exemption Guidance). That guidance can be obtained through the Internet on the Center for Devices and Radiological Health home page at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm080198.htm> or by sending an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive a copy of the document. Please use the document number 159 to identify the guidance you are requesting.

##### III. Device Description

Electric positioning chairs are devices with a motorized positioning control that are intended for medical purposes and that can be adjusted to various positions. Existing legally marketed devices have identified a range of specific procedures or conditions for which an electric positioning chair could be used to provide stability and to alter postural positions (e.g., muscular dystrophy, Parkinson’s syndrome, or joint replacements). The devices are primarily intended to provide stability and a controlled lift from a seated position to a standing position, while supporting the patient’s weight (alter postural positions). The device consists of a frame (where the user would sit) and a lift mechanism, and may also allow the patient to recline in the device.

##### IV. Petition

On April 10, 2015, FDA received a petition requesting an exemption from premarket notification for electric positioning chair devices. (See Docket No. FDA-2015-P-1197.) These devices are currently classified under 21 CFR 890.3110 *Electric positioning chair*.

In the **Federal Register** of June 12, 2015 (80 FR 33525), FDA published a notice announcing that this petition had been received and provided opportunity for interested persons to submit comments on the petition by July 13, 2015. FDA received no comments.

FDA has assessed the need for 510(k) clearance for this type of device using the criteria laid out in the Class II 510(k) Exemption Guidance and in the January 21, 1998, notice (63 FR 3142 at 3143). Based on its review, FDA believes that premarket notification is not necessary to assure the safety and effectiveness of the device, as long as certain conditions are met. FDA believes that the risks posed by the device (such as instability, entrapment, use error, falls and associated injuries, battery/electrical/mechanical failure, pressure sores, bruising, burns, electric shock, and

electromagnetic incompatibility/interference) and the characteristics of the device necessary for its safe and effective performance (such as safety features, weight capacity, power source, drive mechanism/actuator, and user controls) are well established. Moreover, FDA believes that changes in the device that could affect safety and effectiveness will be readily detectable by certain types of routine analysis and non-clinical testing, such as those detailed in certain consensus standards. Therefore, after reviewing the petition, FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of electric positioning chairs, as long as the conditions for 510(k) exemption in section V are met. FDA responded to the petition by letter dated October 9, 2015, to inform the petitioner of this decision within the 180-day timeframe under section 510(m)(2) of the FD&C Act.

#### V. Conditions for Exemption

This final order provides conditions for exemption from premarket notification. The following conditions must be met for the device to be 510(k)-exempt: (1) Appropriate analysis and non-clinical testing must demonstrate that the safety controls are adequate to ensure safe use of the device and prevent user falls from the device in the event of a device failure; (2) appropriate analysis and non-clinical testing must demonstrate the ability of the device to withstand the rated user weight load with an appropriate factor of safety; (3) appropriate analysis and non-clinical testing must demonstrate the longevity of the device to withstand external forces applied to the device and provide the user with an expected service life of the device; (4) appropriate analysis and non-clinical testing must demonstrate proper environments of use and storage of the device to maximize the longevity of the device; (5) appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of ANSI/AAMI ES60601-1: “Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance,” and ANSI/AAMI/IEC 60601-1-2, “Medical Electrical Equipment—Part 1-2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests”) must validate electromagnetic compatibility and electrical safety; (6) appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of ANSI/AAMI/ISO 10993-1, “Biological

Evaluation of Medical Devices—Part 1: Evaluation and Testing Within a Risk Management Process,” ANSI/AAMI/ISO 10993-5, “Biological Evaluation of Medical Devices—Part 5: Tests for In Vitro Cytotoxicity,” and ANSI/AAMI/ISO 10993-10, “Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Skin Sensitization”) must validate that the skin-contacting components of the device are biocompatible; (7) appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of IEC 62304, “Medical Device Software—Software Life Cycle Processes”) must validate the software life cycle and that all processes, activities, and tasks are implemented and documented; (8) appropriate analysis and non-clinical testing must validate that the device components are found to be non-flammable; (9) appropriate analysis and non-clinical testing must validate that the battery in the device (if applicable) performs as intended over the anticipated service life of the device; and (10) adequate patient labeling is provided to the user to document proper use and maintenance of the device to ensure safe use of the device by the patient in the intended use environment.

Firms are now exempt from 510(k) requirements for electric positioning chairs as long as they meet these conditions of exemption, subject to the limitations in 21 CFR 890.9. Firms must comply with the conditions for exemption or submit and receive clearance for a 510(k) prior to marketing.

#### VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VII. Paperwork Reduction Act of 1995

This final order 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 801, regarding medical device labeling, have been approved under OMB control number 0910-0485 and the collections of information in 21 CFR part 820, regarding the quality

system regulation, have been approved under OMB control number 0910-0073.

#### List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

#### PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for 21 CFR part 890 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. In § 890.3110, revise paragraph (b) to read as follows:

#### § 890.3110 Electric positioning chair.

\* \* \* \* \*

(b) *Classification.* Class II. The electric positioning chair is exempt from premarket notification procedures in subpart E of part 807 of this chapter, subject to § 890.9 and the following conditions for exemption:

(1) Appropriate analysis and non-clinical testing must demonstrate that the safety controls are adequate to ensure safe use of the device and prevent user falls from the device in the event of a device failure;

(2) Appropriate analysis and non-clinical testing must demonstrate the ability of the device to withstand the rated user weight load with an appropriate factor of safety;

(3) Appropriate analysis and non-clinical testing must demonstrate the longevity of the device to withstand external forces applied to the device and provide the user with an expected service life of the device;

(4) Appropriate analysis and non-clinical testing must demonstrate proper environments of use and storage of the device to maximize the longevity of the device;

(5) Appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of ANSI/AAMI/ES60601-1, “Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance,” and ANSI/AAMI/IEC 60601-1-2, “Medical Electrical Equipment—Part 1-2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests”) must validate electromagnetic compatibility and electrical safety;

(6) Appropriate analysis and non-clinical testing (such as that outlined in

the currently FDA-recognized editions of ANSI/AAMI/ISO 10993-1, “Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing Within a Risk Management Process,” ANSI/AAMI/ISO 10993-5, “Biological Evaluation of Medical Devices—Part 5: Tests for In Vitro Cytotoxicity,” and ANSI/AAMI/ISO 10993-10, “Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Skin Sensitization”) must validate that the skin-contacting components of the device are biocompatible;

(7) Appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of IEC 62304, “Medical Device Software—Software Life Cycle Processes”) must validate the software life cycle and that all processes, activities, and tasks are implemented and documented;

(8) Appropriate analysis and non-clinical testing must validate that the device components are found to be non-flammable;

(9) Appropriate analysis and non-clinical testing must validate that the battery in the device (if applicable) performs as intended over the anticipated service life of the device; and

(10) Adequate patient labeling is provided to the user to document proper use and maintenance of the device to ensure safe use of the device by the patient in the intended use environment.

Dated: November 16, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-29633 Filed 11-19-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF STATE

### 22 CFR Parts 22 and 51

[Public Notice: 9350]

RIN 1400-AD76

#### Elimination of Visa Page Insert Service for U.S. Passport Book Holders

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** On April 29, 2015, the Department of State published a notice of proposed rulemaking (NPRM) that proposed eliminating the visa page insert service for regular fee passport book holders beginning January 1, 2016. The Department is finalizing the proposed rule without change.

**DATES:** This rule is effective January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michael Holly, Passport Services, Bureau of Consular Affairs; 202-485-6373; [PassportRules@state.gov](mailto:PassportRules@state.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 29, 2015, the Department of State published a NPRM that proposed eliminating the visa page insert service for regular fee passport book holders beginning January 1, 2016. See 80 FR 23754. As explained in the NPRM, the effective date of this rule coincides with when the Department expects to begin issuing an updated version of the Next Generation Passport book. The primary reason for eliminating visa page inserts is to protect the integrity of the Next Generation Passport books. Further discussion of the reasons for the rule is in the NPRM.

##### Public Comments

The Department received only one public comment in response to the notice of proposed rulemaking. The following analysis addresses the comment.

The commenter expressed concern that eliminating visa page inserts would be a considerable inconvenience. The commenter wrote that due to the extent of his travels, eliminating visa page inserts would require him to renew his passport every three or four years, even if he is issued the larger 52-page passport book. The commenter also wrote that running out of visa pages in his passport would cause some of his multi-year visas to expire, requiring him to renew his visas early or possibly carry his expired U.S. passport until the visas in it expire.

The Department recognizes that eliminating visa page inserts may pose an inconvenience to a very small number of U.S. passport holders whose travel requires the issuance of multiple visas. The Department has a policy in place to permit the issuance of a second regular fee passport to individuals who require their first passport books for travel while their visa applications are pending with foreign governments. (See 7 FAM 1310 Appendix R c(2) <http://www.state.gov/documents/organization/94669.pdf>).

The commenter questioned if visa page inserts present a genuine security concern. As described in the NPRM, an interagency working group studied the issue and determined that the elimination of visa page inserts added value to the security features of visa page inserts that far outweighed the inconvenience caused by the elimination of this service, for which there is very limited demand.

Finally, the problems the commenter describes are very rare among U.S. passport holders. The average U.S. passport holder uses six or fewer visa pages. Ninety-seven percent of all U.S. passport holders will have used 17 pages or less by the time they renew their passports. Less than one percent of U.S. passport holders will have used more than 32 pages when they renew their passports. On average, people who apply for visa page inserts for a U.S. passport do so seven years after the passport was issued and 17 percent of these individuals had the smaller passport book to begin with. Accordingly, while the Department certainly understands the commenter's concerns, it still expects the overall impact of this rule on U.S. passport holders to be minimal, and to be outweighed by the security concerns discussed in the NPRM.

##### Regulatory Findings

The Regulatory Findings included in the NPRM are incorporated herein. See 80 FR at 23755.

##### List of Subjects in 22 CFR Parts 22 and 51

Consular services, Fees, Passports and visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR parts 22 and 51 as follows:

#### PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

- 1. The authority citation for part 22 continues to read as follows:

**Authority:** 8 U.S.C 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Executive Order 10718, 22 FR 4632; Executive Order 11295, 31 FR 10603.

##### § 22.1 [Amended]

- 2. The table in § 22.1 is amended by removing and reserving item 2c.

#### PART 51—PASSPORTS

- 3. The authority citation for part 51 continues to read as follows:

**Authority:** 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 213, 213n (Pub. L. 106-113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A-430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103-317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966-

1970 Comp., p. 570; Sec. 1 of Pub. L. 109–210, 120 Stat. 319; Sec. 2 of Pub. L. 109–167, 119 Stat. 3578; Sec. 5 of Pub. L. 109–472, 120 Stat. 3554; Pub. L. 108–447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

■ 4. In § 51.20, paragraph (a) is revised to read as follows:

**§ 51.20 General.**

(a) An application for a passport, a replacement passport, or other passport related service must be completed using the forms the Department prescribes.

\* \* \* \* \*

■ 5. In § 51.56, paragraph (a) is revised to read as follows:

**§ 51.56 Expedited passport processing.**

(a) Within the United States, an applicant for passport service (including issuance or replacement of a passport) may request expedited processing. The Department may decline the request.

\* \* \* \* \*

Dated: November 12, 2015.

**David T. Donahue,**

*Acting Assistant Secretary for Consular Affairs.*

[FR Doc. 2015–29618 Filed 11–19–15; 8:45 am]

**BILLING CODE 4710–06–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2015–1023]

**Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake (Great Bridge), VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the S168 Bridge (Battlefield Boulevard) across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 12.0, at Chesapeake (Great Bridge), VA. This deviation allows the bridge to remain in the closed-to-navigation position to facilitate the annual Chesapeake Christmas Parade.

**DATES:** This deviation is effective from 4 p.m. on December 5, 2015 until 10 p.m. on December 5, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2015–1023], 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 Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6222, email [Hal.R.Pitts@uscg.mil](mailto:Hal.R.Pitts@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The City of Chesapeake, VA, who owns and operates the S168 Bridge, has requested a temporary deviation from the current operating regulations to facilitate the annual Chesapeake Christmas Parade. The bridge is a double bascule draw bridge and has a vertical clearance in the closed position of 8 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.997(g). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 4 p.m. to 6 p.m. and from 8 p.m. to 10 p.m. on December 5, 2015. The Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal is used by a variety of vessels including U.S. government vessels, small commercial vessels, recreational vessels and tug and barge traffic. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and the Atlantic Ocean is the alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by this 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: November 16, 2015.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2015–29677 Filed 11–19–15; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 721**

[EPA–HQ–OPPT–2015–0388; FRL–9936–98]

**RIN 2070–AB27**

**Significant New Use Rules on Certain Chemical Substances; Withdrawal**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for three chemical substances, which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures, which requires EPA to take certain actions if a notice of intent to submit an adverse comment is received. EPA received notices of intent to submit adverse comments regarding the SNURs identified in this document. Therefore, the Agency is withdrawing the direct final rule SNURs identified in this document, as required under the direct final rulemaking procedures.

**DATES:** This document is effective December 1, 2015.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0388, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. 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: Kenneth Moss, Chemical Control Division (7405M) Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: [moss.kenneth@epa.gov](mailto:moss.kenneth@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. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of October 2, 2015 (80 FR 59593) (FRL–9933–30). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. What direct final SNURs are being withdrawn?

In the **Federal Register** of October 2, 2015, EPA issued direct final SNURs for the chemical substances that are identified in this document. These direct final SNURs were issued under the procedures in 40 CFR part 721, subpart D. Because the Agency received notices of intent to submit adverse comments, in accordance with § 721.160(c)(3)(ii), EPA is withdrawing the direct final SNURs issued for the following chemical substances, which were the subject of PMNs: Isocyanate prepolymer (generic), (PMN No. P–15–221); methylene diisocyanate polymer with diols and triols (generic), (PMN No. P–15–247); and polymer of isophorone diisocyanate and amine-terminated propoxylated polyol (generic), (PMN No. P–15–278). EPA intends to publish proposed SNURs for the chemical substances identified in this document.

For further information regarding EPA's direct final rulemaking procedures for issuing SNURs, see 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314).

##### III. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements. As such, the Agency has determined that this action will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rule were discussed in the **Federal Register** of October 2, 2015. Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

##### IV. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects

##### 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

##### 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 12, 2015.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 9—[AMENDED]

- 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

##### § 9.1 [Amended]

- 2. In the table in § 9.1, under the undesignated center heading "Significant New Uses of Chemical Substances," remove §§ 721.10871, 721.10873, and 721.10874.

#### PART 721—[AMENDED]

- 3. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

##### §§ 721.10871 [Removed]

- 4. Remove §§ 721.10871.

##### §§ 721.10873 and 721.10874 [Removed]

- 5. Remove §§ 721.10873 and 721.10874.

[FR Doc. 2015–29596 Filed 11–19–15; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 180

[EPA–HQ–OPP–2014–0194; FRL–9935–01]

#### Amitraz, Carfentrazone-ethyl, Ethephon, Malathion, Mancozeb, et al.; Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking certain tolerances for the fungicides spiroxamine and triflumizole, the herbicides carfentrazone-ethyl and quizalofop ethyl; the insecticides amitraz, oxamyl, propetamphos, and spinosad; the plant growth regulators ethephon and mepiquat; and the tolerance on rice straw for multiple active ingredients. Also, EPA is modifying certain tolerances for the fungicides mancozeb, thiram, and triflumizole. In addition, EPA is establishing new tolerances for the fungicide mancozeb. Also, in accordance with current Agency practice, EPA is making minor revisions to the tolerance expressions for mepiquat and thiram. In addition, EPA is restoring the listings of tolerances on bulb onion and pear for methomyl residues to remedy inadvertent drafting errors and cover existing registrations. EPA is deferring a decision on the malathion tolerances at this time.

**DATES:** This regulation is effective May 18, 2016, except for the amendments to 40 CFR 180.253 (the restorations of the bulb onion and pear tolerances for methomyl), which are effective November 20, 2015. Objections and requests for hearings must be received on or before January 19, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0194, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review

the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; email address: [nevola.joseph@epa.gov](mailto:nevola.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

*C. How can I file an objection or hearing request?*

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2014-0194 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 19, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk

as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2014-0194, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**II. Background**

*A. What action is the agency taking?*

In the **Federal Register** of July 11, 2014 (79 FR 40043) (FRL-9910-45), EPA issued a proposed rule, in follow-up to canceled uses, to revoke specific tolerances for amitraz, carfentrazone-ethyl, ethephon, mepiquat, oxamyl, propetamphos, quizalofop ethyl, spinosad, spiroxamine, and triflumizole. Also, because rice straw is no longer considered by the Agency to be a significant feed item, EPA proposed to revoke the tolerance on rice straw for multiple active ingredients. In follow-up to reregistration, EPA proposed to modify tolerances for malathion and mancozeb, and also establish tolerances for mancozeb, and post-reregistration follow-up to modify specific tolerances for thiram and triflumizole. In addition, the Agency proposed minor revisions to the tolerance expressions for malathion, mepiquat, and thiram. The proposal provided a 60-day comment period.

Since the proposed rule, in the **Federal Register** of March 27, 2015 (80 FR 16302) (FRL-9924-86), the Agency published a final rule that removed the expiration/revocation date for the thiram tolerance in 40 CFR 180.132 on banana at 0.80 parts per million (ppm) for thiram residues. Also, in the **Federal Register** of June 19, 2015 (80 FR 35249)

(FRL-9928-82), the Agency published a final rule that established a thiram tolerance in 40 CFR 180.132 on avocado at 15 ppm for thiram residues.

EPA is finalizing specific mancozeb tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of "reasonable certainty of no harm" is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242-2419; telephone number: (800) 490-9198; fax number: (513) 489-8695; Internet at <http://www.epa.gov/ncepihom> and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: (800) 553-6847 or (703) 605-6000; Internet at <http://www.ntis.gov>. Electronic copies of REDs and TREDs are available on the Internet at <http://www.regulations.gov> and <http://www.epa.gov/pesticides/reregistration/status.htm>.

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of

pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under the Food Quality Protection Act (FQPA).

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. Among the comments received by EPA, are the following:

1. *General—i. Comment by private citizen.* An anonymous comment was received which expressed concerns about the toxicity of pesticides in general.

*Agency response.* The commenter did not take issue with the Agency's specific conclusions to revoke, modify, establish tolerances, or revise tolerance expressions. Also, the commenter did not refer to any specific studies which pertain to those conclusions. The Agency has not changed its previous determination that the tolerances in question are safe and is therefore not making any changes in response to these comments.

2. *Specific chemical comments—i. Oxamyl—Comment by DuPont Crop Protection.* The commenter requested that the soybean seed tolerance for oxamyl be retained for possible future actions. DuPont noted that since the soybean use was deleted from oxamyl labels in 2006 via EPA's approval of its request for voluntary cancellation, growers have experienced an increasing need for management of soybean cyst nematode.

*Agency response.* The use of oxamyl on soybean was officially canceled

under section 6(f)(1) of FIFRA, 7 U.S.C. 136d(f)(1), under which a registrant of a pesticide product may request that the product registration be canceled or amended to terminate one or more uses. Because EPA canceled the soybean use in response to DuPont's request, and no other oxamyl products include a use on soybeans, there is currently no legal use of oxamyl on soybeans. EPA will not retain the tolerance based on the possibility that someone may apply for a new use on soybean in the future.

Tolerances are generally maintained for current uses. Therefore, EPA is revoking the tolerance for oxamyl in 40 CFR 180.303(a) on soybean, seed.

EPA is considering the public comments received on malathion in response to the proposed rule of July 11, 2014 and is thus deferring a decision on the malathion tolerances at this time. The Agency will respond to the comments in a future notice to be published in the **Federal Register**.

With the exception of malathion and oxamyl, the Agency did not receive any specific comments in the docket, during the 60-day comment period, concerning proposed tolerance actions associated with pesticide active ingredients, as described in the **Federal Register** of July 11, 2014. Therefore, the exceptions of malathion, EPA is finalizing amendments in the proposed rule of July 11, 2014. Also, EPA is maintaining both the establishment of the thiram tolerance on avocado (now in newly codified 40 CFR 180.132(a)(1) for thiram residues), and the removal of the expiration/revocation date on the thiram tolerance on banana (now in newly codified 40 CFR 180.132(a)(2) for carbon disulfide residues). In addition, EPA is finalizing the amendments in the proposed rule of July 11, 2014 for thiram tolerances on apple, banana, peach, and strawberry (now in newly codified 40 CFR 180.132(a)(2) for carbon disulfide residues). For a detailed discussion of the Agency's rationale for the finalized tolerance actions, refer to the proposed rule of July 11, 2014.

In this final rule EPA is also making corrections to two unrelated provisions. In the **Federal Register** of May 9, 2012 (77 FR 27164) (FRL-9345-2), EPA issued a proposed rule covering multiple pesticide active ingredients, including methomyl. In that rule, in order to conform to current Agency practice, EPA proposed to revise the tolerance commodity terminology, in 40 CFR 180.253 for methomyl, for vegetable, root (an outdated term) at 0.2(N) ppm to vegetable, root and tuber, group 1 at 0.2 ppm. Also, EPA proposed to make minor revisions to the tolerance expressions for methomyl in 40 CFR

180.253(a) and (c). In follow-up, EPA promulgated a final rule in the **Federal Register** of September 26, 2012 (77 FR 59120) (FRL-9358-8) with an effective date of March 25, 2013. However, the outdated tolerance term "vegetable, root" had covered the use on bulb onions. Therefore, the terminology revision by EPA inadvertently removed a tolerance which covered methomyl residues in or on bulb onions. Also, while EPA revised the methomyl tolerance expressions in 180.253(a) and (c), EPA inadvertently removed the table under paragraph (c), which contained an entry for a regional tolerance on pear at 4 ppm. Yet, active registrations for use of methomyl on bulb onions and pears existed at that time and now. Consequently, in this final rule, EPA is restoring coverage for methomyl residues on the bulb onion commodity as an individual tolerance in 40 CFR 180.253(a) for onion, dry bulb at 0.2 ppm and in 40 CFR 180.253(c) on pear at 4 ppm.

EPA is issuing these tolerance actions for methomyl in this final rule for this purpose without notice and opportunity to comment. Section 553(b)(3)(B) of the Administrative Procedure Act provides that notice and comment is not necessary "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." EPA finds good cause here because restoring the listings of tolerance coverages on bulb onion and pear for methomyl residues merely corrects two inadvertent drafting errors. As such, notice and comment is unnecessary.

#### *B. What is the agency's authority for taking this action?*

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made in the RED for mancozeb during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides.

#### *C. When do these actions become effective?*

As stated in the **DATES** section, this regulation is effective May 18, 2016, except for the restorations of the bulb onion and pear tolerances for methomyl, which are effective November 20, 2015. With the exception of methomyl, for which EPA is restoring tolerances



inadvertently removed, EPA is delaying the effective date of these finalized actions to allow a reasonable interval for producers in exporting members of the World Trade Organization's Sanitary and Phytosanitary Measures Agreement to adapt to the requirements of a final rule. EPA believes that existing stocks of the canceled or amended pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

### III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for carfentrazone-ethyl, mepiquat, propetamphos, quizalofop ethyl, spiroxamine, triflumizole, ethephon in or on cucumber, oxamyl in or on

soybean seed, spinosad in or on coriander leaves, or total dithiocarbamates in or on barley bran, barley flour, field corn grain, oat flour, oat grain, rye bran, rye grain, wheat bran, wheat flour, and wheat, shorts.

The Codex has established MRLs for total dithiocarbamates determined as carbon disulfide in or on various commodities, including barley and wheat, each at 1 milligrams/kilogram (mg/kg). These MRLs are the same as the tolerances finalized for mancozeb in the United States.

The Codex has established MRLs for total dithiocarbamates determined as carbon disulfide in or on various commodities, including papaya at 5 mg/kg. This MRL will be covered by a finalized U.S. tolerance at a higher level than the MRL. The MRL is different than the finalized U.S. tolerance for mancozeb in the United States because of differences in residue definition, use patterns, and/or good agricultural practices.

The Codex has established a MRL for amitraz in or on various commodities, including cotton seed at 0.5 mg/kg. This MRL is covered by the current U.S. tolerance at a higher level than the MRL, but would no longer be covered due to the revocation of the U.S. tolerance.

The Codex has established MRLs for total dithiocarbamates determined as carbon disulfide in or on various commodities, including banana at 2 mg/kg, peach at 7 mg/kg, and strawberry at 5 mg/kg. The MRLs for banana and peach are the same as the U.S. tolerances proposed for thiram in the United States. The MRL for strawberry will be covered by a finalized U.S. tolerance at a higher level than the MRL. The MRL for strawberry is different than the tolerance finalized for thiram in the United States because of differences in use patterns, and/or good agricultural practices.

### IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (*i.e.*, establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled "*Regulatory Planning and Review*" (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to

Executive Order 13211, entitled "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled "*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*" (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled "*Protection of Children from Environmental Health Risks and Safety Risks*" (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published in the **Federal Register** on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL-5753-1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to

any particular revocation. (This Agency document is available in the docket of the proposed rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCFA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, 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, as

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**V. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2015.

**Jack E. Housenger,**  
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.132, revise paragraph (a) to read as follows:

**§ 180.132 Thiram; tolerances for residues.**

(a) *General.* (1) A tolerances for residues of the fungicide thiram (tetramethyl thiuram disulfide), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only thiram.

Commodity	Parts per million
Avocado <sup>1</sup> .....	15

<sup>1</sup>No U.S. registrations as of September 23, 2009.

(2) Tolerances are established for residues of the fungicide thiram, tetramethyl thiuram disulfide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those thiram residues convertible to and expressed in terms of the degradate carbon disulfide, in or on the commodity.

Commodity	Parts per million
Apple .....	5
Banana <sup>1</sup> .....	2.0
Peach .....	7.0
Strawberry .....	13

<sup>1</sup> There are no U.S. registrations as of September 23, 2009.

\* \* \* \* \*

**§ 180.142 [Amended]**

■ 3. In § 180.142, remove the entry for "Rice, straw" from the table in paragraph (a).

**§ 180.169 [Amended]**

■ 4. In § 180.169, remove the entry for "Rice, straw" from the table in paragraph (a)(1).

■ 5. In § 180.176, revise the table in paragraph (a) to read as follows:

**§ 180.176 Mancozeb; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
Almond .....	0.1
Almond, hulls .....	4
Apple .....	0.6
Asparagus .....	0.1
Atemoya .....	3.0
Banana .....	2
Barley, bran .....	2
Barley, flour .....	1.2
Barley, grain .....	1
Barley, hay .....	30
Barley, pearled barley .....	20
Barley, straw .....	25
Beet, sugar, dried pulp .....	3.0
Beet, sugar, roots .....	1.2
Beet, sugar, tops .....	60
Broccoli .....	7
Cabbage .....	9
Canistel .....	15.0
Cattle, kidney .....	0.5
Cattle, liver .....	0.5
Cherimoya .....	3.0
Corn, field, forage .....	40
Corn, field, grain .....	0.06
Corn, field, stover .....	15
Corn, pop, grain .....	0.1
Corn, pop, stover .....	40
Corn, sweet, forage .....	70
Corn, sweet, kernel plus cob with husks removed .....	0.1
Corn, sweet, stover .....	40
Cotton, undelinted seed .....	0.5
Crabapple .....	0.6
Cranberry .....	5
Custard apple .....	3.0
Fennel .....	2.5
Flax, seed .....	0.15
Ginseng .....	1.2
Goat, kidney .....	0.5
Goat, liver .....	0.5
Grape .....	1.5
Hog, kidney .....	0.5
Hog, liver .....	0.5
Horse, kidney .....	0.5

Commodity	Parts per million	Commodity	Parts per million	Commodity	Parts per million
Horse, liver .....	0.5	Rye, grain .....	1	Wheat, shorts .....	2
Lettuce, head .....	3.5	Rye, straw .....	25	Wheat, straw .....	25
Lettuce, leaf .....	18	Sapodilla .....	15.0	<sup>1</sup> There are no U.S. registrations for use of mancozeb on tangerine.	
Mango .....	15.0	Sapote, mamey .....	15.0	* * * * *	
Oat, flour .....	1.2	Sapote, white .....	15.0	<b>§ 180.205 [Amended]</b>	
Oat, grain .....	1	Sheep, kidney .....	0.5	■ 6. In § 180.205, remove the entry for “Rice, straw” from the table in paragraph (a).	
Oat, groats/rolled oats .....	20	Sheep, liver .....	0.5	<b>§ 180.253 [Amended]</b>	
Oat, hay .....	30	Sorghum, grain, forage .....	0.15	■ 7. In § 180.253, add alphabetically an entry for “Onion, dry bulb” to the table in paragraph (a), and add a table to paragraph (c) to read as follows:	
Oat, straw .....	25	Sorghum, grain, grain .....	0.25	<b>§ 180.253 Methomyl; tolerances for residues.</b>	
Onion, bulb .....	1.5	Sorghum, grain, stover .....	0.15	(a) * * *	
Papaya .....	9	Star apple .....	15.0		
Peanut .....	0.1	Sugar apple .....	3.0		
Peanut, hay .....	65	Tangerine <sup>1</sup> .....	10		
Pear .....	0.6	Tomato .....	2.5		
Pepper .....	12	Vegetable, cucurbit, group 9 .....	2.0		
Potato .....	0.2	Walnut .....	0.70		
Poultry, kidney .....	0.5	Wheat, bran .....	2		
Poultry, liver .....	0.5	Wheat, flour .....	1.2		
Quince .....	0.6	Wheat, germ .....	20		
Rice, grain .....	0.06	Wheat, grain .....	1		
Rye, bran .....	2	Wheat, grain .....	30		
Rye, flour .....	1.2	Wheat, hay .....	30		
		Wheat, middlings .....	20		

Commodity	Parts per million	Expiration/Revocation date
Onion, dry bulb .....	0.2	None.

\* \* \* \* \*

(c) \* \* \*

Commodity	Parts per million
Pear .....	4

\* \* \* \* \*

**§ 180.274 [Amended]**

■ 8. In § 180.274, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.287 [Amended]**

■ 9. In § 180.287, remove the entry for “Cotton, undelinted seed <sup>1</sup>” and the footnote from the table in paragraph (a).

**§ 180.288 [Amended]**

■ 10. In § 180.288, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.293 [Amended]**

■ 11. In § 180.293, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.300 [Amended]**

■ 12. In § 180.300, remove the entry for “Cucumber” from the table in paragraph (a).

**§ 180.301 [Amended]**

■ 13. In § 180.301, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.303 [Amended]**

■ 14. In § 180.303, remove the entry for “Soybean, seed” from the table in paragraph (a).

**§ 180.355 [Amended]**

■ 15. In § 180.355, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.361 [Amended]**

■ 16. In § 180.361, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.377 [Amended]**

■ 17. In § 180.377, remove the entry for “Rice, straw” from the table in paragraph (a)(2).

**§ 180.383 [Amended]**

■ 18. In § 180.383, remove the entry for “Rice, straw” from the table in paragraph (a).

■ 19. In § 180.384, revise paragraph (a) to read as follows:

**§ 180.384 Mepiquat (N,N-dimethylpiperidinium); tolerances for residues.**

(a) *General.* Tolerances are established for residues of the plant growth regulator mepiquat, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only mepiquat, N,N-dimethylpiperidinium, in or on the commodity.

Commodity	Parts per million
Cattle, meat byproducts .....	0.1
Cotton, gin byproducts .....	6.0
Cotton, undelinted seed .....	2.0
Goat, meat byproducts .....	0.1
Grape .....	1.0
Grape, raisin .....	5.0
Hog, meat byproducts .....	0.1
Horse, meat byproducts .....	0.1
Sheep, meat byproducts .....	0.1

\* \* \* \* \*

**§ 180.399 [Amended]**

■ 20. In § 180.399, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.401 [Amended]**

■ 21. In § 180.401, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.417 [Amended]**

■ 22. In § 180.417, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.418 [Amended]**

■ 23. In § 180.418, remove the entry for “Rice, straw” from the table in paragraph (a)(2).

**§ 180.425 [Amended]**

■ 24. In § 180.425, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.434 [Amended]**

■ 25. In § 180.434, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.438 [Amended]**

■ 26. In § 180.438, remove the entry for “Rice, straw” from the table in paragraph (a)(1) and from the table in paragraph (a)(2).

**§ 180.439 [Amended]**

■ 27. In § 180.439, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.441 [Amended]**

■ 28. In § 180.441, remove the entry for “Soybean, soapstock” from the table in paragraph (a)(1).

**§ 180.445 [Amended]**

■ 29. In § 180.445, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.447 [Amended]**

■ 30. In § 180.447, remove the entry for “Rice, straw” from the table in paragraph (a)(2).

**§ 180.451 [Amended]**

■ 31. In § 180.451, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.463 [Amended]**

■ 32. In § 180.463, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.473 [Amended]**

■ 33. In § 180.473, remove the entry for “Rice, straw” from the table in paragraph (a).

■ 34. In § 180.476, revise the table in paragraph (a)(1) and revise the table in paragraph (a)(2) to read as follows:

**§ 180.476 Triflumizole; tolerances for residues.**

- (a) \* \* \*
- (1) \* \* \*

Commodity	Parts per million
Berry, low growing, subgroup 13–07G, except cranberry	2.0
Brassica, head and stem, subgroup 5A .....	8.0
Brassica, leafy greens, subgroup 5B .....	40
Canistel .....	2.5
Cherry, sweet .....	1.5
Cherry, tart .....	1.5
Cilantro, leaves .....	35
Fruit, pome, group 11–10 .....	0.50
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F .....	2.5
Hazelnut .....	0.05
Hop, dried cones .....	50
Leafy greens subgroup 4A, except spinach .....	35
Mango .....	2.5
Papaya .....	2.5
Pineapple .....	4.0
Sapodilla .....	2.5
Sapote, black .....	2.5
Sapote, mamey .....	2.5
Star apple .....	2.5
Swiss chard .....	18
Tomato .....	1.5
Turnip, greens .....	40
Vegetable, cucurbit, group 9	0.5

- (2) \* \* \*

Commodity	Parts per million
Cattle, fat .....	0.10
Cattle, meat byproducts .....	0.20
Goat, fat .....	0.10
Goat, meat byproducts .....	0.20
Horse, fat .....	0.10
Horse, meat byproducts .....	0.20
Sheep, fat .....	0.10
Sheep, meat byproducts .....	0.20

\* \* \* \* \*

**§ 180.479 [Amended]**

■ 35. In § 180.479, remove the entry for “Rice, straw” from the table in paragraph (a)(2).

**§ 180.484 [Amended]**

■ 36. In § 180.484, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.495 [Amended]**

■ 37. In § 180.495, remove the entry for “Coriander, leaves” from the table in paragraph (a).

**§ 180.507 [Amended]**

■ 38. In § 180.507, remove the entry for “Rice, straw” from the table in paragraph (a)(1).

**§ 180.515 [Amended]**

■ 39. In § 180.515, remove the entries for “Caneberry subgroup 13A,” “Cotton, hulls,” “Cotton, meal,” “Cotton, refined oil” and “Rice, straw” from the table in paragraph (a).

**§ 180.517 [Amended]**

■ 40. In § 180.517, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.541 [Removed]**

■ 41. Remove § 180.541.

**§ 180.555 [Amended]**

■ 42. In § 180.555, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.570 [Amended]**

■ 43. In § 180.570, remove the entry for “Rice, straw” from the table in paragraph (a)(2).

**§ 180.577 [Amended]**

■ 44. In § 180.577, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.602 [Amended]**

■ 45. In § 180.602, remove the entry for “Hop, dried cones” from the table in paragraph (a).

**§ 180.605 [Amended]**

■ 46. In § 180.605, remove the entry for “Rice, straw” from the table in paragraph (a).

**§ 180.625 [Amended]**

■ 47. In § 180.625, remove the entry for “Rice, straw” from the table in paragraph (a).

[FR Doc. 2015–28491 Filed 11–19–15; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 212, 225, and 252**

[Docket DARS–2015–0024]

RIN 0750–AI41

**Defense Federal Acquisition Regulation Supplement: Photovoltaic Devices From the United States (DFARS Case 2015–D007)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015 that revises the restrictions relating to utilization of domestic photovoltaic devices.

**DATES:** Effective November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571-372-6106; facsimile 571-372-6101.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the **Federal Register** at 80 FR 30119 on May 26, 2015, to implement section 858 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291), which addresses utilization of domestic photovoltaic devices. Three respondents submitted comments on the proposed rule.

**II. Discussion and Analysis**

*A. Summary of Significant Changes From the Proposed Rule*

There are no significant changes from the proposed rule.

*B. Analysis of Public Comments*

1. Trade Agreements Act

*Comment:* One respondent was very supportive of the exceptions for use of photovoltaic devices from designated countries in acquisitions covered by a Trade agreement. The respondent cited legal reasons for the exception (*i.e.*, section 858 specifically states that the restrictions are “subject to exceptions provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.” In addition, the respondent considered the preservation of the Trade Agreements Act exception critical to the deployment of photovoltaic devices to meet the needs of the DoD market in a timely and cost-efficient manner.

*Response:* Both section 846 and section 858 state that the restrictions are subject to the exceptions provided in the Trade Agreements Act or otherwise provided by law. The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides authority for the President to waive the Buy American Act and other discriminatory provisions (*e.g.*, sections 846 and 858) for eligible products from designated countries. This authority has been delegated to the United States Trade Representative (USTR). The USTR has confirmed that the trade agreements provide an exception to the domestic source restrictions of section 858. Since the Trade Agreements Act

exception is specifically provided in law, it remains in the final rule.

2. Covered Contract

a. Enhanced Use Leases

*Comment:* One respondent recommended that DoD should clarify that while the real estate procurement action related to the development of photovoltaic generating assets on DoD land is not subject to the DFARS, the purchase of the output of the photovoltaic devices is (1) a separate procurement action; (2) an acquisition under DoD procurement regulations; and (3) a covered contract under section 858. According to the respondent, DoD may accept the provision of payment of utility services as in-kind consideration for leasing DoD real property interests in an amount not less than the fair market value of the leasehold. Although the respondent agreed that the DFARS does not cover land leases, the respondent asserted that a power purchase agreement for the procurement of power generated from a photovoltaic device located on land awarded through enhanced-use lease (EUL) authority, whether a combined procurement or a separate procurement after the EUL is awarded, is not a real estate transaction, but is a covered contract because it is installed on DoD property and is an acquisition subject to the DFARS.

*Response:* DoD land leases are not governed by the Federal Acquisition Regulations (FAR) or the DFARS, as the FAR system only covers acquisition of supplies and services. The term “supplies” is defined in the FAR as all property except land or interest in land. Therefore, power generated from a photovoltaic device and provided to an installation as in-kind consideration under a land lease is not governed by the FAR, DFARS, or this rule. Real property transactions are addressed under other authorities. To the extent the DoD is contracting for power through a FAR-type contract, this DFARS provision would apply. A separately signed power purchase agreement for the power generated by a photovoltaic device installed on DoD land outgranted under a DoD lease, is (1) a FAR contract and (2) a covered contract for the purposes of this rule.

b. Off-Site Power Generation

*Comment:* One respondent recommended that DoD should clarify that section 858 applies to covered contracts awarded by DoD components utilizing photovoltaic devices located on off-site, private property, so long as the photovoltaic devices are reserved for

the use of DoD for the full economic life of the device.

*Response:* The final Regulatory Flexibility Act analysis has been revised to clarify that section 858 applies to DoD when purchasing renewable power generated via photovoltaic devices. DoD can either purchase the photovoltaic devices (own, operate and maintain the devices for their full economic life), enter into Energy Savings Performance Contracts, or enter into power purchase agreements for the purchase of the power output from photovoltaic devices that are installed on DoD land or buildings, or off-site on private land.

c. Need for Trade Agreements Act Exception

*Comment:* According to one respondent, the broadened definition of “covered contract” will further enable expansion of the market transition to utility scale procurement of photovoltaic devices for military use. However, the respondent stated that without the Trade Agreements Act exception, the market will not be able to be served in a timely and efficient manner.

*Response:* The Trade Agreements Act exception is specifically provided in law and remains in the final rule.

3. Definitions

a. “Domestic Photovoltaic Device”

*Comment:* According to one respondent, the modification of the definition of “domestic photovoltaic device” to include the requirement that the cost of all components mined, produced, or manufactured in the United States must exceed 50 percent of the cost of all components, makes the Trade Agreements Act exception even more essential.

*Response:* The Trade Agreements Act exception is specifically provided in law and remains in the final rule.

b. “Substantial Transformation”

*Comment:* One respondent stated that DoD should amend paragraph (c) of the provision at DFARS 252.225-7018, Photovoltaic Devices—Certificate, to explicitly adopt and apply the Department of Commerce’s definition of “substantial transformation” for photovoltaic devices, stating that substantial transformation of a photovoltaic device takes place in the country where a photovoltaic device’s cell is manufactured.

*Response:* The interpretation of “substantial transformation” is outside the scope of this case. Section 858 did not address or modify the meaning of “substantial transformation.” Paragraph (c) of the provision at DFARS 252.225-

7018 was not included in the **Federal Register** notice of the proposed rule under this case. The preamble to the proposed rule under this case specifically stated that the previous rule published to clarify this DoD policy will remain unaffected.

Paragraph (c) was added to the provision at DFARS 252.225-7017 under DFARS Case 2014-D006, Photovoltaic Devices, to clarify how offerors should assess the rules of origin for photovoltaic devices to be utilized under covered DoD contracts. Paragraph (c) advises offerors to be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the offeror is uncertain as to the origin of a photovoltaic device, the provision directs the offeror to request a determination from U.S. Customs and Border Protection. It is not within the purview of DoD to make such determinations. DoD published the final rule on April 21, 2014, after consultation with the United States Trade Representative and thorough analysis of the public comments received.

c. "U.S.-Made Photovoltaic Device"

*Comment:* One respondent recommended that DoD should revise the definition of U.S.-made photovoltaic device to conform to the other country of origin definitions applicable to photovoltaic devices and require U.S.-made photovoltaic devices to be wholly manufactured or substantially transformed in the United States.

*Response:* The FAR was modified in February 2000 (FAC 97-15) to include the term "U.S.-made end product," defined to mean an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. This term was introduced to provide an opportunity, when an acquisition is subject to the World Trade Organization Government Procurement Agreement, for products made in the United States (which are not designated country end products, and therefore not subject to the trade agreements rules of origin) to compete with designated country end products. Through a public interest class determination, DoD does not apply the Buy American Act to U.S.-made end products if the World Trade Organization Government Procurement Agreement applies. Therefore, when section 846 of the NDAA for FY 2011

required certain covered contracts awarded by DoD to contain a provision requiring the photovoltaic devices provided under the contract to comply with the Buy American Act, subject to the exceptions provided in the Trade Agreements Act of 1979, the DFARS applied the existing public interest class determination to exempt the utilization of U.S.-made photovoltaic devices (treating photovoltaic devices as a specific item fitting within the existing FAR definition of "U.S.-made end products") from the restrictions of section 846 and the Buy American Act.

4. Public Interest Determinations

a. Impact on Domestic Manufacturing

*Comment:* One respondent contended that issuing a public interest waiver as a work around to addressing differing documentation requirements between U.S.-based and designated country photovoltaic manufacturers would reduce the desired connection to domestic manufacturing activities, and therefore presents a suboptimal approach.

*Response:* The public interest waiver of section 858 for acquisition of U.S.-made photovoltaic devices was not only to address differing documentation requirements, but to enable acquisition from a broad range of U.S. companies. Section 858 of the NDAA for FY 2015 allows the head of the department concerned to determine, on a case-by-case basis that application of section 858 is not in the public interest. As delegated in this rule, the head of the contracting activity concerned may make such a public interest determination for a variety of reasons. The rule provides a sample determination based on the utilization of a U.S.-made device because this is consistent with existing practice, except that now an individual determination is required each time utilization of U.S.-made devices is proposed. Use of this determination was suggested only when the value of the acquisition exceeds \$204,000 and the World Trade Organization Government Procurement Agreement applies. It is in the Government's best interest to foster a competitive environment and encourage manufacturing in the United States.

b. Time Delay

*Comment:* One respondent, while recognizing that public interest determinations can provide flexibility, was concerned that obtaining an individual public interest determination on a case-by-case basis could cause delay in project implementation.

*Response:* Section 858 specifically requires approval of public interest determinations on a case-by-case basis. The DFARS rule specifies the head of the contracting activity as approval authority. This approval process is not anticipated to unreasonably delay DoD procurements.

5. Sanctioned Countries

*Comment:* One respondent recommended that the rule should ensure that companies from the list of sanctioned countries should be prohibited from undertaking U.S. military solar projects, regardless of where or how the goods are manufactured.

*Response:* Since the FAR and DFARS contain specific implementation of the Office of Foreign Assets Control restrictions and additional title 10, U.S.C., statutory restrictions on contracting with prohibited sources that apply to both DoD prime contractors and to their subcontractors in accordance with flow down provisions, the rule does not need to be modified. Such prohibitions are already effectively implemented in the regulations that apply to contracts awarded by executive branch agencies U.S. Government and to contracts awarded by DoD military departments and defense agencies.

III. Applicability

Consistent with the determinations that DoD made with regard to application of the requirements of section 846 of NDAA for FY 2011, this rule does not apply the requirements of section 858 of the NDAA for FY 2015 to contracts at or below the simplified acquisition threshold (SAT), but does apply to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Procurement and Acquisition Policy (DPAP), is the appropriate authority to make comparable determinations for regulations to be

published in the DFARS, which is part of the FAR system of regulations. DoD did not make that determination. Therefore, this rule does not apply below the simplified acquisition threshold.

*B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items*

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Given that the requirements of section 858 of the NDAA for FY 2015 were enacted to promote utilization of domestic photovoltaic devices, and since photovoltaic devices are generally COTS items, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items, including COTS items, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**V. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule implements section 858 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), by changing the regulatory coverage on utilization of domestic photovoltaic devices under certain covered contracts.

The objective of this rule is to further promote utilization of domestic photovoltaic devices under DoD covered contracts, while maintaining compliance with trade agreements, reciprocal defense procurement memoranda of understanding, and DoD policy with regard to the acquisition of designated country photovoltaic devices, qualifying country photovoltaic devices, and U.S.-made photovoltaic devices.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. There was one comment on the terminology used to describe the applicability of the rule to small entities, but this did not impact the numerical analysis or the rule itself.

This rule generally applies at the prime contract level to other than small entities. When purchasing renewable power generated via photovoltaic devices, DoD can either purchase the photovoltaic devices and thereby own, operate, and maintain the devices for their full economic life (already covered in DFARS part 225 under standard Buy American Act/Trade Agreements regulations) or, for example, may do some variation of the following:

a. Enter into an energy savings performance contract, which is a contracting method in which the contractor provides capital to facilitate energy savings projects and maintains them in exchange for a portion of the energy savings generated. Under this arrangement, the Government would take title to the devices during contract performance or at the conclusion of the contract. For example, the Defense Logistics Agency-Energy uses the master Department of Energy indefinite delivery-indefinite quantity contract and awards task orders off that contract. Of the 16 contractors, all are large

businesses. There are subcontracting goals that each contractor has to meet, but the ultimate task order award is made to a large business.

b. Enter into a power purchase agreement, also referred to as a utility service contract, for the purchase of the power output of photovoltaic devices that are installed on DoD land or buildings, or on private land, but are owned, operated, and maintained by the contractor. At the conclusion of the contract, DoD would either require the contractor to dismantle and remove the photovoltaic equipment or abandon the equipment in place. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies.

There are approximately 80 manufacturers of photovoltaic devices. We do not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities, because the Federal Procurement Data System does not collect such data on subcontractors.

There are no new reporting burdens under this rule. There are some negligible variations to the existing reporting burdens. Furthermore, since the prime contractors subject to this rule are other than small businesses, the reporting requirements will not impact small entities.

However, under section 858, if the aggregate value of the photovoltaic devices to be utilized under a contract is less than \$204,000, or unless a waiver is obtained for the utilization of U.S.-made products when the aggregate value of the photovoltaic devices is \$204,000 or more, there will be a requirement to track the origin of the components of the domestic photovoltaic devices. However, DoD estimates that most covered contracts will involve utilization of photovoltaic devices with an aggregate value in excess of \$204,000 and expects to grant waivers as appropriate.

DoD did not identify any significant alternatives that meet the requirements of the statute and would have less impact on small entities. The ability for the Government to grant a waiver of section 858 if it is inconsistent with the public interest to preclude utilization of U.S.-made photovoltaic devices when the World Trade Organization Government Procurement Agreement is applicable (*i.e.*, the aggregate value of the photovoltaic devices to be utilized is \$204,000 or more) will greatly reduce the burden on manufacturers of

photovoltaic devices, regardless of the size of the entity.

## VI. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled "Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition, and related clauses at DFARS 252.225."

### List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for parts 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. In section 212.301, revise paragraphs (f)(x)(J) and (f)(x)(K) to read as follows:

#### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(f) \* \* \*

(x) \* \* \*

(J) Use the clause at 252.225-7017, Photovoltaic Devices, as prescribed in 225.7017-5(a), to comply with section 858 of Public Law 113-291.

(K) Use the provision at 252.225-7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017-5(b), to comply with section 858 of Public Law 113-291.

\* \* \* \* \*

### PART 225—FOREIGN ACQUISITION

■ 3. Amend section 225.7017 by—

■ a. Revising sections 225.7017-1 through 225.7017-3;

■ b. Redesignating section 225.7017-4 as 225.7017-5;

■ c. Adding new section 225.7017-4; and

■ d. In the newly redesignated 225.7017-5, revising the section heading and paragraph (a).

The revisions and addition read as follows:

### 225.7017 Utilization of domestic photovoltaic devices.

#### 225.7017-1 Definitions.

As used in this section—

*Caribbean Basin country photovoltaic device* means a photovoltaic device that—

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

*Covered contract* means contract awarded by DoD that, by means other than DoD purchase as end products, provides for a photovoltaic device to be—

(1) Installed in the United States on DoD property or in a facility owned by DoD; or

(2) Reserved for the exclusive use of DoD in the United States for the full economic life of the device.

*Designated country photovoltaic device* means a World Trade Organization Government Procurement Agreement (WTO GPA) country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

*Domestic photovoltaic device* means a photovoltaic device that—

(1) Is manufactured in the United States; and

(2) The cost of its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic.

*Foreign photovoltaic device* means a photovoltaic device other than a domestic photovoltaic device.

*Free Trade Agreement country photovoltaic device* means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of

materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

*Least developed country photovoltaic device* means a photovoltaic device that—

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

*Photovoltaic device* means a device that converts light directly into electricity through a solid-state, semiconductor process.

*Qualifying country photovoltaic device* means a photovoltaic device manufactured in a qualifying country.

*U.S.-made photovoltaic device* means a photovoltaic device that—

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

*WTO GPA country photovoltaic device* means a photovoltaic device that—

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

#### 225.7017-2 Restriction.

In accordance with section 858 of the National Defense Authorization Act for Fiscal Year 2015, photovoltaic devices



provided under any covered contract shall be domestic photovoltaic devices, except as provided in 225.7017-3 and 225.7017-4.

**225.7017-3 Exceptions.**

(a) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at \$25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(b) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices that are valued at \$204,000 or more, only domestic photovoltaic devices or designated country photovoltaic devices may be utilized, unless acquisition of U.S.-made or qualifying country photovoltaic devices is allowed pursuant to a waiver in accordance with 225.7017-4(a).

**225.7017-4 Waivers.**

The head of the contracting activity is authorized to waive, on a case-by-case basis, the application of the restriction in 225.7017-2 upon determination that one of the following circumstances applies (see PGI 225.7017-4 for sample determinations and findings):

(a) *Inconsistent with the public interest.* For example, a public interest waiver may be appropriate to allow—

(1) Utilization of U.S.-made photovoltaic devices if the aggregate value of the photovoltaic devices to be utilized under the contract exceeds \$204,000; or

(2) Utilization of photovoltaic devices from a qualifying country, regardless of dollar value.

(b) *Unreasonable cost.* A determination that the cost of a domestic photovoltaic device is unreasonable may be appropriate if—

(1) The aggregate value of the photovoltaic devices to be utilized under the contract does not exceed \$204,000; and

(2) The offeror documents that the price of the foreign photovoltaic devices plus 50 percent is less than the price of comparable domestic photovoltaic devices.

**225.7017-5 Solicitation provision and contract clause.**

(a)(1) Use the clause at 252.225-7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract that—

(i) Is expected to exceed the simplified acquisition threshold; and

(ii) May be a covered contract, *i.e.*, a contract that provides for a photovoltaic device to be—

(A) Installed in the United States on DoD property or in a facility owned by DoD; or

(B) Reserved for the exclusive use of DoD in the United States for the full economic life of the device.

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it is a covered contract.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. Amend section 252.225-7017—

■ a. In the introductory text, by removing “225.7017-4(a)” and adding “225.7017-5(a)” in its place;

■ b. By removing the clause date “(OCT 2015)” and adding “(NOV 2015)” in its place;

■ c. In paragraph (a), by removing “an article that” and adding “a photovoltaic device that” in its place wherever it appears, and revising the definition of “*Domestic photovoltaic device*”; and

■ d. By revising paragraphs (b) and (c).

The revisions read as follows:

**252.225-7017 Photovoltaic Devices.**

\* \* \* \* \*

(a) \* \* \*

*Domestic photovoltaic device* means a photovoltaic device—

(i) Manufactured in the United States; and

(ii) The cost of its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic.

\* \* \* \* \*

(b) This clause implements section 858 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) Less than \$25,000, then the Contractor shall utilize only domestic photovoltaic devices unless, in its offer, it specified utilization of qualifying

country or other foreign photovoltaic devices in paragraph (d)(2) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device, then the Contractor shall utilize a qualifying country photovoltaic device as specified, or, at the Contractor’s option, a domestic photovoltaic device;

(2) \$25,000 or more but less than \$79,507, then the Contractor shall utilize in the performance of this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Canadian, qualifying country, or other foreign photovoltaic devices in paragraph (d)(3) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, then the Contractor shall utilize a qualifying country photovoltaic device or a Canadian photovoltaic device as specified, or, at the Contractor’s option, a domestic photovoltaic device;

(3) \$79,507 or more but less than \$100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in paragraph (d)(4) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), then the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) as specified; or, at the Contractor’s option, a domestic photovoltaic device;

(4) \$100,000 or more but less than \$204,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in paragraph (d)(5)

of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), then the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) as specified; or, at the Contractor's option, a domestic photovoltaic device; or

(5) \$204,000 or more, then the Contractor shall utilize under this contract only domestic or designated country photovoltaic devices unless, in its offer, it specified utilization of U.S.-made or qualifying country photovoltaic devices in paragraph (d)(6)(ii) or (iii) respectively of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a designated country, U.S.-made, or qualifying country photovoltaic device, then the Contractor shall utilize a designated country, U.S.-made, or qualifying country photovoltaic device as specified, or, at the Contractor's option, a domestic photovoltaic device.

(End of clause)

■ 5. Amend section 252.225-7018—

■ a. In the introductory text, by removing “225.7017-4(b)” and adding “225.7017-5(b)” in its place;

■ b. By removing the clause date “(OCT 2015)” and adding “(NOV 2015)” in its place;

■ c. By revising paragraph (b);

■ d. In paragraph (c), by removing “(See <http://www.cbp.gov/xp/cgov/trade/legal/rulings.>)” and adding “(See <http://www.cbp.gov/trade/rulings.>)” in its place; and

■ e. By revising paragraph (d).

The revisions read as follows:

**252.225-7018 Photovoltaic Devices—Certificate.**

\* \* \* \* \*

(b) *Restrictions.* The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If less than \$204,000, then the Government will not accept an offer specifying the use of—

(i) Other foreign photovoltaic devices in paragraph (d)(2)(iii), (d)(3)(iii), (d)(4)(iii), or (d)(5)(iii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the

price of a comparable domestic photovoltaic device and the Government determines in accordance with DFARS 225.217-4(b) that the price of a comparable domestic photovoltaic device would be unreasonable; and

(ii) A qualifying country photovoltaic device unless the Government determines in accordance with DFARS 225.217-4(a) that it is in the public interest to allow use of a qualifying country photovoltaic device.

(2) If \$204,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are domestic or designated country photovoltaic devices, unless the Government determines in accordance with DFARS 225.7017-4(a) that it is in the public interest to allow use of a qualifying country photovoltaic device from Egypt or Turkey, or a U.S.-made photovoltaic device.

\* \* \* \* \*

(d) *Certification and identification of country of origin.* [The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

(1) No photovoltaic devices will be utilized in performance of the contract.

(2) If less than \$25,000—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

(ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device [Offeror to specify country of origin \_]; or

(iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(3) If \$25,000 or more but less than \$79,507—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a Canadian photovoltaic device [Offeror to specify country of origin \_];

(ii) The offeror certifies that each photovoltaic device to be utilized in

performance of the contract is a qualifying country photovoltaic device [Offeror to specify country of origin \_]; or

(iii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of \_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(4) If \$79,507 or more but less than \$100,000—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) [Offeror to specify country of origin \_];

(ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device (except an Australian or Canadian photovoltaic device, to be listed in paragraph (d)(4)(i) of this provision as a Free Trade Agreement country photovoltaic device) [Offeror to specify country of origin \_]; or

(iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(i) or (d)(4)(ii) of this provision) are the product of \_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(5) If \$100,000 or more but less than \$204,000—

(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) [Offeror to specify country of origin \_];

(ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device (except an Australian or Canadian

photovoltaic device, to be listed in paragraph (d)(5)(i) of this provision as a Free Trade Agreement country photovoltaic device) [Offeror to specify country of origin \_\_\_]; or

\_\_\_ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(5)(i) or (d)(5)(ii) of this provision) are the product of \_\_\_. [Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e., that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(6) If \$204,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

\_\_\_ (i) A domestic or designated country photovoltaic device [Offeror to specify country of origin \_\_\_];

\_\_\_ (ii) A U.S.-made photovoltaic device; or

\_\_\_ (iii) A qualifying country photovoltaic device from Egypt or Turkey (photovoltaic devices from other qualifying countries to be listed in paragraph (d)(6)(i) of this provision as designated country photovoltaic devices). [Offeror to specify country of origin \_\_\_]

(End of provision)

[FR Doc. 2015-29551 Filed 11-19-15; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 216

[Docket DARS-2015-0048]

RIN 0750-A173

#### Defense Federal Acquisition Regulation Supplement: Eliminate Data Collection Requirement (DFARS Case 2015-D031)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate a requirement for military departments and defense agencies to collect and report relevant data on award and incentive fees paid to contractors.

**DATES:** Effective November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571-372-6089.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires that DoD provide guidance on the appropriate use of award and incentive fees in DoD acquisition programs, including the requirement to ensure that DoD collects relevant data on award and incentive fees paid to contractors and has mechanisms in place to evaluate such data on a regular basis. DFARS 216.401-70, Data collection, states this latter requirement of section 814. Previously, DoD collected award and incentive fee data semiannually by a manual data call from the DoD components, which was very labor-intensive. On April 6, 2015 (80 FR 18323), DoD removed from DFARS 216.401-70 the requirement to follow the reporting requirements in the associated DFARS Procedures, Guidance, and Information, because DoD can now obtain relevant data through peer reviews and other sources, such as the Contract Business Analysis Repository (CBAR). This final rule removes the remaining statement about the statutory requirements of section 814. Retention of this statement in the DFARS is no longer necessary, because there is no longer a need to collect data directly from the contracting officer or other members of the contracting community in the military departments or defense agencies.

##### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled "Publication of Proposed Regulations." Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it deletes an unnecessary statement from the DFARS. This revision has no significant effect beyond the internal operating

procedures of the Government and has no cost or administrative impact on contractors or offerors.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 216

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

#### PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### 216.401-70 [Removed]

■ 2. Remove section 216.401-70.

[FR Doc. 2015-29556 Filed 11-19-15; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 217 and 225****Defense Federal Acquisition Regulation Supplement; Technical Amendments**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

**DATES:** Effective November 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon,

Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

**SUPPLEMENTARY INFORMATION:** This final rule amends the DFARS as follows—

1. Updates point of contact information for the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) at DFARS 217.7402(b) by providing an email address in lieu of a physical mailing address; and

2. Removes a reference to Procedures, Guidance, and Information (PGI) at DFARS 225.7703–3(d).

**List of Subjects in 48 CFR 217 and 225**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 225 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 217—SPECIAL CONTRACTING METHODS****217.7402 [Amended]**

■ 2. In section 217.7402, amend paragraph (b) by—

■ a. Adding “electronically via email” after “channels,”; and

■ b. Removing “3060 Defense Pentagon, Washington, DC 20301–3060” and adding “at *osd.pentagon.ousd-atl.mbx.cpic@mail.mil*” in its place.

**PART 225—SPECIAL CONTRACTING METHODS****225.7703–3 [Amended]**

■ 3. In section 225.7703–3, remove paragraph (d).

[FR Doc. 2015–29559 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

# Proposed Rules

Federal Register

Vol. 80, No. 224

Friday, November 20, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

[Docket Number EERE-2014-BT-STD-0027]

RIN 1904-AD31

#### Energy Conservation Standards for Commercial Prerinse Spray Valves: Availability of Provisional Analysis Tools

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability (NODA); withdrawal and republication.

**SUMMARY:** The U.S. Department of Energy (DOE) is withdrawing and republishing the Notice of Data Availability (NODA) published in the *Federal Register* on November 12, 2015 (80 FR 69888) due to errors in that published document. DOE is republishing this document in its entirety. DOE published a notice of proposed rulemaking (NOPR) for the commercial prerinse spray valve (CPSV) energy conservation standards rulemaking on July 9, 2015. In response to comments on the NOPR, DOE has revised its analyses. This NODA announces the availability of those updated analyses and results, and gives interested parties an opportunity to comment on these analyses and submit additional data. The NODA analysis is publicly available on the DOE Web site.

**DATES:** DOE will accept comments, data, and information regarding this NODA submitted no later than December 4, 2015. See section IV, "Public Participation," for details.

**ADDRESSES:** Any comments submitted must identify the NODA for Energy Conservation Standards for commercial prerinse spray valves, and provide docket number EERE-2014-BT-STD-0027 and/or regulatory information number (RIN) number 1904-AD31. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
2. *Email:* [SprayValves2014STD0027@ee.doe.gov](mailto:SprayValves2014STD0027@ee.doe.gov). Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No faxes will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document ("Public Participation").

**Docket:** 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](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://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: [www1.eere.energy.gov/buildings/appliance\\_standards/rulemaking.aspx?ruleid=100](http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100). This Web page will contain a link to the docket for this notice on the [www.regulations.gov](http://www.regulations.gov) site. The [www.regulations.gov](http://www.regulations.gov) Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section IV, "Public Participation," for further information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Mr. James Raba, 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) 586-8654. Email: [SprayValves2014STD0027@ee.doe.gov](mailto:SprayValves2014STD0027@ee.doe.gov).

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: [Peter.Cochran@hq.doe.gov](mailto:Peter.Cochran@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. Summary of the Analyses Performed by the Department of Energy
  - A. Engineering Analysis
    1. Summary of Engineering Updates for the NODA
    - B. Life-Cycle Cost and Payback Period Analysis
    - C. National Impact Analysis
    - D. Manufacturer Impact Analysis
- III. Results of the Economic Analyses
  - A. Economic Impacts on Consumers
  - B. Economic Impacts on the Nation
  - C. Economic Impacts on Manufacturers
- IV. Public Participation
  - A. Submission of Comments
- V. Approval of the Office of the Secretary

##### I. Background

DOE published a notice of proposed rulemaking (NOPR) proposing amended energy conservation standards for commercial prerinse spray valves (CPSVs) on July 9, 2015 (CPSV NOPR). 80 FR 39485. The CPSV NOPR proposed new CPSV product classes based on spray force, and presented results for the engineering analysis, economic analyses, and proposed standard levels. DOE held a public meeting on July 28, 2015 to present the CPSV NOPR. At the public meeting, and during the comment period, DOE received comments on various aspects of the CPSV NOPR.

In response to these comments, DOE has revised the analyses presented in the CPSV NOPR. This notice of data availability (NODA) announces the

availability of those updated analyses and results and invites interested parties to submit comments on these analyses or additional data. DOE may further revise the analysis presented in this rulemaking based on any new or updated information or data it obtains during the course of the rulemaking. DOE encourages stakeholders to provide any additional data or information that may improve the analysis.

## II. Summary of the Analyses Performed by the Department of Energy

DOE conducted analyses of commercial prerinse spray valves in the following areas: (1) Engineering, (2) manufacturer impacts, (3) life-cycle cost and payback period, and (4) national impacts. The spreadsheet tools used in preparing these analyses are available at: <http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0027>. Each individual spreadsheet includes an introduction describing the various inputs and outputs for the analysis, as well as operation instructions. A brief description of each of these analysis tools is provided below. The key aspects of the present analyses and DOE's updates to the CPSV NOPR analyses are described in the following sections.

### A. Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer production cost (MPC) and efficiency levels (ELs) for each product class of commercial prerinse spray valves. This relationship serves as the basis for cost-benefit calculations performed in the other three analysis tools for individual consumers, manufacturers, and the nation.

In the CPSV NOPR, DOE proposed three product classes that were delineated by spray force. DOE analyzed several ELs associated with specific flow rates for each product class. DOE received feedback from interested parties opposing the three product class structure and recommending a single product class. (Chicago Faucets, No. 26 at pp. 1–2;<sup>1</sup> PMI, No. 27 at p. 1; Fisher, No. 30 at p. 1; ASAP, NEEA, NRDC, No. 32 at p. 1; PG&E, SCE, SCGC, SDG&E, No. 34 at p. 1–2; AWE, No. 28 at p. 7; and T&S Brass, No. 33 at p. 2)

DOE is required by EPCA to consider performance-related features that justify

<sup>1</sup> A notation in this form provides a reference for information that is in DOE's rulemaking docket to amend energy conservation standards for commercial prerinse spray valves (Docket No. EERE-2014-BT-STD-0027, which is maintained at [www.regulations.gov](http://www.regulations.gov)). This particular notation refers to a comment from Chicago Faucets on pp. 1–2 of document number 6 in the docket.

different standard levels, such as features affecting customer utility, when establishing or amending energy conservation standards. 42 U.S.C. 6295(q)) In response to comments from interested parties, DOE reviewed the market for commercial prerinse spray valves and available data regarding their typical performance and usage characteristics in different applications.

DOE market research shows that commercial prerinse spray valves have a range of flow rates, spray forces, and spray shapes. For example, manufacturers market commercial prerinse spray valves at lower flow rates with specific terminology such as “ultra-low-flow” or “low-flow” spray valves, indicating that there are diverse products available to satisfy different consumer needs when selecting commercial prerinse spray valves. Conversely, for commercial prerinse spray valves at higher flow rates, DOE has predominately observed shower-type units. Shower-type units contain multiple orifices, as opposed to the more traditional, single-orifice CPSV unit. In the CPSV NOPR public meeting, T&S Brass stated that consumer satisfaction is very high at the upper range of the market flow rate distribution, and that the shower-type commercial prerinse spray valves in the upper range of the market flow rate distribution represent the majority of the market and highest level of customer satisfaction because these units prevent splash-back. (T&S, No. 23 at pp. 42–43) T&S Brass also commented that there are several applications of commercial prerinse spray valves, and all may require different spray forces. (T&S Brass, No. 6 at p. 39) Based on the above information, DOE believes that the CPSV market offers a variety of prerinse spray valves that have different design features and different end-user applications.

Additionally, DOE found a strong linear relationship between spray force and flow rate, indicating that spray force is an important performance-related feature that affects consumer utility. The relationship between spray force and flow rate is presented in the engineering spreadsheet accompanying this NODA. DOE constructed the flow rate-spray force relationship using data primarily from DOE testing, and supplementary data from DOE's Compliance Certification Management System (CCMS), the U.S. Environmental Protection Agency's (EPA) WaterSense® program, and Food Service Technology Center (FSTC) reports.<sup>2</sup> Additionally,

<sup>2</sup> DOE compliance certification data for commercial prerinse spray valves available at

DOE's research shows that spray force relates to user satisfaction. A WaterSense field study found that low water pressure, or spray force, is a source of user dissatisfaction.

WaterSense evaluated 14 commercial prerinse spray valve models and collected 56 consumer satisfaction reviews, of which 9 indicated unsatisfactory performance. Seven of the nine unsatisfactory reviews were attributed, among other factors, to the water pressure, or the user-perceived force of the spray.<sup>3</sup> Therefore, DOE concludes that separating commercial prerinse spray valves into product classes based on spray force is justified, because spray force is a performance-related feature that affects consumer utility, and spray force is strongly correlated with flow rate.

To determine the number of product classes, DOE tested and analyzed a wide range of CPSV units on the market, spanning multiple manufacturers, flow rates, and spray shapes. Based on DOE's test data and additional market research, DOE found that available CPSV units could be differentiated into three distinct spray force ranges. DOE believes that each spray force range represents a specific CPSV application. This conclusion is supported by comments submitted by T&S Brass to the Framework document, suggesting three product classes: (1) An ultra low-flow commercial prerinse spray valve with a maximum flow rate of 0.8 gallons per minute (gpm), (2) a low-flow commercial prerinse spray valve with flow rates of 0.8 to 1.28 gpm, and (3) a standard commercial prerinse spray valve with flow rates of 1.28 to 1.6 gpm. (T&S Brass, No. 12 at p. 3) Therefore, in this NODA, DOE maintains the three product classes presented in the CPSV NOPR. However, based on feedback from interested parties, DOE renames the product classes as product class 1, 2, and 3 instead of using the terminology “light-duty”, “standard-duty”, and “heavy-duty,” respectively. As defined, product class 1 provides distinct utility for cleaning delicate glassware and removing loose food particles from dishware, product class 2 provides distinct utility for cleaning wet foods, and product class 3 provides distinct utility for cleaning baked-on

[www.regulations.doe.gov/certification-data/](http://www.regulations.doe.gov/certification-data/); EPA WaterSense Specification for Commercial Pre-Rinse Spray Valves Supporting Statement. Version 1.0 available at [http://www.epa.gov/watersense/partners/prsv\\_final.html](http://www.epa.gov/watersense/partners/prsv_final.html); Food Service Technology Center test data for prerinse spray valves available at [www.fishnick.com/equipment/sprayvalves/](http://www.fishnick.com/equipment/sprayvalves/).

<sup>3</sup> EPA WaterSense, *Prerinse Spray Valves Field Study Report*, at 24–25 (Mar. 31, 2011) (Available at: [www.epa.gov/watersense/docs/final\\_epa\\_prsv\\_study\\_report\\_033111v2\\_508.pdf](http://www.epa.gov/watersense/docs/final_epa_prsv_study_report_033111v2_508.pdf)).

foods and preserving shower-type units, which prevent splash-back.

For each of the product classes, DOE determined the spray force ranges based on the CPSV flow rate-spray force linear relationship. Product class 1 includes units with spray force less than or equal to 5 ounce-force (ozf), product class 2 includes units with spray force greater than 5 ozf but less than or equal to 8 ozf, and product class 3 includes units with spray force greater than 8 ozf. DOE selected 8.0 ozf as the spray force cut-off between product class 2 and product class 3 based on test results of commercial prerinse spray valves with shower-type spray shapes. DOE testing showed that the upper range of the market, in terms of flow rate, predominantly includes shower-type units. DOE found that the lowest tested spray force of any shower-type unit was 8.1 ozf. Therefore, to maintain the consumer utility provided by shower-type units, DOE selected 8.0 ozf to differentiate product class 3 units from other commercial prerinse spray valves available on the market. Additionally, this spray force threshold is corroborated by T&S Brass’s comments to the Framework document suggesting three product classes. T&S Brass suggested a flow rate cut-off of 1.28 gpm between the “low-flow” and “standard” commercial prerinse spray valves. (T&S Brass, No. 12 at p. 3) The flow rate-spray force linear relationship equates 1.28 gpm to 8.5 ozf. This spray force can be conservatively rounded to 8.0 ozf.

DOE selected 5.0 ozf as the spray force cut-off between product class 1 and product class 2 based on DOE’s test data and market research, which clearly showed a cluster of CPSV units above and below that threshold. One cluster of CPSV units had spray force ranges between 4.1 and 4.8 ozf, and the other cluster was between 5.5 and 7.7 ozf. Therefore, DOE established the

threshold between the two classes at 5.0 ozf. This spray force threshold is corroborated by T&S Brass’s comment to the Framework document suggesting a flow rate cut-off of 0.80 gpm between the “ultra-low-flow” and “low-flow” commercial prerinse spray valves, which equates to 5.3 ozf using the flow rate-spray force linear relationship. This spray force can be conservatively rounded to 5.0 ozf.

While DOE acknowledges the comments from interested parties regarding DOE’s CPSV product class structure, DOE maintains that all available data and information from manufacturers suggests that: (1) Flow rate and spray force are strongly correlated, and (2) CPSV units with different flow rates or spray forces are available in the market and provide distinct consumer utility in the different applications those units are designed to serve. Therefore, in this NODA, DOE has maintained the product class structure presented in the NOPR, with three product classes differentiated by spray force.

1. Summary of Engineering Updates for the NODA

In addition to the product class structure, DOE received comments on a number of assumptions in the engineering analysis presented in the NOPR. In response, DOE conducted additional testing of CPSV units to gather more data on the range of CPSV products available in the market and updated a number of the assumptions in the NOPR engineering analysis. Specifically, DOE’s revised updates include the following:

- Based on new test data, DOE updated the flow rate-spray force relationship, which is presented in the accompanying engineering spreadsheet.
- Although DOE has observed that for product classes 1 and 2 there are

currently no CPSV units at the current federal standard flow rate of 1.6 gpm, DOE acknowledges that such units may exist in the market. Therefore, DOE updated the baseline flow rates for product class 1 and 2 to be the current federal standard flow rate of 1.6 gpm, consistent with the baseline for product class 3.

- Because the baseline levels for product class 1 and 2 were updated, DOE redefined EL 1 to represent the least efficient CPSV unit within each product class (*i.e.*, the market minimum). DOE defined the market minimum levels to be the higher flow rate of either (1) the tested least-efficient unit or (2) the theoretical least-efficient unit at the intersection of the flow rate-spray force linear relationship and the spray force bounds. In product class 1, DOE identified the market minimum to be 1.00 gpm, which is a tested unit with a flow rate of 0.97 gpm, rounded-up to a whole number. This is greater than the theoretical flow rate at the intersection of the flow rate-spray force linear relationship and the spray force bound of 5.0 ozf, which is 0.75 gpm. In product class 2, DOE identified the market minimum level to be 1.20 gpm, which is the intersection of the flow rate-spray force linear relationship and the 8.0 ozf spray force bound.

- Based on new test data, DOE revised the maximum technologically-feasible levels (*i.e.*, max-tech) from 0.65, 0.97, and 1.24 gpm to 0.62, 0.73, and 1.13 gpm for product class 1, product class 2 and product class 3, respectively.

- Based on the updates to the baseline and max-tech levels, DOE updated the intermediate flow rates for product classes 1 and 2 to reflect a 15 percent and 25 percent improvement, respectively, over the market minimum efficiency. Table II.1 through Table II.3 provide the updated ELs for all product classes.

TABLE II.1—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 1  
[Spray force ≤ 5 ozf]

Efficiency level	Description	Flow rate gpm
Baseline .....	Current Federal standard .....	1.60
Level 1 .....	Market minimum .....	1.00
Level 2 .....	15% improvement over market minimum .....	0.85
Level 3 .....	25% improvement over market minimum .....	0.75
Level 4 .....	Maximum technologically-feasible (max-tech) .....	0.62

TABLE II.2—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 2  
[5 ozf < Spray force ≤ 8 ozf]

Efficiency level	Description	Flow rate gpm
Baseline .....	Current Federal standard .....	1.60

TABLE II.2—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 2—Continued  
[5 ozf < Spray force ≤ 8 ozf]

Efficiency level	Description	Flow rate gpm
Level 1 .....	Market minimum .....	1.20
Level 2 .....	15% improvement over market minimum .....	1.02
Level 3 .....	25% improvement over market minimum .....	0.90
Level 4 .....	Maximum technologically-feasible (max-tech) .....	0.73

TABLE II.3—EFFICIENCY LEVELS FOR CPSV PRODUCT CLASS 3  
[Spray force > 8 ozf]

Efficiency level	Description	Flow rate gpm
Baseline .....	Current Federal standard .....	1.60
Level 1 .....	10% improvement over baseline .....	1.44
Level 2 .....	WaterSense level; 20% improvement over baseline .....	1.28
Level 3 .....	Maximum technologically-feasible (max-tech) .....	1.13

### B. Life-Cycle Cost and Payback Period Analysis

The life-cycle cost (LCC) and payback period (PBP) analysis determines the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a commercial prerinse spray valve over the course of its lifetime. The LCC analysis compares the LCC of a commercial prerinse spray valve designed to meet possible energy conservation standards with the LCC of a commercial prerinse spray valve likely to be installed in the absence of amended standards. DOE determines LCCs by considering (1) total installed cost to the consumer (which consists of manufacturer selling price, distribution chain markups, and sales taxes), (2) the range of annual energy consumption of commercial prerinse spray valves that meet each of the ELs considered as they are used in the field, (3) the operating cost of commercial prerinse spray valves (e.g., energy and water costs), (4) CPSV lifetime, and (5) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms.

The PBP represents the number of years needed to recover the typically increased purchase price of higher-efficiency commercial prerinse spray valves through savings in operating costs. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. In this analysis, because more efficient products do not cost more than baseline efficiency products, the PBP is zero, meaning that consumers do not have

any incremental product costs to recover via lower operating costs.

For commercial prerinse spray valves, DOE performed an energy and water use analysis that calculated energy and water use of commercial prerinse spray valves at each EL within each product class identified in the engineering analysis. DOE determined the range of annual energy consumption and annual water consumption using the flow rate of each EL within each product class from the engineering analysis, the average annual operating time, and the energy required to heat a gallon of water used at the commercial prerinse spray valve. Recognizing that several inputs to the determination of consumer LCC and PBP are either variable or uncertain (e.g., annual energy consumption, product lifetime, electricity price, discount rate), DOE conducts the LCC and PBP analysis by modeling both the uncertainty and variability in the inputs using a Monte Carlo simulation and probability distributions. The primary outputs of the LCC and PBP analysis are (1) average LCCs, (2) median PBPs, and (3) the percentage of consumers that experience a net cost for each product class and EL. The average annual energy consumption derived in the LCC analysis is used as an input to the National Impact Analysis (NIA).

### C. National Impact Analysis

The NIA estimates the national energy savings (NES), national water savings (NWS), and the net present value (NPV) of total consumer costs and savings expected to result from potential new standards at each trial standard level (TSL). In this NODA, DOE provides results for a total of five TSLs, one of which uses an alternative shipments scenario. TSLs 1 through 4 utilize a

default shipments scenario similar to the shipments scenario presented in the NOPR, while TSL 4a utilizes the alternative shipments scenario. The default and alternative shipments scenarios are discussed later in this section.

The TSLs analyzed in this NODA are shown in Table II.4. These TSLs were chosen based on the following criteria:

- TSL 1 represents the first EL above the market minimum for each product class. That is, for product classes 1 and 2, TSL 1 represents EL 2 which is a 15 percent savings above the market minimum. For product class 3, TSL 1 represents EL 1 which is a 10 percent savings above the market minimum (which is also the Federal standard level).
- TSL 2 represents the second EL above market minimum for each product class. That is, for product classes 1 and 2, TSL 2 represents EL 3 which is a 25 percent savings above the market minimum. For product class 3, TSL 2 represents the WaterSense level, or 20 percent savings above the market minimum (i.e., the Federal standard).
- TSL 3 represents the minimum flow rates for each product class that would not induce consumers to switch product classes as a result of a standard at those flow rates (as discussed in the CPSV NOPR), and retains shower-type designs. That is, DOE selected the lowest flow rates that would allow consumers to maintain provided utility without purchasing units from a different product class. As discussed in section II.A, DOE believes that spray force and flow rate are strongly correlated and that specific flow rate-spray force combinations represent distinct utility in the market. Therefore, DOE analyzed TSL 3, which exhibits no



product class switching, as the TSL that maintains customer utility and availability of products in the marketplace.

- TSL 4 represents max-tech for all product classes under the default shipments scenario, which assumes the total volume of shipments does not change as a function of the standard level selected. Consumers in product classes 1 and 2 would purchase a compliant CPSV model with flow rates most similar to the flow rate they would

purchase in the absence of a standard. This TSL assumes that purchasers of shower-type commercial prerinse spray valves would transition to single orifice CPSV models but recognizes that the utility or usability of compliant CPSV models in those applications may be impacted.

- TSL 4a represents max-tech for all product classes under an alternative shipments scenario. Since the utility of single-orifice CPSV models may not be equivalent in some applications that

previously used shower-type CPSV, this alternative shipments scenario analyzes the case where, rather than accepting the decreased usability of a compliant CPSV model, consumers of shower-type units instead exit the CPSV market and purchase faucets, which have a maximum flow rate of 2.2 gpm under the current federal standard. Thus, shipments of compliant CPSV models are much lower under this TSL and water consumption higher due to increased faucet shipments.

TABLE II.4—EFFICIENCY LEVELS BY PRODUCT CLASS AND TSL

TSL	Product class 1	Product class 2	Product class 3	Shipments scenario
1 .....	2	2	1	Default.
2 .....	3	3	2	Default.
3 .....	1	1	2	Default.
4 .....	4	4	3	Default.
4a .....	4	4	3	Alternate.

The reported NIA results, in section III.B, reflect the additional testing of units DOE conducted after the NOPR (as discussed in section II.A), and include updated product allocations by product class and EL, as well as updated data sources.

DOE calculated NES, NWS, and NPV for each TSL as the difference between a no-new-standards case scenario (without amended standards) and the standards case scenario (with amended standards). Cumulative energy savings are the sum of the annual NES determined over the lifetime of commercial prerinse spray valves shipped during the analysis period. Energy savings reported include the full-fuel cycle energy savings (*i.e.*, includes the energy needed to extract, process, and deliver primary fuel sources such as coal and natural gas, and the conversion and distribution losses of generating electricity from those fuel sources). Similarly, cumulative water savings are the sum of the annual NWS determined over the lifetime of commercial prerinse spray valves shipped during the analysis period. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and any changes in total installed costs. NPV results are reported for discount rates of 3 percent and 7 percent. Under the alternative shipments scenario, DOE accounts for the energy and water use of CPSV models that remain within the scope of this rule and also accounts for the change in energy or water use for consumers that chose to exit the CPSV

market, and instead purchase faucets, as a result of the standard. As a result, realized savings resulting from TSL 4a are reduced compared to savings for TSL 4 under the default shipments scenario.

To calculate the NES, NWS, and NPV, DOE projected future shipments and efficiency distributions (for each TSL) for each CPSV product class. After further research and consideration of public comments regarding product shipments (T&S, No. 23 at pp. 81), DOE updated its shipments projections from the NOPR to more accurately characterize the CPSV market. The most significant update was allocating more of the overall market share to product class 3 relative to product classes 1 and 2 in the default shipments scenario, and the modeling of an alternative shipments scenario where consumers of shower-type CPSV models do not purchase compliant CPSV models in the standards case and, instead, leave the CPSV market altogether and purchase faucets. Other inputs to the NIA include the estimated CPSV lifetime, final installed costs, and average annual energy and water consumption per unit from the LCC. For detailed NIA results, see Table III.4 and Table III.5.

*D. Manufacturer Impact Analysis*

For the manufacturer impact analysis (MIA), DOE used the Government Regulatory Impact Model (GRIM) to assess the economic impact of potential standards on CPSV manufacturers. DOE developed key industry average financial parameters for the GRIM using publicly available data from corporate annual reports. Additionally, DOE used

this and other publicly available information to estimate and account for the aggregate industry investment in capital expenditures and research and development required to produce compliant products at each EL.

The GRIM uses this information in conjunction with inputs from other analyses including MPCs from the engineering analysis, shipments from the shipments analysis, and price trends from the NIA to model industry annual cash flows from the base year through the end of the analysis period. The primary quantitative output of this model is the industry net present value (INPV), which DOE calculates as the sum of industry cash flows discounted to the present day using industry specific weighted average costs of capital.

Standards affect INPV by requiring manufacturers to make investments in manufacturing capital and product development, and by a change in the number of shipments. Under potential standards, DOE expects that manufacturers may lose a portion of their INPV, which is calculated as the difference between INPV in the no-new-standards case and in the standards case. DOE examines a range of possible impacts on industry by modeling scenarios with various levels of investment.

**III. Results of the Economic Analyses**

*A. Economic Impacts on Consumers*

Table III.1 through Table III.3 provide LCC and PBP results for all ELs and the corresponding TSLs discussed in section II.C.

TABLE III.1—PRODUCT CLASS 1 LCC AND PBP RESULTS

Product class 1 (spray force ≤ 5 ozf)						
TSL	Efficiency level	Average costs 2014\$				Simple payback period years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
—	0	76	780	3,566	3,643	0.0
3	1	76	487	2,229	2,305	0.0
1	2	76	414	1,895	1,971	0.0
2	3	76	366	1,672	1,748	0.0
4, 4a	4	76	302	1,382	1,458	0.0

\* The average discounted LCC for each EL is calculated assuming that all purchases are for equipment only with that EL. This allows the LCCs for each EL to be compared under the same conditions.

TABLE III.2—PRODUCT CLASS 2 LCC AND PBP RESULTS

Product class 2 (spray force > 5 ozf and ≤ 8 ozf)						
TSL	Efficiency level	Average costs 2014\$				Simple payback period years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
—	0	76	780	3,566	3,643	0.0
3	1	76	585	2,675	2,751	0.0
1	2	76	497	2,274	2,350	0.0
2	3	76	439	2,006	2,082	0.0
4, 4a	4	76	356	1,627	1,704	0.0

\* The average discounted LCC for each EL is calculated assuming that all purchases are for equipment only with that EL. This allows the LCCs for each EL to be compared under the same conditions.

TABLE III.3—PRODUCT CLASS 3 LCC AND PBP RESULTS

Product class 3 (spray force > 8 ozf)						
TSL	Efficiency level	Average costs 2014\$				Simple payback period years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC*	
—	0	76	780	3,566	3,643	0.0
1	1	76	702	3,210	3,286	0.0
2, 3	2	76	624	2,853	2,929	0.0
4**	3	76	551	2,519	2,595	0.0

\* The average discounted LCC for each EL is calculated assuming that all purchases are for equipment only with that EL. This allows the LCCs for each EL to be compared under the same conditions.

\*\* LCC results are not presented for TSL 4a since the analysis assumes those consumers have left the CPSV market.

*B. Economic Impacts on the Nation*

Table III.4 provides energy and water impacts associated with each TSL. Table III.5 provides NPV results.

TABLE III.4—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048

TSL	Product class	National energy savings <i>quads*</i>		National water savings <i>billion gal</i>
		Primary	FFC	
1	1 (≤5 ozf)	0.008	0.009	10.831
	2 (>5 ozf and ≤8 ozf)	0.113	0.123	144.916
	3 (>8 ozf)	(0.082)	(0.089)	(105.275)
	TOTAL TSL 1	0.039	0.043	50.471

TABLE III.4—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048—Continued

TSL	Product class	National energy savings <i>quads*</i>		National water savings <i>billion gal</i>
		Primary	FFC	
2	1 (≤5 ozf) .....	0.008	0.009	10.831
	2 (>5 ozf and ≤8 ozf) .....	0.244	0.264	311.926
	3 (>8 ozf) .....	(0.165)	(0.179)	(210.875)
	TOTAL TSL 2 .....	0.087	0.095	111.882
3	1 (≤5 ozf) .....	0.000	0.000	0.000
	2 (>5 ozf and ≤8 ozf) .....	0.000	0.000	0.000
	3 (>8 ozf) .....	0.093	0.101	119.572
	TOTAL TSL 3 .....	0.093	0.101	119.572
4	1 (≤5 ozf) .....	0.059	0.064	75.815
	2 (>5 ozf and ≤8 ozf) .....	0.196	0.212	250.516
	3 (>8 ozf) .....	(0.092)	(0.100)	(118.272)
	TOTAL TSL 4 .....	0.163	0.176	208.059
4a	1 (≤5 ozf) .....	0.059	0.064	75.815
	2 (>5 ozf and ≤8 ozf) .....	0.196	0.212	250.516
	3 (>8 ozf) .....	(0.463)	(0.502)	(593.418)
	TOTAL TSL 4a .....	(0.208)	(0.226)	(267.087)

\* quads = quadrillion British thermal units.

TABLE III.5—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2048

TSL	Product class	Net present value <i>billion \$2014</i>	
		7-Percent discount rate	3-Percent discount rate
1	1 (≤5 ozf) .....	\$0.067	\$0.137
	2 (>5 ozf and ≤8 ozf) .....	\$0.892	\$1.828
	3 (>8 ozf) .....	(\$0.656)	(\$1.342)
	TOTAL TSL 1 .....	\$0.303	\$0.623
2	1 (≤5 ozf) .....	\$0.067	\$0.137
	2 (>5 ozf and ≤8 ozf) .....	\$1.924	\$3.943
	3 (>8 ozf) .....	(\$1.319)	(\$2.699)
	TOTAL TSL 2 .....	\$0.672	\$1.381
3	1 (≤5 ozf) .....	\$0.000	\$0.000
	2 (>5 ozf and ≤8 ozf) .....	\$0.000	\$0.000
	3 (>8 ozf) .....	\$0.718	\$1.476
	TOTAL TSL 3 .....	\$0.718	\$1.476
4	1 (≤5 ozf) .....	\$0.473	\$0.968
	2 (>5 ozf and ≤8 ozf) .....	\$1.539	\$3.156
	3 (>8 ozf) .....	(\$0.763)	(\$1.557)
	TOTAL TSL 4 .....	\$1.249	\$2.568
4a*	1 (≤5 ozf) .....	\$0.473	\$0.968
	2 (>5 ozf and ≤8 ozf) .....	\$1.539	\$3.156
	3 (>8 ozf) .....	(\$3.616)	(\$7.421)
	TOTAL TSL 4a .....	(\$1.604)	(\$3.297)

\* In TSL 4a, DOE assumed that the installed costs for faucets and commercial prerinse spray valves are equal.

C. *Economic Impacts on Manufacturers* conversion cost scenario. Table III.7 provides manufacturer impacts under the sourced materials conversion cost scenario. Table III.6 provides manufacturer impacts under the sourced materials conversion cost scenario.

TABLE III.6—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES UNDER THE SOURCED MATERIALS CONVERSION COST SCENARIO

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	4a
INPV .....	2014\$ MM .....	8.6	7.7	7.5	8.0	7.1	5.0
Change in INPV (\$).	2014\$ MM .....		(0.8)	(1.1)	(0.6)	(1.5)	(3.6)
Change in INPV (%).	% .....		(9.9)	(12.8)	(6.5)	(17.4)	(41.8)
Product Conversion Costs.	2014\$ MM .....		1.5	1.8	0.8	2.4	2.4
Capital Conversion Costs.	2014\$ MM .....		0.1	0.2	0.2	0.2	0.2
Total Investment Required.	2014\$ MM .....		1.6	2.0	1.0	2.6	2.6

TABLE III.7—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES UNDER THE FABRICATED MATERIALS CONVERSION COST SCENARIO

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	4a
INPV .....	2014\$ MM .....	8.6	7.1	6.7	7.4	6.2	4.1
Change in INPV (\$).	2014\$ MM .....		(1.5)	(1.8)	(1.1)	(2.4)	(4.5)
Change in INPV (%).	% .....		(17.5)	(21.4)	(13.1)	(28.0)	(52.3)
Product Conversion Costs.	2014\$ MM .....		1.5	1.8	0.8	2.4	2.4
Capital Conversion Costs.	2014\$ MM .....		0.8	1.0	0.8	1.2	1.2
Total Investment Required.	2014\$ MM .....		2.3	2.8	1.6	3.6	3.6

#### IV. Public Participation

While DOE is not requesting comments on specific portions of the analysis, DOE is interested in receiving comments on all aspects of the data and analysis presented in the NODA and supporting documentation that can be found at: [https://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/54](https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/54).

##### A. Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

*Submitting comments via www.regulations.gov.* The [www.regulations.gov](http://www.regulations.gov) Web page will require you to provide your name and contact information. Your contact information will only be viewable to

DOE Building Technologies staff. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to [www.regulations.gov](http://www.regulations.gov) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through [www.regulations.gov](http://www.regulations.gov) cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through [www.regulations.gov](http://www.regulations.gov) before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [www.regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or mail.* Comments and documents submitted via email, hand delivery, or mail will also be posted to [www.regulations.gov](http://www.regulations.gov). If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in portable document format (PDF) (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 and 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is

generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of data availability.

Issued in Washington, DC, on November 16, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2015-29676 Filed 11-19-15; 8:45 am]

**BILLING CODE 6450-01-P**

---

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 110

[Notice 2015-11]

#### Candidate Debates

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Disposition of Petition for Rulemaking.

**SUMMARY:** The Commission announces its disposition of a Petition for Rulemaking ("petition") filed on September 11, 2014, by Level the Playing Field. The petition asks the Commission to amend its regulation on candidate debates to revise the criteria governing the inclusion of candidates in presidential and vice presidential candidate debates. The Commission is not initiating a rulemaking at this time.

**DATES:** November 20, 2015.

**ADDRESSES:** The petition and other documents relating to this matter are available on the Commission's Web site, [www.fec.gov/fosers](http://www.fec.gov/fosers) (reference REG 2014-06), and in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General

Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On September 11, 2014, the Commission received a Petition for Rulemaking from Level the Playing Field regarding the Commission's regulation at 11 CFR 110.13(c). That regulation governs the criteria that debate staging organizations (which the petitioner refers to as "sponsors") use for inclusion in candidate debates. The regulation requires staging organizations to "use pre-established objective criteria to determine which candidates may participate in a debate" and further specifies that, for general election debates, staging organizations "shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." 11 CFR 110.13(c). The petition asks the Commission to amend 11 CFR 110.13(c) in two respects: (1) To preclude sponsors of general election presidential and vice presidential debates from requiring that a candidate meet a polling threshold in order to be included in the debate; and (2) to require sponsors of general election presidential and vice presidential debates to have a set of objective, unbiased criteria for debate participation that do not require candidates to satisfy a polling threshold.

The Commission published a Notice of Availability seeking comment on the petition on November 14, 2014. Candidate Debates, 79 FR 68137. The Commission received 1264 comments in response to that notice. One comment, that of an organization that stages presidential and vice presidential debates, opposed the petition; the remaining comments either supported the petition or took no position thereon.

The petition and many of the comments supporting it argue that a staging organization's requirement that a candidate meet a polling threshold for inclusion in a debate unfairly benefits major party candidates at the expense of independent and third party candidates. As an alternative, the petition and some of the comments proposed requiring staging organizations to include each candidate who has qualified for the general election ballot in states that collectively have enough Electoral College votes for the candidate to attain the presidency.<sup>1</sup> The petition states that

<sup>1</sup> Specifically, the petitioner proposes that a presidential candidate who, at a given date during the election year, has secured ballot access in states that collectively have at least 270 Electoral College votes (of a total possible 538 votes), could

this would provide an objective, and more inclusive, criterion preferable to polling thresholds. Other commenters did not necessarily support or oppose the petitioner's proposed alternative but supported a rulemaking to determine if changes are warranted. Still other commenters proposed alternative and additional rule modifications for the Commission's consideration, such as a requirement that debate staging organizations provide the public with information about candidates *not* included in a debate.

The commenter that opposed the petition urged the Commission to continue allowing a debate staging organization substantial discretion in formulating the nonpartisan objective candidate selection criteria of its choice. This commenter further argued that its particular polling thresholds are reasonable and objective selection criteria adopted for nonpartisan reasons and designed to advance voter education. This commenter also asserted that the petitioner's proposed alternative would favor early ballot qualification by candidates with the most resources over more meaningful measures of candidate support and viability.

The Commission has evaluated the petition and comments and decided not to initiate a rulemaking to amend 11 CFR 110.13(c) at this time.

As the Commission stated in adopting the current candidate debate rule in 1995, "the purpose of section 110.13 . . . is to provide a specific exception so that certain nonprofit organizations . . . and the news media may stage debates, without being deemed to have made prohibited corporate contributions to the candidates taking part in debates." Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 FR 64260, 64261 (Dec. 14, 1995).<sup>2</sup> Accordingly, the Commission has required that debate "staging organizations use pre-established objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process." *Id.* at 64262. In discussing objective selection criteria,

potentially qualify to participate in the general election debate.

<sup>2</sup> See also Funding and Sponsorship of Federal Candidate Debates, 44 FR 76734 (Dec. 27, 1979) (explaining that, through candidate debate rule, costs of staging multi-candidate nonpartisan debates are not contributions or expenditures); 11 CFR 100.92 (excluding funds provided for costs of candidate debates staged under 11 CFR 110.13 from definition of "contribution"); 11 CFR 100.154 (excluding funds used for costs of candidate debates staged under 11 CFR 110.13 from definition of "expenditure").

the Commission has noted that debate staging organizations may use them to "control the number of candidates participating in . . . a meaningful debate" but must not use criteria "designed to result in the selection of certain pre-chosen participants." *Id.* The Commission has further explained that while "[t]he choice of which objective criteria to use is largely left to the discretion of the staging organization," the rule contains an implied reasonableness requirement. *Id.* Within the realm of reasonable criteria, the Commission has stated that it "gives great latitude in establishing the criteria for participant selection" to debate staging organizations under 11 CFR 110.13.<sup>3</sup> First General Counsel's Report at n.5, MUR 5530 (Commission on Presidential Debates) (May 4, 2005), <http://eqs.fec.gov/eqsdocsMUR/000043F0.pdf>.

The Commission has a well-established history of ensuring that corporate contributions are not made to candidates taking part in debates, including by evaluating the objectivity and neutrality of a debate staging organization's selection criteria in the Commission's enforcement process. Enforcement matters regarding that issue have involved a wide range of candidate selection criteria, including polling thresholds (from 5% to 15%), campaign finance activity levels (such as a minimum number of contributors as shown in reports filed with the Commission), campaign engagement levels (such as numbers of yard signs or participation in neighborhood association meetings), ballot access, and office eligibility. See, e.g., First General Counsel's Report at 5 n.5, MUR 5530 (Commission on Presidential Debates) (May 4, 2005), <http://eqs.fec.gov/eqsdocsMUR/000043F0.pdf> (including 15% polling threshold and ballot access criteria). In each of these matters, the Commission evaluated whether the criteria were objective, pre-established, and not arranged in a manner to promote or advance one candidate over another so as to constitute corporate contributions to the participating candidates.

In these enforcement matters, the Commission has carefully examined the use of polling thresholds and found that they can be objective and otherwise lawful selection criteria for candidate debates. Indeed, almost two decades ago, the Commission found that a staging organization's use of polling data (among other criteria) did not result

<sup>3</sup> See Candidate Debates and News Stories, 61 FR 18049 (Apr. 24, 1996) (quoting H.R. Rep. No. 93-1239 at 4 (1974)).

in an unlawful corporate contribution, with five Commissioners observing that it would make "little sense" if "a debate sponsor could not look at the latest poll results even though the rest of the nation could look at this as an indicator of a candidate's popularity." MUR 4451/4473 Commission Statement of Reasons at 8 n.7 (Commission on Presidential Debates) (Apr. 6, 1998), [http://www.fec.gov/disclosure\\_data/mur/4451.pdf#page=459](http://www.fec.gov/disclosure_data/mur/4451.pdf#page=459). Citing this statement, one court noted with respect to the use of polling thresholds as debate selection criteria that "[i]t is difficult to understand why it would be unreasonable or subjective to consider the extent of a candidate's electoral support prior to the debate to determine whether the candidate is viable enough to be included." *Buchanan v. FEC*, 112 F. Supp. 2d 58, 75 (D.D.C. 2000).

Because the regulation at issue is designed to provide debate sponsors with discretion within a framework of objective and neutral debate criteria, and because the Commission can evaluate the objectivity and neutrality of a debate sponsor's selection criteria through the enforcement process, the Commission finds that the rulemaking proposed by the petition is not necessary at this time. The Commission concludes that section 110.13(c) in its current form provides adequate regulatory implementation of the corporate contribution ban and is preferable to a rigid rule that would prohibit or mandate use of particular debate selection criteria in all debates. See 11 CFR 200.5(c) (listing desirability of proceeding on case-by-case basis as consideration in declining to initiate rulemaking); see also MUR 4451/4473 Commission Statement of Reasons at 8-9 (Commission on Presidential Debates) (noting that Commission cannot reasonably "question[ ] each and every . . . candidate assessment criterion" but can evaluate "evidence that [such a] criterion was 'fixed' or arranged in some manner so as to guarantee a preordained result").

The petition and the commenters who support it rely primarily on policy arguments in favor of debate selection criteria that would include more candidates in general election presidential and vice presidential debates. The rule at section 110.13(c), however, is not intended to maximize the number of debate participants; it is intended to ensure that staging organizations do not select participants in such a way that the costs of a debate constitute corporate contributions to the candidates taking part. Corporate and Labor Organization Activity; Express Advocacy and Coordination with

Candidates, 60 FR at 64261–62. Staging organizations' use of polling criteria is a reasonable way for a debate staging organization to select and "control the number of candidates participating in . . . a meaningful debate," *id.*, and to do so in a way that is objective and does not constitute a corporate contribution. A *per se* rule prohibiting the use of polling criteria is therefore not necessary to prevent debates from constituting unlawful contributions.

Furthermore, the rule at 11 CFR 110.13(c) already permits the use of criteria by staging organizations that could result in larger numbers of candidates participating in debates. Indeed, the specific criterion that the petition asks the Commission to include in a revised section 110.13(c) is already lawful: A debate staging organization has the discretion to stage a general election presidential or vice presidential debate using selection criteria similar to the Electoral College approach preferred by the petitioner (so long as the organization's reasonable selection criteria are pre-established, objective, and not designed to result in the selection of certain pre-chosen participants). No rule change is necessary to enable that approach, and the petitioner may sponsor a debate using such criteria or persuade a debate sponsor to do so.<sup>4</sup>

The petition sets forth certain data in support of its argument that the use of polling thresholds as a debate selection criterion by one staging organization "creates a hurdle that third-party and independent candidates cannot reasonably expect to clear," and therefore is designed to result in the selection of certain pre-chosen participants. Petition at 15. The use of polling data by a single debate staging organization for candidate debates for a single office, however, does not suggest the need for a rule change. The Commission acknowledges that lower (or no) polling threshold selection criteria may open debates to more candidates and that polling thresholds could be used to promote or advance

<sup>4</sup> If the petitioner (or another entity) is unsure whether it is a debate "staging organization" as defined in 11 CFR 110.13(a), it may ask the Commission for an advisory opinion on the matter. *See, e.g.*, Advisory Opinion 1988–22 (San Joaquin Republicans) (concluding that advisory opinion requestor, which did not yet have relevant tax status, was not within candidate debate exemption). Similarly, if a debate staging organization wishes to ask the Commission to conclude that its proposed candidate selection criteria are objective and not designed to result in the selection of certain pre-chosen participants (and thus protect itself from a later enforcement action), it may seek an advisory opinion on that question. *See* 52 U.S.C. 30108(c) (establishing scope of protection of advisory opinions).

one candidate (or group of candidates) over another. But to the extent that a debate staging organization uses non-objective selection criteria "designed to result in the selection of certain pre-chosen participants," this would already be unlawful under the Commission's existing regulation. Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 FR at 64262.

Finally, the Commission notes that the petition focuses on and seeks to amend the rule only with respect to polling threshold criteria in the selection of participants for presidential general election debates. However, the candidate debate rule applies to all debates (primary and general election) "at the presidential, House, and Senate levels." Funding and Sponsorship of Candidate Debates, 44 FR 39348 (July 5, 1979).<sup>5</sup> In the absence of any indication that polling thresholds are inherently unobjective or otherwise unlawful as applied to all federal elections (and the Commission is aware of no such indication),<sup>6</sup> the Commission declines to initiate a rulemaking that would impose a nationwide prohibition on the use of such thresholds, or that could result in giving different legal effect to the use of polling criterion in different elections.

For all of the above reasons, the Commission therefore declines to commence a rulemaking to amend the criteria for staging candidate debates in 11 CFR 110.13(c).

On behalf of the Commission.

Dated: November 9, 2015.

**Ann M. Ravel,**

*Chair, Federal Election Commission.*

[FR Doc. 2015–29494 Filed 11–19–15; 8:45 am]

**BILLING CODE 6715–01–P**

<sup>5</sup> Indeed, the Commission has analyzed, in the enforcement context, debate staging organizations' criteria under 11 CFR 110.13(c) at all levels of federal elections. *See, e.g.*, MUR 5650 (Associated Students of the Univ. of Arizona) (Senate debate); MUR 5530 (Commission on Presidential Debates) (presidential general election debates).

<sup>6</sup> The petitioner provided data intended to demonstrate that polling figures are sometimes inaccurate, but the fact that polls can be *inaccurate* does not mean that a staging organization acts *unobjectively* by using them.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA–2015–4279; Notice No. 25–15–09–SC]

#### Special Conditions: Gulfstream Aerospace Corporation, Gulfstream GVI Airplane; Non-Rechargeable Lithium Battery Installations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Gulfstream Aerospace Corporation GVI airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is non-rechargeable lithium battery systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before January 4, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–4279 using any of the following methods:

- *Federal eRegulations 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:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the

individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov/>.

*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 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:** Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

**Background**

Gulfstream Aerospace Corporation applied for several changes to Type Certificate No. T00015AT to install non-rechargeable lithium batteries in the Model GVI airplane. The Gulfstream Model GVI airplane is a twin-engine, transport-category airplane with a maximum passenger capacity of 19 and maximum takeoff weight of 99,600 pounds.

**Type Certification Basis**

Under the provisions of Title 14, Code of Federal Regulations, (14 CFR) 21.101, Gulfstream must show that the design change and areas affected by the change continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00015AT, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the “original type

certification basis.” The regulations listed in Type Certificate No. T00015AT are 14 CFR part 25 effective February 1, 1965 including Amendments 25–1 through 25–120, 25–122, 25–124, and 25–132. The certification basis also includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these proposed special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVI airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVI airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the Gulfstream Model GVI airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

**Novel or Unusual Design Features**

A battery system consists of the battery and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery and venting capability where necessary. For the purpose of these special conditions, we refer to a battery and battery system as a battery. The Gulfstream GVI will incorporate non-rechargeable lithium batteries, which are novel or unusual design features.

**Discussion**

We derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. We basically reworded the battery requirements, which are currently in

§ 25.1353(b)(1) through (b)(4), from the CAR requirements. Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy-storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries demonstrated unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at <http://www.nts.gov>, filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery, in an emergency locator transmitter installation, demonstrated unanticipated failure modes. Air Accident Investigations Branch Bulletin S5/2013 describes this event.

Some other known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication-management units, and remote-monitor electronic line-replaceable units (LRU);

- Cabin safety, entertainment, and communications equipment, including life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;

- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- Internal failures

In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than



their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

- Fast or imbalanced discharging

Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

- Flammability

Unlike nickel-cadmium and lead-acid batteries, these batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Proposed Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Proposed Special Condition 2 addresses these same issues but for the entire battery. Proposed Special Condition 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Proposed Special Conditions 1 and 2 are intended to ensure that the battery and its cells are designed to eliminate the potential for uncontrolled failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Proposed Special Conditions 3, 9, and 10 are self-explanatory, and the FAA does not provide further explanation for them at this time.

The FAA proposes Special Condition 4 to make it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Proposed Special Condition 5 requires each non-rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape. Proposed Special Condition 6

requires each non-rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting these proposed special conditions may be the same, but they are independent requirements addressing different hazards. Proposed Special Condition 5 addresses corrosive fluids and gases, whereas Proposed Special Condition 6 addresses heat.

Proposed Special Conditions 7 and 8 require non-rechargeable lithium batteries to have automatic means for battery disconnection and control of battery discharge rate due to the fast-acting nature of lithium-battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions will apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113. Sections 25.1353(b)(1) through (b)(4) at Amendment 25–113 will remain in effect for other battery installations.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

#### Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVI airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

#### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Gulfstream Aerospace Corporation Model GVI airplanes.

#### Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113, each non-rechargeable lithium battery installation must:

1. Maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Prevent the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Be capable of automatically controlling the discharge rate of each cell to prevent cell imbalance, back-charging, overheating, and uncontrollable temperature and pressure.

8. Have a means to automatically disconnect from its discharging circuit in the event of an over-temperature condition, cell failure or battery failure.

9. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

10. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

**Note 1:** A battery system consists of the battery and any protective, monitoring and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a battery and battery system are referred to as a battery.

Issued in Renton, Washington, on November 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–29626 Filed 11–19–15; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2015-5809; Directorate Identifier 2015-NM-055-AD]

RIN 2120-AA64

**Airworthiness Directives; The Boeing Company Airplanes****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2006-19-12, which applies to certain The Boeing Model 777-200 and -300 series airplanes. AD 2006-19-12 currently requires inspecting the lower web of the aft fairing of the engine struts for any discoloration and doing any related investigative and corrective action if necessary; inspecting the heat shield castings for any damage and doing any corrective action if necessary; installing gap cover strips; and replacing insulation blankets with new insulation blankets. Since we issued AD 2006-19-12, we have received a report that an aft fairing lower spar web exceeded the allowable conductivity limits. This proposed AD would also require, depending on airplane configuration, one-time or repetitive detailed inspections for cracking and deformation, as applicable, of the aft fairing lower structure, and one-time or repetitive conductivity inspections of the aft fairing lower structure and related investigative and corrective actions if necessary. This proposed AD also adds airplanes to the applicability. We are proposing this AD to detect and correct degradation of the aft fairing lower web, which could lead to cracking of the web and could allow flammable fluids to leak into the heat shield pan castings, and consequent increased risk of an uncontained fire and subsequent structural damage.

**DATES:** We must receive comments on this proposed AD by January 4, 2016.**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 proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-5809.

**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-2015-5809; 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:** Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone: 425-917-6438; fax: 425-917-6590; email: [suzanne.lucier@faa.gov](mailto:suzanne.lucier@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-5809; Directorate Identifier 2015-NM-055-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**

On September 13, 2006, we issued AD 2006-19-12, Amendment 39-14769 (71 FR 55727, September 25, 2006), for certain Boeing Model 777-200 and -300 series airplanes. AD 2006-19-12 requires inspecting the lower web of the aft fairing of engine struts for any discoloration and doing any related investigative and corrective action if necessary; inspecting the heat shield castings for any damage and doing any corrective action if necessary; installing gap cover strips; and replacing insulation blankets with new insulation blankets. AD 2006-19-12 resulted from a report that several discolored fairing lower webs and some damaged/deteriorated insulation blankets were found in the aft fairings of engine struts. We issued AD 2006-19-12 to prevent cracking of lower webs of the aft fairings, which could result in flammable hydraulic fluid leaking onto or near an ignition source, and possibly result in an uncontrollable fire in the engine strut area.

**Discussion**

**Actions Since AD 2006-19-12, Amendment 39-14769 (71 FR 55727, September 25, 2006) Was Issued**

Since we issued AD 2006-19-12, Amendment 39-14769 (71 FR 55727, September 25, 2006), we have received a report that an aft fairing lower spar web exceeded the allowable conductivity limits. An investigation concluded that wear to the pan casting and gap cover strips allowed increased heat into the aft fairing heat shield cavity, which exceeded the thermal capability of the insulation blankets.

**Related Service Information Under 14 CFR Part 51**

We have reviewed Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012. The service information describes procedures for a detailed inspection of the gap cover strips and heat shield pan castings for damage, corrective actions, and installation of new gap cover strip fillers, new velcro strips, and new aft fairing insulation blankets.

**Related Service Information Under 14 CFR Part 51**

We reviewed Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015. The service information describes procedures for one-time and repetitive detailed inspections for any cracking and deformation, as applicable, of the aft fairing lower structure; conductivity

inspections of the aft fairing lower structure; and related investigative and corrective actions.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this NPRM.

**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 retain all requirements of AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006). In addition, this proposed AD would add airplanes to the applicability of this AD. This proposed

AD would also require accomplishing the actions specified in the service information described previously.

The phrase “related investigative actions” is used in this proposed AD. “Related investigative actions” are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase “corrective actions” is used in this proposed AD. “Corrective actions” are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

**Change to AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006)**

Since AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25,

2006) was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have been redesignated in this proposed AD, as listed in the following table:

**REVISED PARAGRAPH IDENTIFIERS**

Requirement in AD 2006–19–12	Corresponding requirement in this proposed AD
paragraph (f) paragraph (g) paragraph (h)	paragraph (g) paragraph (h) paragraph (i)

**Costs of Compliance**

We estimate that this proposed AD affects 99 airplanes of U.S. registry.

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

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and other actions [retained actions from AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006)].	Up to 11 work-hours × \$85 per hour = \$935, depending on airplane configuration.	Up to \$16,179, depending on airplane configuration.	Up to \$17,114, depending on airplane configuration.	Up to \$1,694,286, depending on airplane configuration
Inspections [new proposed action].	Up to 24 work-hours × \$85 per hour = \$2,040, depending on airplane configuration.	\$0 .....	Up to \$2,040, depending on airplane configuration.	Up to \$201,960, depending on airplane configuration

We estimate the following costs to do any necessary related investigative and corrective actions that would be

required based on the results of the proposed inspection. We have no way of determining the number of aircraft that

might need these inspections and replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Related Investigative Actions .....	Up to 36 work-hours × \$85 per hour = \$3,060, depending on airplane configuration.	\$0	Up to \$3,060, depending on airplane configuration
Corrective Actions .....	Up to 38 work-hours × \$85 per hour = \$3,230, depending on airplane configuration.	0	Up to \$3,230, depending on airplane configuration

According to the manufacturer, all 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 have 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 that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2015–5809; Directorate Identifier 2015–NM–055–AD.

#### (a) Comments Due Date

The FAA must receive comments on this AD action by January 4, 2016.

#### (b) Affected ADs

This AD replaces AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006).

#### (c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certified in any category, as identified in Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015.

#### (d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

#### (e) Unsafe Condition

This AD was prompted by a report that an aft fairing lower spar web exceeded the allowable conductivity limits. An investigation concluded that wear to the pan casting and gap cover strips allowed increased heat into the aft fairing heat shield cavity. We are proposing this AD to detect and correct degradation of the aft fairing lower web, which could lead to cracking of the web and could allow flammable fluids to leak into the heat shield pan castings, and consequent increased risk of an uncontained fire and subsequent structural damage.

#### (f) Compliance

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

#### (g) Retained Inspection, Installation, and Replacement Actions With No Changes

This paragraph restates the actions required by paragraph (f) of AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006), with no changes. For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006: Except as provided by paragraph (h) of this AD, within 12 months after October 30, 2006 (the effective date of AD 2006–19–12), do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006.

(1) Do a general visual inspection of the lower web of the aft fairing for any discoloration and do any related investigative action.

(2) Do a general visual inspection of the heat shield castings for any damage (crack(s), dent(s), gouge(s), warpage, fretting, or missing/loose nutplates).

(3) Install gap cover strips on the heat shield pans.

(4) Replace insulation blankets on the heat shield pans with new insulation blankets.

#### (h) Retained Repair Instructions

This paragraph restates the actions required by paragraph (g) of AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006), with no changes. If any damage, discoloration, heat damage, or crack is found during any inspection required by paragraph (g) of this AD: Before further flight, do all applicable corrective actions in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006.

#### (i) Retained Credit for Previous Actions With Revised Format

This paragraph restates the credit provided by paragraph (h) of AD 2006–19–12, Amendment 39–14769 (71 FR 55727,

September 25, 2006), with revised format. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before October 30, 2006 (the effective date of AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006)) using Boeing Special Attention Service Bulletin 777–54–0021, dated June 23, 2005, except where Boeing Special Attention Service Bulletin 777–54–0021, dated June 23, 2005, does not provide an International Annealed Copper Standard (IACS) value for determining the results of the inspection for heat damage, the maximum acceptable IACS value is 42 percent. Boeing Special Attention Service Bulletin 777–54–0021, dated June 23, 2005, is not incorporated by reference in this AD.

#### (j) New Requirements: Detailed and Conductivity Inspections and Related Investigative and Corrective Actions (Repetitive Inspections for Certain Airplanes)

Within 24 months after the effective date of this AD: Do detailed and conductivity inspections of the aft fairing lower structure for cracks and deformation, as applicable, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015. Do all applicable related investigative and corrective actions before further flight. For Group 1, Configurations 1 and 3 airplanes, and Group 2, Configuration 1, airplanes, identified in Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015, repeat the inspections thereafter at intervals not to exceed 24 months until the terminating action specified in paragraph (k) of this AD is done.

#### (k) Optional Terminating Action

Accomplishing a detailed inspection of the gap cover strips and heat shield pan castings for damage and applicable corrective actions, and installation of new gap cover strip fillers, new velcro strips, and new aft fairing insulation blankets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012, concurrently with accomplishing detailed and conductivity inspections and all applicable related investigative and corrective actions required by paragraph (j) of this AD, terminates the repetitive inspections specified in paragraph (j) of this AD; except where Boeing Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012, specifies to contact the manufacturer, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

#### (l) 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 (m)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006) are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), and (i) of this AD.

#### (m) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6438; fax: 425–917–6590; email: [suzanne.lucier@faa.gov](mailto:suzanne.lucier@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, 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 12, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–29617 Filed 11–19–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Parts 771 and 774

#### Federal Transit Administration

#### 49 CFR Part 622

[Docket No. FHWA–2015–0011]

FHWA RIN 2125–AF60

FTA RIN 2132–AB26

### Environmental Impact and Related Procedures

**AGENCY:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This NPRM provides interested parties with the opportunity to comment on proposed revisions to the FHWA and FTA joint regulations that implement the National Environmental Policy Act (NEPA) and Section 4(f) of the Department of Transportation Act. The revisions are prompted by the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires rulemaking to address programmatic approaches. This NPRM proposes to revise the FHWA/FTA Environmental Impact and Related Procedures and Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites regulations due to MAP–21 changes to the environmental review process that FHWA and FTA have not previously captured in other rulemakings, such as the use of programmatic agreements and the use of single final environmental impact statement/record of decision documents. In addition, FHWA and FTA propose changes to the regulatory text to improve readability and to reflect current practice, consistent with an Executive order to improve regulations and regulatory review. The FHWA and FTA seek comments on the proposals contained in this notice.

**DATES:** Comments must be received on or before January 19, 2016.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

*Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12–140, Washington, DC 20590.

*Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

*Instructions:* You must include the agency name and docket number or the Regulatory Identifier Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Neel Vanikar, Office of Project Development and Environmental Review, (202) 366–2068, or Diane

Mobley, Office of Chief Counsel, (202) 366–1366. For FTA: Megan Blum, Office of Planning and Environment, (202) 366–0463, or Helen Serassio, Office of Chief Counsel, (202) 366–1974. The FHWA and FTA are both located at 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141, 126 Stat. 405), which contains new requirements that FHWA and FTA, hereafter referred to as the “Agencies,” must meet in complying with NEPA (42 U.S.C. 4321 *et seq.*), as well as a requirement to initiate a rulemaking to allow for the use of programmatic approaches. 23 U.S.C. 139(b)(3)(A). Through this NPRM, the Agencies propose to revise their regulations that implement NEPA at 23 CFR part 771—Environmental Impact and Related Procedures, and 23 U.S.C. 138 and 49 U.S.C. 303 (hereafter referred to as Section 4(f)<sup>1</sup>) at 23 CFR part 774—Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. The proposed revisions would reflect MAP–21 requirements and better reflect current Agency practice, as well as improve readability consistent with Executive Order 13563, “Improving Regulation and Regulatory Review” (2011).

#### General Discussion of the Proposals

The following bullets are sections of MAP–21 that affect 23 CFR parts 771 and 774; the list does not include the sections of MAP–21 that have been the subject of other rulemakings:

- Section 1119(c)(2) revised the Section 4(f) exception for park road and parkway projects to apply to Federal lands transportation facilities, which affects the Section 4(f) exception in 774.13(e);
- Section 1122 replaced the former “transportation enhancement projects program” with a new “transportation alternatives projects program,” which affects the Section 4(f) exception in 774.13(g);
- Section 1302 amended 23 U.S.C. 108 to address advance acquisition of real property interests, which affects the

<sup>1</sup> Section 4(f) of the Department of Transportation Act of 1966 was repealed in 1983 when it was codified without substantive change at 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138. This regulation continues to refer to Section 4(f) as such because the policies Section 4(f) engendered are widely referred to as “Section 4(f)” matters.

timing of administrative activities in section 771.113;

- Section 1305 amended 23 U.S.C. 139(b)–(e) concerning programmatic approaches for environmental reviews; the Secretary’s designation of lead Federal agency for projects with more than one modal administration; participating agency roles and responsibilities; and project initiation information, which affects early coordination, public involvement, and project development as described in section 771.111;

- Section 1315 expanded the emergency actions covered by categorical exclusion (CE), which were addressed in a previous rulemaking, but also affected information in section 771.131, emergency action procedures, which are addressed in this rule;

- Section 1319 provided for the preparation of a final environmental impact statement (EIS) using errata sheets in certain circumstances and requiring the combination of final EISs with records of decision (ROD) to the maximum extent practicable if certain circumstances are met. This requirement affects definitions in § 771.107 as well as final EISs and RODs in §§ 771.125 and 771.127, respectively;

- Section 1320(d) provided a definition of “early coordination activities;”

- Section 20003 amended 49 U.S.C. 5301 and struck minimization of environmental impacts from the statement of policies and purposes so the reference to section 5301 has been removed from § 771.101;

- Section 20016 amended 49 U.S.C. 5323 by striking requirements for public review and comment and public hearings for capital projects that will not substantially affect a community or its public transportation service, which affects references in §§ 771.101 and 771.125; and

- Section 20017 amended 49 U.S.C. 5324 by striking requirements for findings of no significant impacts (FONSI) and RODs to have a written statement that no adverse environmental effect is likely from the project or no reasonable and prudent alternative exists and all attempts have been made to minimize effects, which affects a reference in § 771.125.

In addition to the proposed MAP–21-related changes, this proposed rule includes other proposed changes to provide clarification and guidance. All proposed changes are discussed in the next section.

## Section-by-Section Discussion of the Proposals

### *NEPA Regulation Changes (Part 771)*

#### *Section 771.101 Purpose*

The Agencies propose to remove outdated references from and include new references in § 771.101 in accordance with MAP–21. The Agencies propose to revise the last sentence in section 101 to include MAP–21 references and updated U.S. Code references: “This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, 327; 49 U.S.C. 303, and 5323(q); and Pub. L. 112–141, 126 Stat. 405, sections 1301, and 1319.”

#### *Section 771.103 [Reserved]*

The Agencies propose no changes to section 771.103 in this NPRM.

#### *Section 771.105 Policy*

The Agencies propose to remove references to specific guidance documents in the footnote to paragraph (a). The revised footnote would continue to refer to the Agencies’ Web sites for the most recent guidance documents. These changes will allow the regulation to stay current as the Agencies release new guidance documents.

The Agencies propose to add a new paragraph (b) to support development of programmatic approaches consistent with MAP–21 Section 1305(a) (23 U.S.C. 139(b)): it is the Administration’s policy that “[p]rogrammatic approaches be developed for compliance with environmental requirements, coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.” Addressing programmatic approaches in this section and under a separate paragraph reflects the Agencies’ intent to encourage their broader use.

With the addition of proposed paragraph (b), current paragraphs (b), (c), (d), (e), and (f) would be re-lettered as paragraphs (c), (d), (e), (f), and (g), respectively. The Agencies propose no change in wording to any of these paragraphs.

#### *Section 771.107 Definitions*

The Agencies propose to modify the first sentence of the definition of “Administration action” from passive voice to active voice without losing the original intent of the definition: “FHWA or FTA approval of the applicant’s request for Federal funds for construction.” The rest of the definition would not change.

The Agencies propose to modify the definition of “applicant” by adding the

word “Federal” to include Federal governmental units as potential applicants. This change would provide for instances when the Federal Lands program is an FHWA applicant.

The Agencies propose to add a definition for “programmatic approaches” to § 771.107 consistent with MAP–21 Section 1305(a) (23 U.S.C. 139(b)). The proposed definition is “an approach that reduces the need for project-by-project reviews, eliminates repetitive discussion of the same issue, or focuses on the actual issues ripe for analyses at each level of review, while maintaining appropriate consideration for the environment” and is taken in large part from 23 U.S.C. 139(b)(3)(A). The Agencies do not propose adding or deleting any other definitions.

The Agencies propose to modify the definition of “Project sponsor” by adding “Federal funding” to the definition and clarifying that the project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant. This change would slightly broaden the definition of project sponsor and make it consistent with other parts of the regulation, as well as clarify that the project sponsor and the applicant are not always one and the same entity. The proposed revised definition is “[t]he Federal, State, local, or federally-recognized Indian tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project. The project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant.”

The Agencies propose to modify the definition of “Section 4(f)” to include a reference to the current implementing regulations for Section 4(f) (23 CFR part 774), and to delete footnote 2, which is discussed in 23 CFR part 774.

Structurally, the Agencies propose reorganizing the definitions within this section by organizing them in alphabetical order and removing the lettering of paragraphs. This change is consistent with other regulations (*e.g.*, 23 CFR part 774), and will aid reader comprehension, as definitions are typically in alphabetical order. In addition, this change would reduce future associated formatting changes to the regulation should definitions be added or removed.

#### *Section 771.109 Applicability and Responsibilities*

The Agencies propose several changes to § 771.109 that provide greater clarity on Agency, project sponsor, and applicant responsibilities, as well as improve the organizational structure of

the section. For example, the Agencies propose to reorganize paragraph (b) by renumbering it as paragraph (b)(1) and to modify the language of proposed paragraph (b)(1) by adding the phrase “unless the Administration approves of their deletion or modification in writing” to the end of the first sentence. This text is not new; the Agencies propose to move this concept from the last clause in paragraph (d) of this section and revise the language to be in active voice, clarifying that the Administration performs the action (*i.e.*, the Agencies will approve of any deletions or modifications of mitigation measures previously committed to in the environmental documents prepared pursuant to this regulation). In addition to that change, the Agencies propose to modify the language of proposed paragraph (b)(1) by clarifying the responsibilities of FHWA in the second sentence. The current phrase, “program management,” would be replaced with “stewardship and oversight,” and the phrase, “that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections,” would be deleted. The Agencies propose this change to reflect the customary practice and responsibilities of FHWA. In summary, paragraph (b)(1) would read, “The applicant, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation unless the Administration approves of their deletion or modification in writing. The FHWA will assure that this is accomplished as a part of its stewardship and oversight responsibilities. The FTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.”

The Agencies propose creating a new paragraph (b)(2) that reaffirms FHWA’s commitment to ensuring that the State highway agency with which it partners fulfills all environmental commitments as listed in approved environmental review documents. The language found in proposed paragraph (b)(2) was previously found in section 771.109(d), though the last clause of paragraph (d) was added to paragraph (b)(1) as explained above. The Agencies moved the language to its new position in paragraph (b)(2) in order to improve the logical sequence of the section; paragraphs (b)(1) and (b)(2) both address mitigation measures.

The Agencies propose to add a new paragraph (c)(7) that clarifies the responsibility of a participating agency: “[a] participating agency is responsible for providing input, as appropriate, during the times specified in the coordination plan under 23 U.S.C. 139(g), and providing comments and concurrence on a schedule if included within the coordination plan.” This change is proposed in accordance with MAP–21 Section 1305(e) (23 U.S.C. 139(g)(1)(B)(i)).

As noted in the discussion above, the Agencies propose to delete paragraph (d), as these responsibilities are now articulated through revisions to paragraph (b)(1) and in proposed new paragraph (b)(2).

#### *Section 771.111 Early Coordination, Public Involvement, and Project Development*

Upon review of § 771.111, the Agencies found the beginning of the section to be out of logical order. The Agencies propose to reorganize paragraph (a) into three subparagraphs, keeping much of the same information: Paragraph (a)(1) addresses early coordination activities; paragraph (a)(2) covers the transportation planning process in relation to the environmental review process; and paragraph (a)(3) remains focused on class of action identification. The proposed new sentence in paragraph (a)(1) would discuss the benefits of early coordination activities: “These [early coordination] activities contribute to reducing or eliminating delay, duplicative processes, and conflict by incorporating planning outcomes that have been reviewed by agencies and Indian tribal partners in project development.” The Agencies developed this language after considering the language in section 1320(a)(1) of MAP–21, which essentially contains the goals of early coordination. Early coordination activities include: (1) Technical assistance on identifying potential impacts and mitigation issues; (2) the potential appropriateness of using planning products and decisions in later environmental reviews; and (3) the identification and elimination from detailed study in the environmental review process of the issues that are not significant or that have been covered by prior environmental reviews (for the list of activities, *see* MAP–21 Section 1320(d)). The Agencies propose deleting the second sentence currently in paragraph (a)(1) (“This involves the exchange of information from the inception of a proposal for action to preparation of the environmental review documents.”) because it is duplicative

of the concepts addressed in paragraph (a)(2) (now proposed paragraph (a)(2)(i)).

The Agencies propose modifying current paragraph (a)(2) by renumbering it as paragraph (a)(2)(i) and updating the citations to read “40 CFR parts 1500 through 1508, 23 CFR part 450, or 23 U.S.C. 168” in order to be more encompassing of the referenced statute and regulations. In addition, a new paragraph (a)(2)(ii) would address the inclusion of mitigation actions in the planning process: “The planning process described in paragraph (a)(2)(i) may include mitigation actions consistent with a programmatic mitigation plan developed pursuant to 23 U.S.C. 169 or from a programmatic mitigation plan developed outside of that framework.” Programmatic mitigation plans are the subject of a separate on-going MAP–21 rulemaking action (*see* 79 FR 31784, June 2, 2014); in the event the Agencies publish a final rule, the Agencies would revise the proposed paragraph (a)(2)(ii) text to include a reference to the applicable regulation. The Agencies propose including the reference to programmatic mitigation plans to further encourage the link between the planning and environmental processes.

Finally, paragraph (a)(3) would include the class of action identification language currently found in the last two sentences of paragraph (a)(1): “Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (*see* 23 CFR 771.115) and related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process.” Generally, this is a non-substantive change in that most of the information found in proposed new paragraph (a)(3) comes from the current paragraph (a)(1). But the Agencies clarified that the Administration may advise applicants of the need for specific studies and findings that would normally be developed during the environmental review process by replacing “concurrently with” with “during,” and “documents” with “process.” The Agencies want to highlight through these changes that the focus is on the environmental review process, not documents, and the studies and findings performed are completed as part of the process.

In paragraph (c), the Agencies propose to replace the word “project” with

“action” to be consistent within 23 CFR part 771 and to more accurately reflect the work of the Agencies, which is not solely devoted to projects but to actions taken in advancement of projects.

“Action” is defined in section 771.107.

In paragraph (d), the Agencies propose to delete the outdated footnote (footnote 4): “The FHWA and FTA have developed guidance on 23 U.S.C. Section 139 titled “SAFETEA—LU Environmental Review Process: Final Guidance,” November 15, 2006, and available at <http://www.fhwa.dot.gov> or in hard copy upon request.” The Agencies are updating the guidance regarding section 139 to reflect MAP–21 changes and may update the guidance in response to future transportation bills. In order to maximize the flexibility of these regulations, the Agencies propose deleting the specific reference to the 2006 document.

In paragraph (e), the Agencies propose to revise the second sentence to read: “The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.” This replaces the provision that the “Administration will prepare a written evaluation of any significant unresolved issues.” The change reflects current practice and is consistent with the responsibilities of the Agencies. The Agencies also replaced the references to environmental assessments and draft EIS documents with the broader term “environmental review process” because the Agencies may provide direction on any class of action. Although a CE will not have significant unresolved issues, the Agencies could provide early input on an action with significant unresolved issues that allow for the use of a CE.

Paragraph (f) would notably be modified to include CEs. The Agencies propose replacing “In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:” with “Any action evaluated through a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) shall:”. This change would clarify that actions evaluated in a CE, EA, or EIS must comply with NEPA requirements related to connected actions and segmentation, per 40 CFR 1508.25. The Agencies recognize that projects cannot be segmented improperly, regardless of the NEPA class of action; any action evaluated must have independent

utility, connect logical termini when applicable (*i.e.*, linear facilities), and not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. The Agencies have presented this guidance in recent rulemakings (*e.g.*, 79 FR 60100, October 6, 2014 and 79 FR 2107, January 13, 2014). For consistency, the term “FONSI” would be removed from the list and replaced with “EA.”

The Agencies propose to delete the outdated footnote in paragraph (h)(2)(viii) regarding Section 4(f) guidance (“The FHWA and FTA have developed guidance on Section 4(f) *de minimis* impact findings titled “Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources,” December 13, 2005, which is available at <http://www.fhwa.dot.gov> or in hard copy upon request.”) as *de minimis* guidance is now included in the Section 4(f) Policy Paper, available at <http://www.environment.fhwa.dot.gov/4f/4fpolicy.pdf>.

The Agencies propose a number of non-substantive modifications to paragraph (i) in subparagraphs (1), (3), and (4). Subparagraph (1) would be modified to improve readability and improve understanding. The term “projects” would be replaced with “actions” to better reflect the work of the Agencies in two places, and the first sentence would be changed to reflect that scoping is about the environmental review “process,” not simply about “documents.” In addition, the Agencies propose to remove the last sentence, “For other projects that substantially affect the community or its public transportation service, an adequate opportunity for public review and comment must be provided,” because the support for the statement (*i.e.*, 49 U.S.C. 5323) was repealed by MAP–21 Section 20016, and the opportunity for the public to review EA and EIS documents is provided for in sections 771.119 (EA) and 771.123 (draft EIS). In subparagraph (3), the Agencies would modify the first sentence to provide examples of “NEPA documents” by adding “(*e.g.*, EAs and EISs),” and would add “environmental studies (*e.g.*, technical reports)” and “meeting” minutes to the list of potential information and material that the Agencies encourage applicants for capital assistance in the FTA program to post and distribute to enhance public involvement. Finally, in subparagraph (4), the Agencies would clarify and update the list of materials FTA encourages applicants in the FTA program to post on a project Web site until the project is constructed and open for operation. This list would include

FONSIs, combined final EIS/RODs, and RODs. This sentence would now read: “Are encouraged to post all findings of no significant impact (FONSI), combined final environmental impact statement (EIS)/records of decision (ROD), and RODs on a project Web site until the project is constructed and open for operation.”

Paragraph (j) would be modified to include updated contact information for FTA, and the Web site address for each Agency. These changes are meant simply to provide complete contact information for both Agencies.

#### *Section 771.113 Timing of Administration Activities*

The Agencies propose modest changes to each of the four paragraphs in § 771.113. In paragraph (a), the Agencies propose revising the paragraph by replacing the phrase “(if not a lead agency)” with “and project sponsor as appropriate,” in the first sentence. This change recognizes that the applicant and the project sponsor are not always the same entity and may not be identified as “lead agencies,” but they may work with the lead agencies to “perform the work necessary to complete the environmental review process.” As noted in the previous sentence, the Agencies would also revise the sentence by replacing the text, “a finding of no significant impact (FONSI) or a record of decision (ROD) and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process” with the text, “the environmental review process.” This modification changes the focus from the completion of a FONSI or a ROD to the completion of the environmental review process, which is a broader term and more accurately reflects the Agencies’ goals. In addition, the Agencies propose revising the second sentence to more clearly provide examples of work that takes place during the review process. This sentence would be changed from, “This work includes environmental studies, related engineering studies, agency coordination and public involvement” to “This work includes drafting environmental documents and completing studies, related engineering studies, agency coordination, and public involvement.” Finally, the Agencies propose reorganizing the last sentence to bring the exception clause forward to lend greater reader comprehension; there is no content change to the last sentence.

In subparagraph (a)(1), the Agencies propose to update the document types that indicate the environmental review process is complete. In (a)(1)(i), the



Agencies would simply use “CE.” In paragraph (a)(1)(ii), the Agencies would reword the sentence to make clear that the Administration issues a FONSI by replacing passive language with active language and by adding the text “The Administration has issued a” before “FONSI” and deleting “has been approved.” In paragraph (a)(1)(iii), the Agencies would replace the text, “A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed” with “The Administration has issued a combined final EIS/ROD or a final EIS and ROD.” This change would be in compliance with MAP–21 Section 1319.

Paragraph (b) would be reworded to clarify that it applies to FHWA alone. The phrase “For activities proposed for FHWA action” would be added to the beginning of the sentence.

In paragraph (d), the Agencies propose several modifications pursuant to MAP–21, including MAP–21 Section 1302 (and as implemented in 23 CFR part 710, subpart E, Property Acquisition Alternatives), MAP–21 Section 20008, and MAP–21 Section 20016. Generally, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction cannot proceed until the proposed action has been classified as a CE or a decision document has been issued. Exceptions to that prohibition, however, are found in paragraph (d). The Agencies propose modifying the text for subparagraph (d)(1) to read, “Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA.” This exception refers the reader to FHWA property acquisition regulations for the acquisition compliance requirements. The FTA’s existing exception in subparagraph (d)(1) (*i.e.*, the second sentence) would not change. To summarize, this subparagraph states that acquisition of land for hardship or protective purposes may occur prior to the completion of NEPA for Agency actions. Subparagraph (d)(2) pertains to FTA only; the text, revised as proposed, would no longer refer to FTA’s “acquisition of right-of-way” CE, specifically, but would refer to the broader corridor preservation statute and guidance, pursuant to MAP–21 Section 20016. The proposed text for subparagraph (d)(2) would read: “The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.” The Agencies propose deleting subparagraphs (d)(3) and (d)(4) because the proposed language in subparagraph

(d)(1) broadly encompasses 23 CFR part 710; therefore, the current references to 23 CFR 710.503 and 23 CFR 710.501 would no longer be necessary. Finally, subparagraph (d)(5) would be renumbered as subparagraph (d)(3), and the statutory reference at the end of the sentence would be updated to reflect changes to 49 U.S.C. 5309 by MAP–21 Section 20008: “A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).” These are non-substantive changes.

#### *Section 771.115 Classes of Actions*

The Agencies propose several minor modifications to § 771.115 to clarify this section. In the introductory paragraph, the Agencies would add the sentence “A programmatic approach may be used for any class of action” to be consistent with MAP–21 Section 1305 (23 U.S.C. 139(b)).

In paragraph (a), the Agencies would move the acronym “EIS” to the beginning of the sentence and move “Class 1” to parentheses to aid in readability.

Paragraph (a) states that “actions that significantly affect the environment require an EIS” and provides examples of actions that normally require an EIS in the subsequent subparagraphs. In subparagraph (a)(3), FTA proposes to modify the current example, “Construction or extension of a fixed transit facility (*e.g.*, rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way,” by inserting the term “primarily” before “within an existing transportation right-of-way.” This addition would be in response to FTA’s recent revisions to its list of CEs since 2012, including the “assembly or construction of facilities” CE (23 CFR 771.118(c)(9)). The FTA has categorically excluded some actions from requiring an EIS or EA when they take place primarily or entirely within existing transportation right-of-way; therefore, FTA proposes adding “primarily” to subparagraph (a)(3) in order to distinguish clearly that actions *not* primarily within existing transportation right-of-way will normally require an EIS.

In subparagraph (a)(4), the Agencies would add “For FHWA actions” to the beginning of the sentence, but no other modifications are proposed to the subparagraph: “For FHWA actions, new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.” The Agencies propose this change because the Agencies propose adding a new subparagraph (a)(5) to reflect FTA

actions. The subparagraph (a)(5) language would be similar to subparagraph (a)(4) language, but it would not refer to high occupancy vehicles because they are not typically part of the FTA program. In addition, the subparagraph would include the “not located *primarily* within an existing transportation right-of-way” condition (*emphasis added*) to reflect FTA’s program, as discussed above for subparagraph (a)(3). Proposed subparagraph (a)(5) would read: “For FTA actions, new construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.”

As the Agencies propose for paragraph (a), the Agencies propose moving the acronym for CEs to the beginning of the sentence in paragraph (b), and moving the acronym for EAs to the beginning of the sentence in paragraph (c) to aid in readability, followed by their class in parentheses. Finally, the Agencies propose to slightly reword the first sentence in paragraph (c) to clarify that it is the Administration’s responsibility to determine the significance of the environmental impact, and where significance is not clearly established, then an EA would be the appropriate class of action. The first sentence in paragraph (c) would read, “Actions in which the Administration has not clearly established the significance of the environmental impact.”

#### *Section 771.117 FHWA Categorical Exclusions*

The Agencies propose no changes to § 771.117 in this NPRM.

#### *Section 771.118 FTA Categorical Exclusions*

The Agencies propose no changes to § 771.118 in this NPRM.

#### *Section 771.119 Environmental Assessments*

The Agencies propose modifications to paragraphs (a) through (f) and paragraph (h) in § 771.119. In paragraph (a), the Agencies would revise the first sentence from passive voice to active voice. It would instead read as, “The applicant shall prepare an EA. . . .” This would make it clear that it is the applicant’s responsibility to prepare an EA. In addition, the Agencies would reorganize the paragraph as subparagraph (a)(i). This change would aid in readability. It would also support a second proposed modification to paragraph (a): New subparagraph (a)(ii).

The Agencies propose adding a new subparagraph (a)(ii) that would apply to FTA actions alone. Subparagraph (a)(ii)

would read, “For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor shall execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor’s scope of work for the preparation of the EA will not be finalized until the early coordination activities or scoping process found in paragraph (b) is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).” This new subparagraph would address two issues. First, it would specify that if the applicant selects a contractor to prepare the EA, the contractor must execute an FTA conflict of interest disclosure statement (statement) attesting to the lack of a conflict of interest in the NEPA process, pursuant to 40 CFR 1506.5. The Agencies propose that the statement must be maintained in the FTA Regional Office and with the applicant. This addition to our regulation is not a major change from how FTA and its applicants currently prepare EAs, but it updates our regulation to reflect current practice. Second, proposed subparagraph (a)(ii) would require that the contractor’s scope of work for the preparation of the EA not be finalized until the early coordination activities or scoping process found in paragraph (b) has been completed. Under this proposal, the contractor’s scope of work would not be finalized until FTA and the applicant have approved the scope, in terms of NEPA, of the EA analysis and documentation. This addition would emphasize the importance that FTA places on early coordination activities and scoping for its NEPA documents, with the goal being more refined analyses that focus on significant issues rather than all potential impacts. Although scoping as a formal process is associated with EISs, a less formal type of scoping may be conducted for projects evaluated with EAs. Regardless of the form early coordination takes, FTA believes this addition will lead to better decisionmaking and documentation. Note, the language proposed for subparagraph (a)(ii) is similar to language proposed in a previous NPRM (see 77 FR 15310, March 15, 2012), but the language was never finalized. The FTA considered the comments received during the previous NPRM comment period when developing the language proposed in this rule.

In paragraph (b), the Agencies would revise the last two sentences regarding early coordination activities to read,

“The applicant shall accomplish this through early coordination activities or through a scoping process. The applicant shall summarize the public involvement process and include the results of agency coordination in the EA.” The Agencies changed the reference from “an early coordination process (*i.e.*, procedures under § 771.111)” to “early coordination activities” for consistency with other early coordination references proposed in this rule and MAP–21 Section 1320. The Agencies modified the last sentence by (1) revising language from passive voice to active voice and (2) identifying the applicant as the entity responsible for summarizing the public involvement process and including the results of agency coordination in the EA, which reflects current practice.

In paragraph (c), the Agencies would revise the sentence to clearly state in a reader-friendly manner that the Administration must approve the EA before it is made available to the public. Paragraph (c) would read: “The Administration must approve the EA before it is made available to the public as an Administration document.”

In paragraph (d), the Agencies would revise the text from passive voice to active voice, clearly identify the responsibilities of the applicant, and make this paragraph easier to read and understand overall. Paragraph (d) would read: “The applicant does not need to circulate the EA for comment but the document must be made available for public inspection at the applicant’s office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. The applicant shall send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, State, and local government. The applicant shall also send notice to the State intergovernmental review contacts established under Executive Order 12372.” Other than clearly identifying the applicant’s role in this paragraph, there are no changes regarding content.

In paragraph (e), the Agencies would revise the first sentence by changing the text from “as part of the application for Federal funds” to “as part of the environmental review process for an action.” This change more accurately reflects current practice and is consistent with other changes proposed in this rule (*e.g.*, use of “environmental review process” and “action”). In addition, the Agencies propose revising the second and third sentence of paragraph (e) by clarifying the applicant’s role in providing notice of

the public hearing and availability of the EA and clarifying when comments are accepted on the EA, respectively. The second and third sentences of paragraph (e) would read: “The applicant shall publish a notice of the public hearing in local newspapers that announces the availability of the EA and where it may be obtained or reviewed. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted.” These changes are minor but improve the quality of the written language.

The Agencies propose revising the last sentence in paragraph (f) to reflect the changes proposed for the last sentence in paragraph (e) regarding comment submittal during the EA public availability period. Paragraph (f) would read: “When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted.” This is a non-substantive change proposed for consistency between paragraphs.

Lastly, the Agencies propose to limit paragraph (h) to FHWA actions only by replacing “Administration” with “FHWA” at the beginning of the paragraph. For FTA project sponsors, application of the Council on Environmental Quality’s (CEQ) regulatory provision alone aligns better with how transit projects are planned, developed, and reviewed. The FTA would direct its applicants and project sponsors to rely on the CEQ NEPA Implementing Regulations, specifically 40 CFR 1501.4(e)(2), which requires that in certain circumstances the FONSI be available for public review for 30 days before FTA makes its final determination and before the action may begin. This requirement applies when the proposed action is (or is closely similar to) one that normally requires the preparation of an EIS pursuant to § 771.115, or when the nature of the proposed action is one without precedent.

### Section 771.121 Findings of No Significant Impact

The Agencies propose minor text revisions to all three paragraphs in § 771.121. In paragraph (a), the Agencies propose to reword the first sentence to reflect existing practice: “The Administration will review the EA, comments submitted on the EA (in writing or at public hearings/meetings), and other supporting documentation, as appropriate.” This is a non-substantive change and is meant to improve readability.

Similarly, in paragraph (b), the Agencies propose to reword the first sentence in active voice and to make it clear to the reader that the Administration issues a FONSI. The first sentence would be rewritten to read, “After the Administration issues a FONSI . . .” This non-substantive change does not affect the responsibility of the Administration in issuing a FONSI, and it does not affect the applicant’s responsibility in providing notice of availability of the FONSI to affected units of Federal, State, and local government or any other responsibilities noted within this section.

In paragraph (c), the Agencies propose a slight modification to include those times when the Administration may have an approval role for another Federal agency’s action (e.g., when FHWA issues Interstate Access Point Approval). The modification would add “or approval” after “Administration funding” in the first sentence: “If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding or approval . . .” In these rare situations, the Administration would evaluate the other agency’s “EA/FONSI” (replacing the term “FONSI” at the end of the first sentence) in determining whether to issue its own FONSI incorporating the other agency’s “EA/FONSI” (again, replacing the term “FONSI” but at the end of the second sentence). The Administration could also issue a CE for the element of the project proposed for Administration funding or approval if it determines that a CE would be appropriate.

### Section 771.123 Draft Environmental Impact Statements

The Agencies propose a number of modifications to § 771.123. In paragraph (b), the Agencies would revise the language in the first sentence to reference CEQ’s NEPA Implementing Regulations (40 CFR parts 1500 through 1508), and replace “which” with “that.” In addition, the Agencies propose

deleting the reference to the FHWA in the third sentence and deleting the fourth sentence pertaining to FTA; the revised third sentence would apply to both Agencies. The Agencies propose paragraph (b) read: “After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 CFR 450.212, 450.318, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500 through 1508. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration’s Notice of Intent and by appropriate means at the local level.” These minor changes would update the text to be more encompassing of the environmental review requirements and more readable.

In paragraph (d), the Agencies would add language requiring a conflict of interest disclosure for FTA actions. This change would be consistent with proposed modifications to section 771.119(a)(ii) and 40 CFR 1506.5(c). Paragraph (d) would read, “Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c). For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor shall execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor’s scope of work for the preparation of the EIS will not be finalized until the early coordination activities or scoping process found in paragraph (b) is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content).” See the discussion above in § 771.119 for a more robust discussion regarding this proposed addition.

The Agencies propose to add a new paragraph (e). Proposed new paragraph (e) would encourage identification of the preferred alternative in the draft EIS: “The draft EIS should identify the preferred alternative to the extent practicable. If the draft EIS does not identify the preferred alternative, the Administration should provide agencies

and the public with an opportunity after issuance of the draft EIS to review the impacts.” This addition would update the regulations in response to changes created by MAP–21 Section 1319 and is consistent with the Agencies’ “Interim Guidance on MAP–21 Section 1319 Accelerated Decisionmaking in Environmental Reviews” (January 14, 2013) (“Section 1319 Guidance”). It would also provide for the cases where the preferred alternative is not identified in the draft EIS. Section 1319(b) directs the lead agency, to the maximum extent practicable, to expeditiously develop a single document that consists of a final EIS and ROD, unless certain conditions exist. By identifying the preferred alternative in the draft EIS, the lead agencies more easily facilitate issuance of a combined final EIS/ROD document.

The Agencies would also add a new paragraph (f). Proposed new paragraph (f) would allow the lead agency to develop the preferred alternative (or portion thereof) for a project to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with requirements for permitting: “At the discretion of the lead agency, the preferred alternative (or portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with requirements for permitting. The development of such higher level of detail must not prevent the lead agency from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review process.” This concept is not new to the Agencies, as it was codified in 23 U.S.C. 139 via the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) in 2005; the Agencies propose including a direct copy of the codified language (23 U.S.C. 139(f)(4)(d)) in this section. It is important to note that although the development of such higher level of detail is acceptable in some circumstances as noted in the proposed language, the lead agency must make an impartial decision among the alternatives considered in the environmental review process. Including this proposed paragraph would help streamline the environmental review process, particularly in terms of fulfilling permitting requirements and possibly in terms of complying with MAP–21 Section 1319(b). It also would safeguard

the impartiality of the alternative analysis done during the NEPA process.

With the addition of proposed new paragraphs (e) and (f), current paragraphs (e), (f), (g), (h), and (i) would be re-lettered as paragraphs (g), (h), (i), (j), and (k), respectively.

In paragraph (g), the Agencies propose to add a sentence that encourages including a notice on the cover sheet that the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude it. This change would be consistent with MAP-21 Section 1319(b). Paragraph (g) would read: "The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet. The cover sheet should include a notice that after circulation of the draft EIS and consideration of the comments received, the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude issuance of the combined document."

The Agencies propose modifying the first sentence of paragraph (i) (existing paragraph (g)) to read, "The applicant, on behalf of the Administration, shall circulate the draft EIS for comment." This change is non-substantive and would change the current text from passive voice to active voice. In addition, two subparagraphs of paragraph (i) would be slightly modified. In subparagraph (i)(2), the Agencies propose to replace "Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action," with "Cooperating and participating agencies," because the types of agencies listed are typically cooperating or participating agencies in the Agencies' environmental review process. This change is consistent with 23 U.S.C. 139 and 40 CFR 1508.5, and provides additional consistency within the Agencies' regulations. In proposed subparagraph (i)(3), the Agencies would correct a small grammatical error; the word "which" would be replaced with "that." This change would be non-substantive.

The Agencies propose to delete the first two sentences found in existing paragraph (h), which contain specific FHWA and FTA references. The Agencies also propose to revise the third sentence to include a general reference to § 771.111, which would broaden the existing language to clearly apply to both agencies. These changes would be reflected in proposed paragraph (j); the

first sentence would read: "When a public hearing on the draft EIS is held (if required by 23 CFR 771.111), the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing." This rewriting would not change the substance of the paragraph or current practice; a draft EIS would still be required to be available at the public hearing and for a minimum of 15 days in advance of the public hearing, should one be held on the draft EIS, and the reader is directed to § 771.111 for specific Agency information. The remainder of the paragraph would remain unchanged.

#### *Section 771.124 Final Environmental Impact Statement/Record of Decision*

The Agencies propose to add new § 771.124 to address MAP-21 Section 1319(b) development of a combined final EIS/ROD. Section 1319(b) directs Agencies, to the maximum extent practicable, to expeditiously develop a single document that consists of a final EIS and ROD, unless certain conditions exist.

Proposed paragraph (a)(1) would make the section 1319(b) requirement clear and identify the conditions when a combined final EIS/ROD document would not be appropriate: "After circulation of a draft EIS and consideration of comments received, the lead agencies, in cooperation with the applicant (if not a lead agency), shall combine the final EIS and record of decision (ROD), to the maximum extent practicable, unless (1) the final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns, or (2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action." This language is consistent with the MAP-21 language and the Agencies' Section 1319 Guidance.

The existing applicable requirements for both a final EIS and ROD must be met for issuance of a combined final EIS/ROD document. Proposed paragraph (a)(2) clarifies this and refers the reader to other applicable requirements: "When the combined final EIS/ROD is a single document, it shall include the content of a final EIS presented in § 771.125 and present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this title."

Proposed paragraph (a)(3) establishes that both provisions of MAP-21 Section 1319 (*i.e.*, paragraphs (a) and (b)) may be used in concert with each other. The proposed language is: "If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement, which together shall then become the combined final EIS/ROD document." Errata sheets are not new to the Agencies, but the Agencies are including them in this section in response to MAP-21 Section 1319(a) to highlight their potential use, especially with the new combined final EIS/ROD document type. When both errata sheets and a combined final EIS/ROD are used, the combined final NEPA document would consist of the draft EIS, errata sheets, and any additional information required in a final EIS and ROD.

Proposed paragraph (a)(4) establishes that a combined final EIS/ROD must meet legal sufficiency requirements. The proposed language is: "A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration." Legal sufficiency involves ensuring adequate documentation exists to support the final agency action/decision, as well as determining whether the combined final EIS/ROD complies with minimum legal standards of NEPA and other procedural or substantive requirements. It is not new to the Agencies' environmental review process; it is included in this section for consistency with § 771.125.

Proposed paragraph (a)(5) would address Administration approval of the combined final EIS/ROD: "The Administration shall indicate approval of the combined final EIS/ROD by signing the document. The provision on Administration's Headquarters prior concurrence in § 771.125(c) applies to the combined final EIS/ROD."

Proposed paragraph (b) would make clear that the **Federal Register** public availability notice does not establish a comment period for the combined final EIS/ROD: "The **Federal Register** public availability notice published by EPA (40 CFR 1506.10) does not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD."

#### *Section 771.125 Final Environmental Impact Statements*

The Agencies propose deleting paragraph (d) ("The signature of the FTA approving official on the cover sheet also indicates compliance with 49 U.S.C. 5324(b) and fulfillment of the grant application requirements of 49

U.S.C. 5323(b).”) because sections 20016 and 20017 of MAP–21 repealed the environmental review process-related requirements previously found through those statutory references for FTA.

Due to the proposed deletion of paragraph (d), existing paragraphs (e), (f), and (g) would be re-lettered as paragraphs (d), (e), and (f), respectively.

The Agencies propose to modify paragraph (e), previously paragraph (f), by replacing the word “printing” with the word “publication.” This change would address the fact that the final EIS may be produced by electronic means and that paper hardcopies are not required except as necessary to meet State requirements.

The Agencies propose to add a new paragraph (g) that states: “The final EIS may take the form of an errata sheet pursuant to 40 CFR 1503.4(c).” As noted above, this change would make the Agencies’ regulations consistent with MAP–21 Section 1319(a), which provides for the preparation of a final EIS by attaching errata sheets to the draft EIS if certain conditions are met. The use of errata sheets is appropriate when comments received on a draft EIS are minor, and the lead agency’s responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response.

#### *Section 771.127 Record of Decision*

The Agencies propose to modify paragraph (a) to reflect that the minimum 30-day period between final EIS and ROD is incompatible with the publication of a combined final EIS/ROD, as required by MAP–21 Section 1319. The modification would be made by adding the phrase, “When the final EIS is not combined with the ROD,” to the beginning of the first sentence in this paragraph. This change would make clear that the 30-day waiting period between final EIS and ROD applies only for those instances where the final EIS is not combined with the ROD. Under the scenario where the Administration signs a combined final EIS/ROD document, there is no waiting period. In addition, the Agencies propose to remove the last sentence from paragraph (a) (“Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1”) because it is duplicative of § 771.113 and unnecessary to repeat in this section. The changes presented to this paragraph are, therefore, non-substantive.

In paragraph (b), the Agencies propose to modify the language to reflect the possibility of an amended ROD, as well as to include a reference to the combined final EIS/ROD process. In the discussion of a revised ROD, the Agencies would add the text “or amended” before the term “ROD” in both sentences to reflect FTA current practice. Examples of when the Agencies would amend a ROD include where (1) the Administration previously signed a combined final EIS/ROD or ROD and subsequently decides to approve an alternative that was not identified as the preferred alternative but was fully evaluated in the final EIS, or (2) the Administration proposes to make substantial changes to the mitigation measures or findings discussed in the combined final EIS/ROD or ROD. To provide for the combined final EIS/ROD process requirements, the Agencies propose inserting “§ 771.124(a) or” prior to the existing reference to § 771.125(c) at the end of the first sentence, and removing “pursuant to § 771.125(g)” from the second sentence.

#### *Section 771.129 Re-Evaluations*

The Agencies propose to add introductory text before paragraph (a) to provide the purpose and timing of re-evaluations. The introductory text would read: “The Administration shall determine, prior to granting any new approval related to an action or amending any previously approved aspect of an action, including mitigation commitments, whether an approved environmental document remains valid as described below. . . .” This change would clarify the Administration’s responsibility regarding re-evaluations and provide a link to existing paragraphs (a) through (c).

In paragraph (a), the Agencies propose a non-substantive change that changes passive voice to active voice. The Agencies would add the text “The applicant shall prepare a” to the beginning of this paragraph and remove “shall be prepared by the applicant” from later in the sentence. This change clearly states that the applicant is responsible for preparing the written evaluation of the draft EIS.

In paragraph (b), the Agencies propose similar modifying language to clarify that the applicant is responsible for preparing a written evaluation of the final EIS before further Administration approvals may be granted. The first sentence would be modified to read: “The applicant shall prepare a written evaluation of the final EIS before the Administration may grant further approvals if major. . . .” This change

clarifies the actions of the applicant and Administration and is consistent with current practice.

The Agencies propose revising the first sentence in paragraph (c) to include combined final EIS/ROD documents in the list of environmental documents that the Administration issues and to clearly state the Administration’s role. Paragraph (c) would be revised to read: “After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant. . . .” The original language noted “approval” of the ROD, FONSI, or CE designation, but did not state who approved the document nor did the use of “approval” accurately reflect the Administration’s role. The proposed change would clarify that it is the Administration that issues environmental decision documents, which is consistent with other proposals in this rule.

#### *Section 771.130 Supplemental Environmental Impact Statements*

The Agencies propose to delete paragraph (e) from this section (“A supplemental draft EIS may be necessary for major new fixed guideway capital projects proposed for FTA funding if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.”). The FTA proposes deleting this paragraph because it is not necessary to refer specifically to major new fixed guideway capital projects; a supplemental document may be needed for a variety of public transportation projects.

The Agencies propose to modify existing paragraph (f) (proposed paragraph (e) if the deletion noted above is finalized) to add EAs as a supplemental document type that may be used to analyze issues of limited scope; the addition of EAs to this paragraph is consistent with § 771.130(c). The modification would be made by revising the first sentence: “In some cases, an EA or supplemental EIS may be required. . . .” In addition, the Agencies would replace the term “EIS” with “document” in the last sentence of the paragraph and the last sentence of subparagraph (e)(3) to account for the possibility of completing an EA for the supplemental analyses.

#### *Section 771.131 Emergency Action Procedures*

The Agencies propose to add an introductory sentence to the current paragraph in this section to address

emergency and disaster-related CEs. This change would reflect the recently updated Agencies' CEs in §§ 771.117 and 771.118 for FHWA and FTA, respectively. The introductory sentence would read: "Responses to some emergencies and disasters are categorical exclusions under § 771.117 for FHWA or § 771.118 for FTA." In the second sentence, the Agencies would add "Otherwise," to the beginning of the sentence to account for those actions that do not qualify for a CE and must follow current emergency action procedures.

#### *Section 771.133 Compliance With Other Requirements*

The Agencies are proposing to modify the current paragraph by reorganizing the section and adding or modifying text. The existing paragraph would be listed as paragraph (a) and, in accordance with Section 1319 of MAP-21, paragraph (a) would be modified to include "combined final EIS/ROD" as a document type that should comply with requirements of all applicable environmental laws, Executive orders, and other related requirements. In the last sentence of paragraph (a), the Agencies propose changing the reference to "the Administration" to "the FHWA" because the report requirements referenced in the paragraph and found in 23 U.S.C. 128 do not apply to FTA. This is a minor change that accurately reflects legal requirements and current practice.

The Agencies propose to add a new paragraph (b) to provide for the possibility that applicants may want to meet compliance requirements with other laws, regulations or Executive orders through programmatic approaches, consistent with MAP-21 Section 1305(a) (23 U.S.C. 139(b)). This new paragraph would read, "In consultation with the Administration and subject to Administration approval, an applicant may develop a programmatic approach for compliance with the requirements of any law, regulation, or Executive order applicable to the project development process."

#### *Section 771.137 International Actions*

The Agencies propose no changes to § 771.137 in this NPRM.

#### *Section 771.139 Limitations on Actions*

The Agencies propose to modify this section by replacing the 180-day statute of limitations for claims arising under Federal law seeking judicial review of any final decisions by the Administration or by other Federal

agencies on a transportation project announced in the **Federal Register** with a 150-day time period. The Agencies would replace the text "180" with "150". This modification would make the paragraph consistent with MAP-21 Section 1308 (23 U.S.C. 139(l)).

#### *Section 4(f) Regulation Changes (Part 774)*

##### *Section 774.11 Applicability*

In paragraph (i), the Agencies propose to revise the examples of documentation that would be adequate to show that a transportation facility and a Section 4(f) property were concurrently or jointly planned or developed: "(1) Formal reservation of a property for a future transportation use can be demonstrated by a government document created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include: (A) A government map that depicts a transportation facility on the property; (B) a land use or zoning plan depicting a transportation facility on the property; or (C) a fully executed real estate instrument that references a future transportation facility on the property. (2) Concurrent or joint planning or development can be demonstrated by a government document created after, contemporaneously with, or prior to the establishment of the Section 4(f) property. Examples of an adequate document to demonstrate concurrent or joint planning or development include: (A) A government document that describes or depicts the designation or donation of the property for both the potential transportation facility and the Section 4(f) property; or (B) a government agency map, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other." This would expand the current text that provides more limited direction to applicants as to what the Agencies will accept as adequate documentation of concurrent or joint planning or development of a transportation facility and a park, recreation area, or wildlife and waterfowl refuge.

##### *Section 774.13 Exceptions*

In paragraph (e), the Agencies propose to revise the exception to read: "Projects for the Federal lands transportation

facilities described in 23 U.S.C. 101(a)(8)." This replaces: "Park road or parkway projects under 23 U.S.C. 204." This change is necessary due to the restructuring of the Federal Lands Highway Program by MAP-21, and more specifically, to implement Section 1119(c)(2) of MAP-21, which revised and broadened the Section 4(f) exception for park road and parkway projects to apply to Federal lands transportation facilities. Federal lands transportation facilities are public highways, roads, bridges, trails, and transit systems that are located on, adjacent to, or provide access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appear on the national Federal lands transportation facility inventory described in 23 U.S.C. 203(c).

In paragraph (g), the Agencies propose to revise the exception to read: "Transportation enhancement activities, transportation alternatives projects, and mitigation activities . . ." This replaces: "Transportation enhancement projects and mitigation activities . . ." This change is necessary because Section 1122 of MAP-21 replaced the former "transportation enhancement projects program" with a new "transportation alternatives projects program." This exception would continue to be limited to situations where the official(s) with jurisdiction over the Section 4(f) resource agrees that "the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection."

#### **Statutory/Legal Authority for This Rulemaking**

The Agencies derive explicit authority for this rulemaking action from 49 U.S.C. 322(a), which provides authority to "[a]n officer of the Department of Transportation [to] prescribe regulations to carry out the duties and powers of the officer." The Secretary delegated this authority to the Agencies in 49 CFR 1.81(a)(3), which provides that the authority to prescribe regulations contained in 49 U.S.C. 322(a) is delegated to each Administrator "with respect to statutory provisions for which authority is delegated by other sections in [49 CFR part 1]." The Secretary has delegated authority to the Agencies to implement NEPA and Section 4(f), the statutes implemented by this rule, in 49 CFR 1.81(a)(4) and (5). Moreover, the CEQ regulations that implement NEPA provide at 40 CFR 1507.3 that agencies shall continue to review their policies and NEPA implementing procedures

and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA.

#### **Rulemaking Analyses and Notices**

The agencies will consider all comments received before the close of business on the comment closing date indicated above and will be available for examination in the docket (FHWA–2015–0011) at regulations.gov. Comments received after the comment closing date will be filed in the docket and the Agencies will consider them to the extent practicable. In addition to late comments, the Agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. The Agencies may publish a final rule at any time after close of the comment period.

#### **Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

Executive Orders 12866 and 13563 direct agencies to assess all 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). The Agencies have determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 nor would it be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures (44 FR 11032, February 26, 1979). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Agencies anticipate that the economic impact of this rulemaking would be minimal. The Agencies do not have specific data to assess the monetary value of the benefits from the proposed changes because such data does not exist and would be difficult to develop.

This NPRM proposes to modify 23 CFR parts 771 and 774 in order to be consistent with changes introduced by MAP–21 as well as to provide clarification and make the regulation more consistent with the Agencies' practices. These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes

would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. The Agencies anticipate that the changes in this NPRM would enable projects to move more expeditiously through the Federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA or Section 4(f) while still ensuring that projects are built in an environmentally responsible manner. The Agencies request comment, including data and information on the experiences of project sponsors, on the likely effects of the changes being proposed.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The proposed revisions are expected to expedite environmental review and thus are anticipated to be less than any current impact on small business entities.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$148.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

#### **Executive Order 13132 (Federalism Assessment)**

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory

policies that may 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 Agencies analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The Agencies invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

#### **Executive Order 13175 (Tribal Consultation)**

The Agencies have analyzed this action under Executive Order 13175, and determined that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

The Agencies have analyzed this action under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Agencies have determined that this action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### **Executive Order 12372 (Intergovernmental Review)**

The DOT's regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities (49 CFR part 17) apply to this program. Accordingly, the Agencies solicit comments on this issue.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or

require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

#### **Executive Order 12988 (Civil Justice Reform)**

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

#### **Executive Order 12898 (Environmental Justice)**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and DOT Order 5610.2(a), 91 FR 27534 (May 10, 2012) (available online at [www.fhwa.dot.gov/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/index.cfm](http://www.fhwa.dot.gov/environmental_justice/ej_at_dot/order_56102a/index.cfm)), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive order and the DOT Order in all rulemaking activities. In addition, both Agencies have issued additional documents relating to administration of the Executive order and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (available online at [www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm](http://www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm)). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients*, 77 FR 42077 (July 17, 2012) (available online at [http://www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html)).

The Agencies have evaluated this proposed rule under the Executive order, the DOT Order, the FHWA Order, and the FTA Circular. The Agencies have determined that the proposed changes to 23 CFR part 771, if finalized as proposed, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

At the time the Agencies apply the NEPA implementing procedures in 23

CFR part 771, the Agencies would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects resulting from a proposed Agency action covered under any of the NEPA classes of action in 23 CFR part 771, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. See DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed, outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies have determined that no further EJ analysis is needed and no mitigation is required in connection with the proposed revisions to the Agencies' NEPA and Section 4(f) implementing regulations (23 CFR parts 771 and 774).

#### **Executive Order 13045 (Protection of Children)**

The Agencies have analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks*. The Agencies certify that this action would not be an economically significant rule and would not cause an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*.

#### **National Environmental Policy Act**

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before

establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The changes proposed in this rule are part of those agency procedures, and therefore establishing the proposed changes does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

#### **Regulation Identifier Number**

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects**

*23 CFR Part 771*

Environmental review process, Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mitigation plans, Programmatic approaches, Public lands, Recreation areas, Reporting and recordkeeping requirements.

*23 CFR Part 774*

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass Transportation, Public Lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

*49 CFR Part 622*

Environmental impact statements, Environmental review process, Grant programs—transportation, Mitigation plans, Programmatic approaches, Public transportation, Recreation areas, Reporting and recordkeeping requirements, Transit.



Issued in Washington, DC, on November 10, 2015, under authority delegated in 49 CFR 1.85 and 1.91.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

**Therese W. McMillan,**

*Acting Administrator, Federal Transit Administration.*

In consideration of the foregoing, the Agencies propose to amend title 23, Code of Federal Regulations parts 771 and 774, and title 49, Code of Federal Regulations part 622, as follows:

## **TITLE 23—Highways**

### **PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES**

■ 1. Revise authority citation for part 771 to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303; 40 CFR parts 1500–1508; 49 CFR 1.81, 1.85, and 1.91; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319.

■ 2. Revise § 771.101 to read as follows:

#### **§ 771.101 Purpose.**

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FTA and Department of Transportation (DOT) requirements under NEPA for the processing of highway and public transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, and 327; 49 U.S.C. 303 and 5323(q); and Public Law 112–141, 126 Stat. 405, sections 1301 and 1319.

■ 3. Revise § 771.105 and its footnote to read as follows:

#### **§ 771.105 Policy.**

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by this regulation.<sup>1</sup>

<sup>1</sup> FHWA and FTA have supplementary guidance on environmental documents and procedures for their programs available on the Internet at <http://www.fhwa.dot.gov> and <http://www.fta.dot.gov>, or in hardcopy by request.

(b) Programmatic approaches be developed for compliance with environmental requirements, coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.

(c) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(d) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(e) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive order, or Administration regulation or policy.

(f) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(g) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

■ 4. Revise § 771.107 to read as follows:

#### **§ 771.107 Definitions.**

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

**Action.** A highway or transit project proposed for FHWA or FTA funding. It also includes activities such as joint and multiple use permits, changes in access

control, etc., which may or may not involve a commitment of Federal funds.

**Administration.** The FHWA or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the FHWA, or FTA, or a State when the State is functioning as the FHWA or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. A reference herein to the FHWA or FTA means the State when the State is functioning as the FHWA or FTA respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. Nothing in this definition alters the scope of any delegation or assignment made by FHWA or FTA.

**Administration action.** FHWA or FTA approval of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

**Applicant.** Any Federal, State, local, or federally-recognized Indian tribal governmental unit that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this section) may assume the responsibilities of the applicant in this part. If there is no applicant then the Federal lead agency will assume the responsibilities of the applicant in this part.

**Environmental studies.** The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

**Lead agencies.** The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulation.

**Participating agency.** A Federal, State, local, or federally-recognized Indian tribal governmental unit that may have an interest in the proposed project and has accepted an invitation to be a participating agency, or, in the case of a Federal agency, has not declined the invitation in accordance with 23 U.S.C. 139(d)(3).

**Programmatic approaches.** An approach that reduces the need for

[www.fhwa.dot.gov](http://www.fhwa.dot.gov) and <http://www.fta.dot.gov>, or in hardcopy by request.

project-by-project reviews, eliminates repetitive discussion of the same issue, or focuses on the actual issues ripe for analyses at each level of review, while maintaining appropriate consideration for the environment.

*Project sponsor.* The Federal, State, local, or federally-recognized Indian tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project. The project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant.

*Section 4(f).* Refers to 49 U.S.C. 303 and 23 U.S.C. 138 (as implemented by 23 CFR part 774).

■ 5. Amend § 771.109 by revising paragraph (b) and adding paragraph (c)(7) to read as follows:

**§ 771.109 Applicability and responsibilities.**

\* \* \* \* \*

(b)(1) The applicant, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation unless the Administration approves of their deletion or modification in writing. The FHWA will assure that this is accomplished as a part of its stewardship and oversight responsibilities. The FTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(2) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, FHWA shall ensure that the State highway agency constructs the project in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents.

(c) \* \* \*

(7) A participating agency is responsible for providing input, as appropriate, during the times specified in the coordination plan under 23 U.S.C. 139(g), and providing comments and concurrence on a schedule if included within the coordination plan.

\* \* \* \* \*

■ 6. Revise § 771.111 to read as follows:

**§ 771.111 Early coordination, public involvement, and project development.**

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental review document an action requires, the scope of the

document, the level of analysis, and related environmental requirements. These activities contribute to reducing or eliminating delay, duplicative processes, and conflict by incorporating planning outcomes that have been reviewed by agencies and Indian tribal partners in project development.

(2)(i) The information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR parts 1500 through 1508, 23 CFR part 450, or 23 U.S.C. 168.

(ii) The planning process described in paragraph (a)(2)(i) may include mitigation actions consistent with a programmatic mitigation plan developed pursuant to 23 U.S.C. 169 or from a programmatic mitigation plan developed outside of that framework.

(3) Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (see 23 CFR 771.115) and related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action.

(c) When both the FHWA and FTA are involved in the development of an action, or when the FHWA or FTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139. Agencies with special expertise may be invited to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States and Federal land management entities that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.

(f) Any action evaluated through a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139 and CEQ regulation.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required

to comply with public involvement requirements of other laws, Executive orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning.

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(vii) An opportunity for public involvement in defining the purpose and need and the range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139.

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 49 U.S.C. 303(d).

(i) Applicants for capital assistance in the FTA program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seeking input from the public through scoping for the environmental review process. Project milestones may be announced to the public using electronic or paper media (*e.g.*, newsletters, note cards, or emails) pursuant to 40 CFR 1506.6. For actions requiring EISs, an early opportunity for public involvement in defining the purpose and need for action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS.

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts are underway. Notice of early scoping must be made to the public and other

agencies. If early scoping is the start of the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FTA will publish the Notice of Intent if it is determined at that time that the proposed action requires an EIS. The Notice of Intent will establish a 30-day period for comments on the purpose and need and the alternatives.

(3) Are encouraged to post and distribute materials related to the environmental review process, including but not limited to, NEPA documents (*e.g.*, EAs and EISs), environmental studies (*e.g.*, technical reports), public meeting announcements, and meeting minutes, through publicly-accessible electronic means, including project Web sites. Applicants are encouraged to keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Are encouraged to post all findings of no significant impact (FONSI), combined final environmental impact statement (FEIS)/records of decision (ROD), and RODs on a project Web site until the project is constructed and open for operation.

(j) Information on the FTA environmental process may be obtained from: Director, Office of Environmental Programs, Federal Transit Administration, Washington, DC 20590, or [www.fta.dot.gov](http://www.fta.dot.gov). Information on the FHWA environmental process may be obtained from: Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590, or [www.fhwa.dot.gov](http://www.fhwa.dot.gov).

■ 7. Revise § 771.113 to read as follows:

**§ 771.113 Timing of Administration activities.**

(a) The lead agencies, in cooperation with the applicant and project sponsor as appropriate, will perform the work necessary to complete the environmental review process. This work includes drafting environmental documents and completing studies, related engineering studies, agency coordination, and public involvement. Except as otherwise provided in law or in paragraph (d) of this section, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

(1)(i) The action has been classified as a CE;

(ii) The Administration has issued a FONSI; or

(iii) The Administration has issued a combined final EIS/ROD or a final EIS and ROD;

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For activities proposed for FHWA action, completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental review documents unless otherwise specified by the approving official.

(c) Letters of Intent issued under the authority of 49 U.S.C. 5309(g) are used by FTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by FTA until the NEPA process is completed.

(d) The prohibition in paragraph (a)(1) of this section is limited by the following exceptions:

(1) Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA. Exceptions for the acquisitions of real property are addressed in paragraphs (c)(6) and (d)(3) of § 771.118 for FTA.

(2) The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.

(3) A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).

■ 8. Revise § 771.115 to read as follows:

**§ 771.115 Classes of actions.**

There are three classes of actions which prescribe the level of documentation required in the NEPA process. A programmatic approach may be used for any class of action.

(a) EIS (Class I). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) Construction or extension of a fixed transit facility (*e.g.*, rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation right-of-way.

(4) For FHWA actions, new construction or extension of a separate roadway for buses or high occupancy

vehicles not located within an existing highway facility.

(5) For FTA actions, new construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.

(b) CE (Class II). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA actions or pursuant to § 771.118(c) for FTA actions. When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d) for FHWA actions or pursuant to § 771.118(d) for FTA actions.

(c) EA (Class III). Actions in which the Administration has not clearly established the significance of the environmental impact. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

■ 9. Revise § 771.119 to read as follows:

**§ 771.119 Environmental assessments.**

(a)(i) The applicant shall prepare an EA in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(ii) For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor shall execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor's scope of work for the preparation of the EA will not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse

environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through early coordination activities or through a scoping process. The applicant shall summarize the public involvement process and include the results of agency coordination in the EA.

(c) The Administration must approve the EA before it is made available to the public as an Administration document.

(d) The applicant does not need to circulate the EA for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. The applicant shall send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, State and local government. The applicant shall also send notice to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the environmental review process for an action, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The applicant shall publish a notice of the public hearing in local newspapers that announces the availability of the EA and where it may be obtained or reviewed. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses

thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA shall be prepared in accordance with the applicable provisions of that statute.

■ 10. Revise § 771.121 to read as follows:

**§ 771.121 Findings of no significant impact.**

(a) The Administration will review the EA, comments submitted on the EA (in writing or at public hearings/meetings), and other supporting documentation, as appropriate. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After the Administration issues a FONSI, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State, and local government, and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding or approval, the Administration will evaluate the other agency's EA/FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's EA/FONSI. If environmental

issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

■ 11. Revise § 771.123 to read as follows:

**§ 771.123 Draft environmental impact statements.**

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e) and the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 CFR 450.212, 450.318, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500–1508. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c). For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor shall execute an FTA conflict of interest

disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor's scope of work for the preparation of the EIS will not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content).

(e) The draft EIS should identify the preferred alternative to the extent practicable. If the draft EIS does not identify the preferred alternative, the Administration should provide agencies and the public with an opportunity after issuance of the draft EIS to review the impacts.

(f) At the discretion of the lead agency, the preferred alternative (or portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with requirements for permitting. The development of such higher level of detail must not prevent the lead agency from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review process.

(g) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet. The cover sheet should include a notice that after circulation of the draft EIS and consideration of the comments received, the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude issuance of the combined document.

(h) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(i) The applicant, on behalf of the Administration, shall circulate the draft EIS for comment. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR

1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Cooperating and participating agencies. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(j) When a public hearing on the draft EIS is held (if required by 23 CFR 771.111), the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(k) The **Federal Register** public availability notice (40 CFR 1506.10) shall establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

■ 12. Add § 771.124 to read as follows:

**§ 771.124 Final environmental impact statement/record of decision document**

(a)(1) After circulation of a draft EIS and consideration of comments received, the lead agencies, in cooperation with the applicant (if not a lead agency), shall combine the final EIS and record of decision (ROD), to the maximum extent practicable, unless:

(i) The final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

(2) When the combined final EIS/ROD is a single document, it shall include the content of a final EIS presented in § 771.125 and present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this title.

(3) If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement, which together shall then become the combined final EIS/ROD.

(4) A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration.

(5) The Administration shall indicate approval of the combined final EIS/ROD by signing the document. The provision on Administration's Headquarters prior concurrence in § 771.125(c) applies to the combined final EIS/ROD.

(b) The **Federal Register** public availability notice published by EPA (40 CFR 1506.10) does not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD.

■ 13. Amend § 771.125 as follows:

■ a. Remove paragraph (d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f);

■ b. Revise newly redesignated paragraphs (e) through (f) and add new paragraph (g).

The revisions read as follows:

**§ 771.125 Final environmental impact statements.**

\* \* \* \* \*

(e) The initial publication of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(f) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may

provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

(g) The final EIS may take the form of an errata sheet pursuant to 40 CFR 1503.4(c).

■ 14. Revise § 771.127 to read as follows:

**§ 771.127 Record of decision.**

(a) When the final EIS is not combined with the ROD, the Administration will complete and sign a ROD no sooner than 30 days after publication of the final EIS notice in the **Federal Register** or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required Section 4(f) approval in accordance with part 774 of this title.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised or amended ROD shall be subject to review by those Administration offices which reviewed the final EIS under § 771.124(a) or § 771.125(c). To the extent practicable the approved revised or amended ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS.

■ 15. Revise § 771.129 to read as follows:

**§ 771.129 Re-evaluations.**

The Administration shall determine, prior to granting any new approval related to an action or amending any previously approved aspect of an action, including mitigation commitments, whether an approved environmental document remains valid as described below:

(a) The applicant shall prepare a written evaluation of the draft EIS in cooperation with the Administration if

an acceptable final EIS is not submitted to the Administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) The applicant shall prepare a written evaluation of the final EIS before the Administration may grant further approvals if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action.

■ 16. Amend § 771.130 by removing paragraph (e) and redesignating paragraph (f) as paragraph (e), and revising it to read as follows:

**§ 771.130 Supplemental environmental impact statements.**

\* \* \* \* \*

(e) In some cases, an EA or supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental document shall not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities, for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental document is completed.

■ 17. Revise § 771.131 to read as follows:

**§ 771.131 Emergency action procedures.**

Responses to some emergencies and disasters are categorical exclusions under § 771.117 for FHWA or § 771.118

for FTA. Otherwise, requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

■ 18. Revise § 771.133 to read as follows:

**§ 771.133 Compliance with other requirements.**

(a) The combined final EIS/ROD, final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the combined final EIS/ROD, final EIS or FONSI is prepared, the combined final EIS/ROD, final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

(b) In consultation with the Administration and subject to Administration approval, an applicant may develop a programmatic approach for compliance with the requirements of any law, regulation, or Executive order applicable to the project development process.

**§ 771.139 [Amended]**

■ 19. Revise § 771.139 by replacing "180" with "150" in the second and third sentences.

**PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(f))**

■ 20. Revise the authority citation for part 774 to read as follows:

**Authority:** 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.81 and 1.91.

■ 21. Revise § 774.11(i) to read as follows:

**§ 774.11 Applicability.**

\* \* \* \* \*

(i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established, and

concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in § 774.17.

(1) Formal reservation of a property for a future transportation use can be demonstrated by a government document created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include:

(i) A government map that depicts a transportation facility on the property;

(ii) A land use or zoning plan depicting a transportation facility on the property; or

(iii) A fully executed real estate instrument that references a future transportation facility on the property.

(2) Concurrent or joint planning or development can be demonstrated by a government document created after, contemporaneously with, or prior to the establishment of the Section 4(f) property. Examples of an adequate document to demonstrate concurrent or joint planning or development include:

(i) A government document that describes or depicts the designation or donation of the property for both the potential transportation facility and the Section 4(f) property; or

(ii) A government agency map, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

■ 22. Amend § 774.13 by revising paragraphs (e) and (g) to read as follows:

**§ 774.13 Exceptions.**

\* \* \* \* \*

(e) Projects for the Federal lands transportation facilities described in 23 U.S.C. 101(a)(8).

\* \* \* \* \*

(g) Transportation enhancement activities, transportation alternatives projects, and mitigation activities, where:

(1) The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and

(2) The official(s) with jurisdiction over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.

**TITLE 49—Transportation**

**PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES**

■ 23. Amend authority citation for part 622 to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; and Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319.

[FR Doc. 2015–29413 Filed 11–19–15; 8:45 am]

**BILLING CODE 4910–22–P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 5**

[Docket No. FR–5863–P–01]

**RIN 2506–AC40**

**Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** As the Nation's housing agency, HUD administers programs designed to meet the goal of ensuring decent housing and a suitable living environment for all. In furtherance of this goal, in February 2012, HUD promulgated a final rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" (Equal Access Rule), which requires that HUD-assisted and HUD-insured housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status, and which generally prohibits inquiries into sexual orientation or gender identity for the purpose of determining eligibility for such housing or otherwise making such housing available. HUD's Equal Access Rule provides a limited exception for inquiries about the sex of an individual to determine eligibility for housing provided or to be provided to the individual when the housing is a temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or for inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled. At that time, HUD decided not to set national policy regarding how transgender persons would be accommodated in temporary, emergency shelters that involve shared sleeping quarters or shared bathing facilities, but instead decided to monitor and review

its programs to determine if transgender individuals had greater access to temporary, emergency shelters as a result of the rule or if additional guidance or a national policy was warranted. HUD also committed to review the prohibition on inquiries contained in the Equal Access Rule. HUD has now monitored and reviewed its programs and, based on that review, is proposing this rule to require recipients and subrecipients of assistance from HUD's Office of Community Planning and Development (CPD), as well as owners, operators, and managers of shelters, buildings, and other facilities and providers of services covered by CPD's programs, to provide transgender persons and other persons who do not identify with the sex they were assigned at birth with access to programs, benefits, services, and accommodations in accordance with their gender identity. This proposed rule would also amend the definition of "gender identity" included in HUD's Equal Access Rule so the definition more clearly reflects the difference between actual and perceived gender identity. Finally, HUD has completed its review of the inquiries provision, and the proposed rule would eliminate the Equal Access Rule's current prohibition on inquiries related to sexual orientation or gender identity, while maintaining the prohibition against discrimination on those bases.

**DATES:** *Comment Date:* January 19, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to

make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

**No Facsimile Comments.** Facsimile (fax) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments can access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In order to address evidence of arbitrary exclusion of lesbian, gay, bisexual, and transgender individuals (LGBT) and their families from housing opportunities, HUD published its Equal Access Rule in the **Federal Register** on February 3, 2012, at 77 FR 5662. The Equal Access Rule, codified primarily at 24 CFR 5.100 and 5.105(a)(2) and in applicable program regulations, defines the terms sexual orientation and gender identity, at 24 CFR 5.100, and requires, at 24 CFR 5.105(a)(2), that housing assisted or insured by HUD be made available to individuals and families

without regard to an individual's actual or perceived sexual orientation, gender identity, or marital status. Certain other rules governing HUD housing programs were revised to clarify that all otherwise eligible families, regardless of sexual orientation, gender identity, or marital status of any member, have the opportunity to participate in HUD programs. The 2012 rule also revised 24 CFR 203.33(b) by adding sexual orientation and gender identity, in addition to marital status, to the characteristics that an FHA-certified lender may not take into consideration in determining the adequacy of a mortgagor's income.

Further, § 5.105(a)(2)(ii) prohibits owners and administrators of HUD-assisted or HUD-insured housing, approved lenders in a Federal Housing Administration (FHA) mortgage insurance program, and any other recipients or subrecipients of HUD funds from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing or otherwise make such housing available. The prohibition on inquiries regarding sexual orientation or gender identity does not prohibit individuals from voluntarily self-identifying sexual orientation or gender identity. Further, the rule provides a limited exception for inquiries about the sex of an individual to determine eligibility for housing provided or to be provided in temporary, emergency shelters with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled.

In response to public comments recommending that HUD-assisted programs accommodate individuals in accordance with their gender identity, HUD stated in the preamble to the Equal Access Rule that it was not adopting a national policy on the placement of transgender persons in temporary, emergency shelters with shared sleeping quarters or shared bathing facilities at that time, but would instead monitor its programs to determine whether additional guidance or a national policy was needed to ensure equal access. In response to comments on the permissibility of inquiries about an individual's sex, HUD stated in the preamble to the Equal Access Rule that HUD would monitor its programs and review the prohibition on inquiries to determine whether additional guidance was necessary to provide transgender individuals with equal access to shelters and other housing. The Fair Housing



Act<sup>1</sup> prohibits discrimination in the sale, rental, making unavailable, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, and national origin, and thus prohibits making housing unavailable to a person because of that person's sex. However, temporary, emergency shelters and other buildings and facilities that are not covered by the Fair Housing Act<sup>2</sup> because they provide short-term, temporary accommodations may provide sex-segregated accommodations, when the buildings and facilities have physical limitations or configurations that require shared sleeping quarters or shared bathing facilities.<sup>3</sup>

Since the publication of the Equal Access Rule, HUD has conducted further review on the issue of transgender individuals' access to temporary, emergency shelters and other facilities with physical limitations or configurations that require shared sleeping quarters or bathing facilities, both in terms of individual cases and evidence from broader research. In this regard, HUD and the U.S. Interagency Council on Homelessness conducted a listening session on LGBT issues at the National Alliance to End Homelessness's 2012 National Conference on Ending Homelessness, where homeless service providers reported that, if given the choice between a shelter designated for their assigned birth sex or sleeping on the streets, many transgender shelter-seekers would choose the streets.<sup>4</sup> One participant reported that, in her community, transgender women are excluded from the women's shelter, and conditions for them are so dangerous at the men's shelter that the shelter forces them to try to disguise their gender identity. HUD has also investigated several cases in which transgender persons have not been provided equal

access to housing as required by the Equal Access Rule or have faced discrimination under the Fair Housing Act because of nonconformance with gender stereotypes.

National research indicates that these denials of access are a common occurrence. According to one major national survey on the experiences of transgender persons, nearly half (47 percent) of all transgender respondents who accessed shelters left those shelters because of the treatment they received there—choosing the street over the abuse and indignity they experienced in the shelters.<sup>5</sup> This survey further reported that 25 percent of transgender individuals who stayed in shelters were physically assaulted, and 22 percent were sexually assaulted, by another resident or shelter staff.<sup>6</sup>

The experiences of homeless transgender youth, specifically, have also been documented, with similar findings of lack of access to housing and services. While research suggests that transgender youth represent less than one percent of the youth in the United States,<sup>7</sup> a disproportionately high 6.8 percent of youth living on the streets identify as transgender.<sup>8</sup> In addition, a report detailing case studies of runaway and homeless youth found that transgender youth were particularly at risk of emotional distress resulting from discrimination or harassment because of gender identity and supported establishing clear nondiscrimination and antiharassment policies relating to gender identity. With respect to facilities with shared sleeping or bathing areas, the policies recommended include addressing the needs of transgender persons and other persons who do not identify with the sex assigned to the individual at birth.<sup>9</sup> A recent report on experiences of homeless LGBT youth also calls for the creation of safe and supportive protocols for housing and placement specific to transgender individuals and

individuals who do not conform with gender stereotypes.<sup>10</sup>

HUD has also reviewed steps that other Federal agencies have taken since the Equal Access Rule was promulgated in February 2012 to provide equal access for transgender persons and other persons who do not conform with gender stereotypes.

*U.S. Department of Justice Guidance.* On April 9, 2014, the Office for Civil Rights, Office of Justice Programs, at the U.S. Department of Justice (DOJ) published guidance entitled "Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013"<sup>11</sup> (VAWA 2013 FAQ). VAWA 2013 authorizes certain grants administered by DOJ, including grants to provide housing assistance for survivors of domestic violence. VAWA 2013 also imposes a new grant condition that prohibits discrimination by recipients of such grants on the basis of sexual orientation and gender identity. The VAWA 2013 FAQ, which is not applicable to HUD-assisted housing,<sup>12</sup> addresses how a recipient of DOJ funds can operate a single-sex facility funded through VAWA and not discriminate on the basis of gender identity. The DOJ guidance states:

A recipient that operates a sex-segregated or sex-specific program should assign a beneficiary<sup>13</sup> to the group or service which corresponds to the gender with which the beneficiary identifies, with the following considerations. In deciding how to house a victim, a recipient that provides sex-segregated housing may consider on a case-by-case basis whether a particular housing assignment would ensure the victim's health and safety. A victim's own views with respect to personal safety deserve serious consideration. The recipient should ensure that its services do not isolate or segregate victims based upon actual or perceived gender identity. A recipient may not make a determination about services for one beneficiary based on the complaints of another beneficiary when those complaints are based on gender identity.

For the purpose of assigning a beneficiary to sex-segregated or sex-specific services, best practices dictate that the recipient should ask a transgender beneficiary which group or service the beneficiary wishes to join. The

<sup>1</sup> 42 U.S.C. 3601 *et seq.* The Fair Housing Act contains no exemptions that permit covered housing to be sex-segregated. See 42 U.S.C. 3603(b) (limited exemptions for sales of certain single-family homes and for rooms or units in certain owner-occupied dwellings), sec. 3607 (exemptions for private clubs and religious organizations).

<sup>2</sup> An emergency shelter and other building and facility that would not qualify as dwellings under the Fair Housing Act are not subject to the Act's prohibition against sex discrimination and thus may be permitted by statute to be sex-segregated.

<sup>3</sup> For purposes of this proposed rule, shared sleeping quarters or shared bathing facilities are those that do not accommodate privacy. For example, a single user bathing facility with a lock on the door accommodates privacy, so it is not a "shared bathing facility" for purposes of the Equal Access Rule or this proposed rule.

<sup>4</sup> See [http://usich.gov/blog/hud\\_usich\\_hears\\_from\\_you\\_understanding\\_the\\_needs\\_of\\_the\\_lgbt\\_homeless\\_popul](http://usich.gov/blog/hud_usich_hears_from_you_understanding_the_needs_of_the_lgbt_homeless_popul).

<sup>5</sup> Jamie M. Grant *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality, 118 (2011).

<sup>6</sup> See Jamie M. Grant *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality, footnote 5 at 117–18 (2011).

<sup>7</sup> Hannah Hussey, *Beyond 4 walls and a Roof: Addressing Homelessness Among Transgender Youth*, Center for American Progress, 4 (2015).

<sup>8</sup> Administration for Children and Families, *Street Outreach Program: Data Collection Project Executive Summary* (U.S. Department of Health and Human Services, 2014).

<sup>9</sup> Andrew Burwick *et al.*, *Identifying and Serving LGBTQ Youth: Case Studies of Runaway and Homeless Youth Program Grantees*, Mathematica Policy Research and the Williams Institute, 19 (2014).

<sup>10</sup> Meredith Dank *et al.*, *Surviving the streets of New York: Experiences of LGBTQ youth, YMSM, and YSW Engaged in Survival Sex*. Urban Institute, 70 (2015).

<sup>11</sup> The guidance can be found at <http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

<sup>12</sup> Unlike HUD program statutes, which do not authorize single-sex housing, VAWA 2013 specifically authorizes funding for single-sex shelters in certain narrowly defined circumstances.

<sup>13</sup> The beneficiary is the individual seeking services from the recipient or service provider.

recipient may not, however, ask questions about the beneficiary's anatomy or medical history or make burdensome demands for identity documents.<sup>14</sup>

*U.S. Department of Education Guidance.* Similarly, on December 1, 2014, the U.S. Department of Education's Office for Civil Rights issued guidance providing that "under Title IX [of the Education Amendments of 1972, which prohibits discrimination based on sex], a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes."<sup>15</sup>

Given HUD's mission to provide equal housing opportunities for all, and the significant violence, harassment, and discrimination faced by transgender individuals and other persons who do not identify with the sex they were assigned at birth in attempting to access programs, benefits, services, and accommodations, HUD has a responsibility to provide leadership in establishing a policy for HUD's community development programs that addresses these serious concerns. After considering the feedback from HUD recipients and subrecipients, the experiences of the beneficiaries of HUD's community development programs who have been denied access because of their gender identity, research on transgender discrimination in shelter settings, and the actions taken by other Federal agencies to address access to programs, benefits, services,

and accommodations in accordance with an individual's gender identity, CPD released Notice CPD-015-02, "Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities," applicable to the Housing Opportunities for Persons with AIDS, Emergency Solutions Grants, and Continuum of Care programs, on February 20, 2015.<sup>16</sup> This guidance states:

HUD assumes that a recipient or subrecipient ("provider") that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities will place a potential client (or current client seeking a new assignment) in a shelter or facility that corresponds to the gender with which the person identifies, taking health and safety concerns into consideration. A client's or potential client's own views with respect to personal health and safety should be given serious consideration in making the placement. For instance, if the potential client requests to be placed based on his or her sex assigned at birth, HUD assumes that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns. HUD assumes that a provider will not make an assignment or re-assignment based on complaints of another person when the sole stated basis of the complaint is a client or potential client's non-conformance with gender stereotypes.<sup>17</sup>

CPD's guidance also outlines best practices for appropriate and inappropriate inquiries related to sex, and states that where a provider is uncertain of the client's sex or gender identity, the provider informs the client or potential client that the agency provides shelter based on the individual's gender identity. The guidance further states that there generally is no legitimate reason for the provider to request documentation of a person's sex in order to determine appropriate placement, nor should the provider have any basis to deny access to a single-sex emergency shelter or facility solely because the provider possesses identity documents indicating a sex different than the client's or potential client's gender identity. Further, the provider may not ask questions or otherwise seek information or documentation concerning the person's anatomy or medical history, nor consider a client ineligible for an emergency shelter or other facility because the client's appearance or

behavior does not conform with gender stereotypes. In addition, the guidance provides examples of steps that providers may take to address safety or privacy concerns, and says that providers should train staff on adhering to this guidance.<sup>18</sup>

## II. This Proposed Rule

To adopt requirements consistent with the guidance recently published by HUD, HUD is proposing to add in 24 CFR part 5 a new section that would require recipients and subrecipients of assistance under the HOME Investment Partnerships program, Community Development Block Grant program, Housing Opportunities for Persons with AIDS program, Emergency Solutions Grants program, and the Continuum of Care program, as well as owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any of these programs, to provide equal access to programs, benefits, services, and accommodations in accordance with an individual's gender identity. If the proposed rule becomes a final rule, the final rule would be effective upon receipt of assistance after the effective date of the final rule. Nothing in this proposed rule is meant to prevent necessary and appropriate steps to address any fraudulent attempts to access services or legitimate safety concerns that may arise in any shelter, building, or facility covered by this rule.

Prior to discussing the requirements that would be established in this section, it is important to clarify which individuals would be covered by the protections of this new section. While some individuals refer to themselves as transgender, other persons who do not identify with the sex they were assigned at birth may use other terms to describe themselves. For this reason, the proposed rule seeks to ensure that all individuals, regardless of the terms they use to describe themselves, are afforded equal access to programs, benefits, services, and accommodations in accordance with their gender identity.

The following requirements would be established by this proposed rule:

### *§ 5.100—Revised definition of gender identity.*

HUD is proposing to amend the definition of gender identity in § 5.100, which currently provides that "Gender identity means actual or perceived gender-related characteristics." This

<sup>14</sup> See Department of Justice, Frequently Asked Questions: Nondiscrimination Grant Conditions in the Violence Against Women Reauthorization Act of 2013 (Apr. 9, 2013), FAQ 14, available at <http://www.ovw.usdoj.gov/docs/faqs-ngc-wawa.pdf>.

<sup>15</sup> The guidance can be found at <http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf>. In this guidance the Department of Education considers discrimination based on gender identity as a form of sex discrimination. The guidance states, in relevant part: "All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes." See also the Department of Education's guidance, "Questions and Answers on Title IX and Sexual Violence," which makes clear that sexual violence against transgender students is a form of sex discrimination prohibited by Title IX. The guidance can be found at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. In addition to this guidance, the Department of Labor, Office of Job Corps, issued guidance ensuring equal access and opportunity for transgender applicants and students in the Job Corps Program; see "Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program" issued May 1, 2015, available at <https://supportservices.jobcorps.gov/health/Pages/PINotices.aspx>.

<sup>16</sup> See <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

<sup>17</sup> See <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

<sup>18</sup> See <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

definition of gender identity, which was adopted by HUD in its 2012 Equal Access Rule for purposes of ensuring equal access in HUD-assisted and HUD-insured housing, is the same definition that was used in the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. 249. While this definition is effective for purposes of prosecuting hate crimes, HUD has concluded that it would be more effective for purposes of ensuring equal access to HUD programs to separate the definitions of actual and perceived gender identity. The Department is therefore proposing to amend the definition of gender identity to read as follows: “Gender identity means the gender with which a person identifies, regardless of the sex assigned to that person at birth. Perceived gender identity means the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender-related characteristics, or sex assigned to the individual at birth.” Perceived gender identity may differ from the identity with which a person identifies.

*§ 5.106—Providing access in accordance with an individual’s gender identity in community planning and development programs.*

HUD proposes to add a new § 5.106, which would contain equal access provisions specifically tailored to HUD’s community development programs. This proposed new provision would be placed after the more general equal access provisions applicable to all HUD housing programs, added in 2012 to § 5.105.

Section 5.106(a) would identify the programs covered by the new § 5.106. Section 5.106 would apply to recipients and subrecipients of assistance under the HOME Investment Partnerships program (24 CFR part 92), Community Development Block Grant program (24 CFR part 570), Housing Opportunities for Persons with AIDS program (24 CFR part 574), Emergency Solutions Grants program (24 CFR part 576), or Continuum of Care program (24 CFR part 578), as well as to owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any of these programs.

Section 5.106(b) is the operative provision in § 5.106. Under this subsection, a recipient, subrecipient, or provider would be required to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures, including policies and procedures to protect individuals’ privacy and security, so that equal access is provided to

individuals based on their gender identity. This requirement includes tenant selection and admission preferences. The provision also requires that services, benefits, and accommodations be provided in a manner that affords equal access to the individual’s family.<sup>19</sup>

Section 5.106(c) addresses temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require shared sleeping quarters or shared bathing facilities. This section requires that the placement and accommodation of individuals in such facilities that are permitted to be single-sex because they are not covered by the Fair Housing Act must be made in accordance with the individual’s gender identity.

The only exception to the requirement to accommodate and serve a person in accordance with the individual’s gender identity is that the recipient, subrecipient, owner, operator, manager, or provider may consider, on a case-by-case basis, whether a particular housing assignment would ensure health and safety. It is prohibited for such a determination to be based solely on a person’s actual or perceived gender identity or on complaints of other shelter residents when those complaints are based on actual or perceived gender identity. It is likewise prohibited to deny appropriate placement based on a perceived threat to health or safety that can be mitigated some other less burdensome way (e.g., providing the transgender shelter seeker the option to use single-use bathing facilities).

Section 5.106(d) requires that when such a determination is made, the recipient, subrecipient, owner, operator, manager, or provider is required to provide either (1) equivalent alternative accommodation, benefits, and services or (2) a referral to a comparable alternative program that meets the needs of the individual. HUD expects the recipient, subrecipient, owner, operator, manager, or provider to refer the individual to a comparable alternative program that can more appropriately mitigate or eliminate the safety risk and that has available accommodations, or offer the individual equivalent alternative accommodation (e.g., a hotel or motel voucher), benefits, and services. HUD anticipates that the use of this limited exception for the provision of equivalent alternative

<sup>19</sup> As noted above, the Fair Housing Act prohibits familial status discrimination. Accordingly, housing providers covered by the Fair Housing Act may not discriminate based on familial status unless the housing meets statutory and regulatory requirements for housing for older persons. 42 U.S.C. 3607(b); 24 CFR part 100, subpart E.

accommodations, benefits, and services or referral to a comparable alternative program would be rare, since it would not apply unless the facts and circumstances demonstrated a nondiscriminatory risk to health or safety that could not be eliminated or appropriately mitigated by policy adjustments and physical modifications to buildings and facilities.

Section 5.106(e) requires that records of case-by-case determinations must be kept by the recipient, subrecipient, owner, operator, manager, or provider, including when the determination is made that an individual cannot safely be served in accordance with the individual’s gender identity. Where an alternative placement is made, recipients, subrecipients, owners, operators, managers, or providers must thoroughly document the reasons for that placement, in accordance with the recordkeeping requirements established in this subsection. Further, the recordkeeping section proposes that when a referral is made, the recipient, subrecipient, owner, operator, manager, or provider documents the facts and circumstances regarding the referral and whether the individual and the individual’s family, in instances where the individual presents with a family, has been admitted and accommodated.

*§ 5.105(a)(2)(ii)—Removal of prohibited inquiries.*

In the preamble to HUD’s 2012 Equal Access Rule, HUD stated that it would review the prohibition of inquiries in § 5.105(a)(2)(ii) following monitoring of the application of this provision in HUD programs. As discussed earlier in this preamble, CPD released Notice CPD–015–02 “Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities,” applicable to the Housing Opportunities for Persons with AIDS, Emergency Solutions Grants, and Continuum of Care programs, on February 20, 2015,<sup>20</sup> which provided that HUD expected recipients, subrecipients, and providers to accommodate individuals in accordance with the individual’s gender identity. The guidance states that where a provider is uncertain of the client’s sex or gender identity and that information matters for the determination of placement, the provider informs the client or potential client that the agency provides shelter based on the individual’s gender identity. HUD now believes, however, that the prohibition

<sup>20</sup> See <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>.

of inquiries at § 5.105(a)(2)(ii) may hinder a provider from making an appropriate placement decision for fear of violating the rule. For this reason, HUD is proposing to remove the prohibition of inquiries.

HUD's intent in proposing removal of § 5.105(a)(2)(ii) is not to now permit recipients or subrecipients to ask questions in order to seek information that could be used for discriminatory purposes. Rather, HUD is proposing removal because § 5.105(a)(2)(ii) has raised several legitimate questions about implementation. Removal of § 5.105(a)(2)(ii) would allow shelters and other facilities with physical limitations or configurations that require shared sleeping quarters or shared bathing facilities to ask the individual's gender identity, and it would permit inquiries of the individual's gender identity and sexual orientation to determine the number of bedrooms to which a household is entitled. Removal of § 5.105(a)(2)(ii) also reaffirms that HUD permits mechanisms for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of State and local governments or Federal assistance programs.

### III. Findings and Certifications

#### *Regulatory Review—Executive Order 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all 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, reducing costs, harmonizing rules, and promoting flexibility. Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

This proposed rule is consistent with Administration policy, as has been noted in the preamble by citing to policy already implemented by the U.S. Department of Education, the U.S. Department of Justice, the U.S. Department of Labor, and the CPD guidance already implemented by HUD. This proposed rule clarifies how facilities funded by CPD that have

shared sleeping quarters or shared bathing facilities comply with the requirement that equal access be provided to programs, buildings, facilities, services, benefits, and accommodations in accordance with the individual's gender identity. This clarification should provide benefits to clients accessing CPD-funded, temporary, emergency shelters and other buildings and facilities by assuring all clients receive equal access, and will benefit the CPD-funded facilities by making compliance with HUD's equal access requirements easier.

In this proposed rule, HUD recognizes a limited exception to accommodating individuals in accordance with the individual's gender identity when a recipient, subrecipient, owner, operator, manager, or provider identifies a legitimate safety risk that cannot be eliminated or appropriately mitigated and makes a written case-by-case analysis. The written case-by-case analysis only applies when the benefits, services, and accommodations are not being provided to an individual in accordance with the individual's gender identity. The written case-by-case analysis benefits the client accessing the services and the recipient, subrecipient, owner, operator, manager, or provider by keeping a record of when a legitimate safety risk is identified. The recipient, subrecipient, owner, operator, manager, or provider must also undertake reasonable efforts to ensure that equivalent alternative accommodations are provided or refer the individual to a comparable alternative program that will meet the individual's needs. This proposed rule also seeks to amend the definition of gender identity in § 5.100 to clarify the difference between actual and perceived gender identity, which would be necessary if proposed § 5.106 is adopted. This proposed rule also would eliminate the prohibition on inquiries relating to sexual orientation or gender identity in § 5.105(a)(2)(ii). Both of these proposed changes would make it easier for recipients, subrecipients, owners, operators, managers, and providers of programs, buildings, and facilities funded by CPD programs to comply with the requirements of existing § 5.105(a)(2)(i) and proposed § 5.106. An estimate of the cost of recording and retaining that written case-by-case analysis, in the limited situations in which it may apply, is discussed in the Paperwork Reduction Act section of this proposed rule.

The docket file is available for public inspection 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, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Approximately 4,000 providers participating in the CPD programs covered by this rule are small organizations, but the number of entities that would address the accommodation needs addressed by this rule is much lower. The benefit of this proposed rule is to ensure equal access to CPD programs, facilities, services, benefits, and accommodations. The rule does require organizations to make a written case-by-case analysis and referral in limited situations. Although HUD does not have any way to determine the number of written case-by-case analyses or referrals that will occur in any one year, HUD does not believe that costs will be significant for small service providers and estimates it will take a provider 15 minutes per case-by-case analysis and referral. HUD invites interested parties to provide data with which HUD can formulate better estimates of the compliance costs associated with the written notice and referral requirements of this proposed rule. Accordingly, for the foregoing reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this proposed rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives and the principles in Executive Order 13559, as described in this preamble.

#### *Paperwork Reduction Act*

The proposed rule requires CPD programs to include a written case-by-case analysis and make referrals. This rule also requires the retention of

records to show that the case-by-case analysis was followed and referral requirements in this rulemaking have been met. HUD estimates that a case-by-case analysis and referral will be required infrequently given that the case-by-case analysis is only necessary when the provider is not providing accommodations to an individual in accordance with the gender with which an individual identifies because there is a legitimate safety risk that cannot be eliminated or appropriately mitigated. HUD estimates that only 0.05 percent of facilities that are covered by this proposed regulation will need to make a written case-by-case analysis and referral, and estimates it will take an individual 15 minutes to complete the case-by-case analysis and referral. This estimate includes the time required to write down the basis for the analysis, identify service providers that provide similar services, and make the referral.

The information collection requirements for the CPD's HOME Investment Partnerships program, Community Development Block Grant program (State and entitlement), Housing Opportunities for Persons with AIDS program, Emergency Solutions Grants program, or Continuum of Care program impacted by this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0171, 2506–0085, 2506–0077, 2506–0133, 2506–0089, and 2506–0199. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The existing forms will be changed to include the new recordkeeping requirement added by this proposed rule.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.
- (3) Enhance the quality, utility, and clarity of the information to be collected.
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection

techniques or other forms of information technology (e.g., by permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposed rule by name and docket number (FR-5583-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202-395-6947; and Reports Liaison Officer, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9128, Washington, DC 20410.

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

#### *Environmental Impact*

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on State and local governments and is not required by statute or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–

1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

#### **List of Subjects in 24 CFR Part 5**

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

#### **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

- 1. The authority citation for 24 CFR part 5 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

- 2. In § 5.100, revise the definition for "Gender identity" to read as follows:

#### **§ 5.100 Definitions.**

\* \* \* \* \*

*Gender identity* means the gender with which a person identifies, regardless of the sex assigned to that person at birth. *Perceived gender identity* means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth.

\* \* \* \* \*

#### **§ 5.105 [Amended]**

- 3. In § 5.105, remove paragraph (a)(2)(ii) and redesignate paragraph (a)(2)(i) as paragraph (a)(2).
- 4. Add § 5.106 to read as follows:

#### **§ 5.106 Providing access in accordance with the individual's gender identity in community planning and development programs.**

(a) *Applicability.* This section applies to recipients and subrecipients of assistance under the HOME Investment Partnerships program (24 CFR part 92), Community Development Block Grant program (24 CFR part 570), Housing Opportunities for Persons with AIDS program (24 CFR part 574), Emergency Solutions Grants program (24 CFR part 576), or Continuum of Care program (24

CFR part 578), as well as to owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any of these programs.

(b) *Equal access in accordance with gender identity.* The admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers identified in paragraph (a) of this section, including policies and procedures to protect privacy and security, shall be established or amended, as necessary, and administered so:

(1) Equal access to programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to individuals in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family; and

(2) Individuals are placed, served, and accommodated in accordance with the individual's gender identity.

(c) *Placement and accommodation in facilities with shared sleeping quarters or shared bathing facilities.* Placement and accommodation of individuals in shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with the individual's gender identity. Under narrow circumstances, a written case-by-case determination can be made as to whether an alternative accommodation is necessary to ensure health and safety. It shall be prohibited for such a determination to be based solely on a person's actual or perceived gender identity, the complaints of other clients, beneficiaries, or employees when those complaints are based on actual or perceived gender identity, or on an actual or perceived threat to health or safety that can be mitigated in some other way that is less burdensome. In order to avoid unwarranted denials of placement in accordance with an individual's gender identity, decisions to provide accommodations based on concern for the health and safety of the individual seeking accommodations should be based on the individual's own request to be otherwise accommodated.

(d) *Referrals.* In any instance in which a case-by-case determination is made under paragraph (c) of this section, the recipient, subrecipient, owner, operator, manager, or provider shall ensure that an opportunity to access equivalent alternative accommodations, benefits, and services is provided or shall refer the individual to a comparable

alternative program with availability that will meet the individual's needs.

(e) *Documentation and record retention.* Providers shall document and maintain records of compliance with the requirements in paragraphs (b), (c), and (d) of this section for a period of 5 years, including but not limited to:

(1) The specific facts, circumstances, and reasoning relied upon in any case-by-case determination that results in an alternative admission, accommodation, benefit, or service to an individual or their family;

(2) The facts and circumstances regarding the opportunities to access alternative accommodations that are provided to an individual and their families by the recipient, subrecipient, owner, operator, manager, or provider; and

(3) The facts, circumstances, and outcomes regarding each referral of an individual and their family to a comparable alternative program, including information regarding the benefits, services, and accommodations received.

Dated: October 23, 2015.

**Julián Castro,**  
*Secretary.*

[FR Doc. 2015-29342 Filed 11-19-15; 8:45 am]

**BILLING CODE 4210-67-P**

---

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-134219-08]

RIN 1545-B182

#### Relief From Joint and Several Liability

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code (Code). The regulations reflect changes in the law made by the Tax Relief and Health Care Act of 2006 as well as changes in the law arising from litigation. The regulations provide guidance to married individuals who filed joint returns and later seek relief from joint and several liability.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 18, 2016.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-134219-08), Room 5203, Internal Revenue Service, P.O.

Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134219-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-134219-08).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Nancy Rose at (202) 317-6844; concerning submissions of comments contact Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) for relief from joint and several liability under section 6015 of the Code and relief from the operation of state community property law under section 66.

Section 6013(a) permits a husband and wife to file a joint income tax return. Section 6013(d)(3) provides that spouses filing a joint income tax return are jointly and severally liable for liabilities for tax arising from that return. The term "tax" includes additions to tax, additional amounts, penalties, and interest. See sections 6665(a)(2) and 6601(e)(1). Joint and several liability allows the IRS to collect the entire liability from either spouse who signed the joint return, without regard to whom the items of income, deduction, credit, or basis that gave rise to the liability are attributable. Prior to 1998, section 6013(e) provided limited relief from joint and several liability. In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685 (1998), which repealed section 6013(e) and replaced it with section 6015. Section 6015 applies to liabilities arising after July 22, 1998, and liabilities that arose on or before July 22, 1998, but remained unpaid as of that date.

Section 6015 provides three avenues for relief from joint and several liability—sections 6015(b), (c) and (f). To be eligible for relief from joint and several liability, a spouse must request relief. Under section 6015(b), a requesting spouse may be entitled to relief from joint and several liability for an understatement of tax attributable to erroneous items of the nonrequesting spouse. Section 6015(c) permits a taxpayer who is divorced, separated, widowed, or who had been living apart

from the other spouse for 12 months to allocate his or her tax deficiency between the spouses as if separate returns had been filed. Claims for relief under section 6015(b) and (c) must be made within two years of the IRS's first collection activity against the requesting spouse. Finally, section 6015(f) confers discretion upon the Commissioner to grant equitable relief from joint and several liability for understatements and underpayments, based on all the facts and circumstances. Regulations under section 6015 were first prescribed in TD 9003, **Federal Register** (67 FR 47278) on July 18, 2002.

These proposed amendments are necessary to carry out the provisions of section 6015 and to reflect changes in the law since the publication of TD 9003. On December 20, 2006, Congress enacted the Tax Relief and Health Care Act of 2006, Public Law 109-432, div. C, title IV, section 408, 120 Stat. 2922, 3061-62 (2006) (the 2006 Act). The 2006 Act amended section 6015 to provide the United States Tax Court with jurisdiction to review the Commissioner's determination to deny equitable relief under section 6015(f) when the Commissioner has not determined a deficiency and to suspend the period of limitation for collection under section 6502 when relief is requested only under section 6015(f). The proposed regulations also provide clarification and additional guidance on procedural and substantive issues related to the three types of relief from joint and several liability under section 6015.

Section 66 provides relief for a spouse who did not file a joint return in a community property state and did not include in gross income an item of community income that would be attributable solely to the nonrequesting spouse but for the operation of state community property law. Regulations under section 66 were first prescribed in TD 9074, **Federal Register** (68 FR 41067) on July 10, 2003. The proposed regulations under section 66 contain only non-substantive changes.

Recently, other amendments to the regulations under section 6015 were proposed in a notice of proposed rulemaking (REG-132251-11) published in the **Federal Register** (78 FR 49242) on August 13, 2013. Those regulations proposed changes to § 1.6015-5 to remove the two-year deadline for taxpayers to file requests for equitable relief under section 6015(f), and other changes related to the time and manner for requesting relief. Additionally, on September 16, 2013, the IRS issued Rev. Proc. 2013-34 (2013-2 CB 397). Rev. Proc. 2013-34 revised the factors used

in determining if a requesting spouse is eligible for equitable relief under sections 66(c) and 6015(f).

#### Explanation of Provisions

These regulations propose to make a number of significant changes to the existing regulations. These changes include providing additional guidance on the judicial doctrine of res judicata and the section 6015(g)(2) exception to res judicata when a requesting spouse did not meaningfully participate in a prior court proceeding. The regulations propose to add a list of acts to be considered in making the determination as to whether the requesting spouse meaningfully participated in a prior proceeding and provide examples of the operation of these rules. The regulations also (1) propose a definition of underpayment or unpaid tax for purposes of section 6015(f); (2) provide detailed rules regarding credits and refunds in innocent spouse cases; (3) expand the rule that penalties and interest are not separate items from which relief can be obtained to cases involving underpayments; (4) incorporate an administratively developed rule that attribution of an erroneous item follows the attribution of the underlying item that caused the increase to adjusted gross income (AGI); (5) update the discussion of the allocation rules under section 6015(c) and (d); and (6) revise the rules regarding prohibition on collection and suspension of the collection statute.

##### 1. Section 1.6015-1

The procedures for requesting relief on Form 8857, "Request for Innocent Spouse Relief," under section 6015 have changed since 2006 because of the amendments to section 6015(e) made by Section 408 of Title IV of Division C of the 2006 Act. The amendments to section 6015(e) conferred jurisdiction on the Tax Court to review the Commissioner's denial of relief under section 6015(f) in cases in which a deficiency had not been asserted. The amendments also provided for a prohibition on collection and a corresponding tolling of the collection statute under section 6502 upon the filing of a request for relief under section 6015(f). The amendments apply to any liability for taxes arising on or after December 20, 2006, and to any liability for taxes arising before December 20, 2006, and remaining unpaid as of that date. As a result of the amendments, any request for relief under section 6015 will toll the collection statute, making it unnecessary for a spouse to elect or request a particular type of relief as

required under § 1.6015-1(a)(2) of the current regulations. Accordingly, § 1.6015-1 and all sections referencing an election under §§ 1.6015-2 and 1.6015-3 or a request for relief under § 1.6015-4 are proposed to be revised to reflect that a requesting spouse is no longer required to elect or request relief under a specific provision of section 6015. Thus, beginning with the June 2007 revision to the Form 8857, a requesting spouse makes a single request for relief on Form 8857. Section 1.6015-1 is also being revised to provide that the IRS will consider in all cases whether the requesting spouse is eligible for relief under § 1.6015-2 or § 1.6015-3, and if relief is not available under either of those sections, under § 1.6015-4.

Section 6015(g)(2) provides an exception to the common law doctrine of res judicata except in a case in which relief under section 6015 was at issue in a prior court proceeding or if a requesting spouse meaningfully participated in a prior proceeding, in which relief under section 6015 could have been raised. Current § 1.6015-1(e) is being revised in these proposed regulations to provide more detailed guidance on how the exception to res judicata and the meaningful participation rule work, and to reflect developments in the case law since 2002 (described below). Proposed § 1.6015-1(e)(1) restates the general rule from the current regulations.

Proposed § 1.6015-1(e)(2) incorporates the holding in *Deihl v. Commissioner*, 134 T.C. 156 (2010) (When a requesting spouse generally raises relief under section 6015 in a proceeding but does not specifically plead relief under any subsection of section 6015, relief under section 6015(c) will not be treated as being at issue in that proceeding if the requesting spouse was not eligible to elect relief under section 6015(c) because the requesting spouse was not divorced, widowed, legally separated, or living apart for 12 months at any time during the prior proceeding.)

Proposed § 1.6015-1(e)(3) provides guidance on the meaningful participation exception to res judicata provided by section 6015(g)(2). A requesting spouse meaningfully participated in the prior proceeding if the requesting spouse was involved in the proceeding so that the requesting spouse could have raised the issue of relief under section 6015 in that proceeding. Meaningful participation is a facts and circumstances determination. A nonexclusive list of acts was added in proposed § 1.6015-1(e)(3) to provide indicators of

“meaningful participation” within the context of a bar against relief based on the judicial doctrine of *res judicata*. Whether a requesting spouse meaningfully participated in a prior proceeding is based on all the facts and circumstances. No one act necessarily determines the outcome. The degree of importance of each act varies depending on the requesting spouse’s facts and circumstances. The following acts, derived from case law and experience since 2002, are among the acts the IRS and courts consider in making the determination regarding meaningful participation: Whether the requesting spouse participated in the IRS Appeals process while the prior case was docketed; whether the requesting spouse participated in discovery; whether the requesting spouse participated in pretrial meetings, settlement negotiations, or trial; whether the requesting spouse signed court documents; and whether the requesting spouse was represented by counsel in the prior proceedings.

Proposed § 1.6015–1(e)(3)(i) provides a new rule under which the requesting spouse will not be considered to have meaningfully participated in the prior proceeding if the requesting spouse establishes that the requesting spouse performed any of the acts listed in proposed § 1.6015–1(e)(3) because the nonrequesting spouse abused or maintained control over the requesting spouse, and the requesting spouse did not challenge the nonrequesting spouse for fear of the nonrequesting spouse’s retaliation. Proposed § 1.6015–1(e)(3)(ii) restates the rule from the current regulations that a requesting spouse did not meaningfully participate in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding.

Proposed § 1.6015–1(e)(3)(iii) provides that in a case petitioned from a statutory notice of deficiency under section 6213, the fact that the requesting spouse did not have the ability to effectively contest the underlying deficiency is irrelevant for purposes of determining whether the requesting spouse meaningfully participated in the prior proceeding. Treasury and the IRS disagree with the holding in *Harbin v. Commissioner*, 137 T.C. 93 (2011), in which the Tax Court concluded that Mr. Harbin did not meaningfully participate in the deficiency case in part because he could not effectively contest the part of the deficiency related to his ex-wife’s gambling losses without her. The Tax Court found that Mr. Harbin could not effectively contest this part of the deficiency without his ex-wife because

she “was the one with personal knowledge of the winnings and losses from the gambling activities” and was the one “who maintained and provided all of the documentation relating to the gambling activities.” The Tax Court concluded that this knowledge and control of the documentation resulted in Mr. Harbin’s ex-wife effectively exercising “exclusive control” of the case. *Harbin v. Commissioner*, 137 T.C. at 98.

Treasury and the IRS believe that the Tax Court applied the incorrect standard to determine whether a taxpayer meaningfully participated in a proceeding for purposes of section 6015(g)(2). The purpose of the meaningful participation exception to *res judicata* is not to ensure that a taxpayer had the opportunity to contest the deficiency but rather to ensure that the taxpayer could have raised relief under section 6015. *Moore v. Commissioner*, T.C. Memo. 2007–156. This is evident because, if section 6015 relief was at issue in the prior case, the taxpayer is not permitted to raise section 6015 relief in a subsequent proceeding regardless of the degree to which the taxpayer participated or whether taxpayer’s ability to contest the deficiency was impaired. *See Deihl v. Commissioner*, 134 T.C. 156, 161 (2010).

Proposed § 1.6015–1(e)(4) provides examples of how the rules in paragraphs (e)(1), (e)(2), and (e)(3) work. Proposed § 1.6015–1(e)(5) restates the collateral estoppel rule from current § 1.6015–1(e) without change.

Proposed § 1.6015–1(h)(1) and (h)(5) are being revised to remove the distinction between electing and requesting relief as discussed earlier in this preamble.

Proposed § 1.6015–1(h)(6) defines “unpaid tax” for purposes of § 1.6015–4. For purposes of § 1.6015–4, the regulations propose that the terms “unpaid tax” and “underpayment” have the same meaning. The unpaid tax or underpayment on a joint return is the balance shown as due on the return reduced by the tax paid with the return or paid on or before the due date for payment (without considering any extension of time to pay). The balance due is determined after applying withholding credits, estimated tax payments, payments with an extension, and other credits applied against the total tax reported on the return. Payments made with the return include payments made by check in the same envelope with the return or remitted at a later date (but before the due date for payment) with Form 1040–V, “Payment Voucher.” Payments made with the return also include remittances made by

direct debit, credit card, or other commercially acceptable means under section 6311 on or before the due date for payment. The determination of the existence and amount of unpaid tax is made as of the date the joint return is filed, or as of the due date for payment if payments are made after the return is filed but on or before the due date.

If the payments made with the joint return, including any payments made on or before the due date for payment (without considering any extension of time for payment), completely satisfy the balance due shown on the return, then there is no unpaid tax for purposes of § 1.6015–4. A requesting spouse is not entitled to be considered for relief (credit or refund) under § 1.6015–4 for any tax paid with the joint return (including a joint amended return). Payments made after the later of the date the joint return is filed or the due date for payment (without considering any extension of time for payment), including offsets of overpayments from other tax years, do not change the amount of unpaid tax reported on the joint return. Under § 1.6015–4, a requesting spouse can only get relief from the unpaid tax on the return, and if refunds are available, from any payments made on the liability after the later of the date the joint return was filed or the due date for payment (without considering any extension of time for payment).

Proposed § 1.6015–1(h)(7) and (h)(8) define understatement and deficiency, respectively. Section 6015(b)(3) provides that an “understatement” for purposes of section 6015 has the same meaning given to that term by section 6662(d)(2)(A). The definition of understatement is in current § 1.6015–2(b) and therefore only applies to requests under that section. The term “understatement,” however, is a term that is relevant to relief under sections 6015(b), (c), and (f). These regulations propose to move the definition of “understatement” to proposed § 1.6015–1(h)(7) to allow a consistent definition to apply throughout the regulations. Likewise, proposed § 1.6015–1(h)(8) adds a definition of deficiency, by reference to section 6211 and the regulations under section 6211, to clarify that the term deficiency has the same meaning throughout the regulations.

Section 6015(g)(1) provides that requesting spouses generally can receive a credit or refund of payments made on the joint liability if the requesting spouse is entitled to relief under section 6015. This general rule is set forth in proposed § 1.6015–1(k)(1). Section 6015(g) also provides some limitations



on the availability of credit or refund. New § 1.6015-1(k)(2) through (5) discuss these and other limitations on credit or refund when a requesting spouse is eligible for relief.

Proposed § 1.6015-1(k)(2) sets forth the limitation on refunds from section 6015(g)(3) when a requesting spouse is entitled to relief under § 1.6015-3. Proposed § 1.6015-1(k)(3) sets forth the rule from current § 1.6015-4(b) that relief under § 1.6015-4 is not available when the requesting spouse is entitled to full relief under § 1.6015-3 but is not entitled to a refund because of the limitation in section 6015(g)(3) and proposed § 1.6015-1(k)(2). Proposed § 1.6015-1(k)(4) incorporates, consistent with section 6015(g)(1), the limitations on credit or refund provided by sections 6511 (general limitations on credits or refunds) and 6512(b) (limitations on credits or refunds where the Tax Court determines that a taxpayer made an overpayment). This section also clarifies that, in general, Form 8857 will be treated as the requesting spouse's claim for credit or refund.

Proposed § 1.6015-1(k)(5) sets forth the general rule that a requesting spouse who is entitled to relief is generally not eligible for a credit or refund of joint payments made with the nonrequesting spouse. Under the proposed rule, a requesting spouse, however, may be eligible for a credit or refund of the requesting spouse's portion of the requesting and nonrequesting spouse's joint overpayment from another tax year that was applied to the joint income tax liability to the extent that the requesting spouse can establish his or her contribution to the overpayment. Both spouses have an interest in a joint overpayment relative to each spouse's contribution to the overpayment. See, for example, *Gordon v. United States*, 757 F.2d 1157, 1160 (11th Cir. 1985) ("Where spouses claim a refund under a joint return, the refund is divided between the spouses, with each receiving a percentage of the refund equivalent to his or her proportion of the withheld tax payments."). If the requesting spouse contributed to the joint overpayment through withholding, estimated tax, or other payments, then the requesting spouse may be entitled to a refund of that portion of the overpayment that was applied to the joint liability. Under the proposed rule, a requesting spouse in a state that is not a community property state may establish his or her portion of a joint overpayment using the allocation rules of Rev. Rul. 80-7 (1980-1 CB 296), or successor guidance. A requesting spouse in a community property state may establish his or her portion of a joint

overpayment using the allocation rules of Rev. Rul. 2004-71 (2004-2 CB 74), Rev. Rul. 2004-72 (2004-2 CB 77), Rev. Rul. 2004-73 (2004-2 CB 80), or Rev. Rul. 2004-74 (2004-2 CB 84), or successor guidance, whichever is applicable to the state in which the requesting spouse is domiciled. For copies of Revenue Procedures, Revenue Rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

These proposed regulations reflect the elimination of the more restrictive rule regarding credit or refund when relief is granted under § 1.6015-4 in cases involving a deficiency, as provided by Rev. Proc. 2013-34. A credit or refund, subject to the limitations in § 1.6015-1(k), is available to a requesting spouse who is entitled to relief under § 1.6015-4 in both underpayment and deficiency cases.

Current § 1.6015-1(h)(4) provides, in part, that penalties and interest are not separate erroneous items from which a requesting spouse can be relieved separate from the tax. Rather, relief from penalties and interest related to an understatement or deficiency will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved.

Thus, under the existing regulations, a requesting spouse who is determined not to be eligible for relief from the understatement or deficiency stemming from an erroneous item cannot be separately relieved from a penalty, such as the accuracy-related penalty, related to the item under section 6015. If a requesting spouse is entitled to partial relief (such as relief from two of three erroneous items giving rise to the understatement or deficiency), then the requesting spouse will be entitled to relief from the accuracy-related penalty applicable to those two items.

These regulations propose to move the discussion in current § 1.6015-1(h)(4) to proposed § 1.6015-1(m). Proposed § 1.6015-1(m) additionally clarifies, consistent with the statutory interpretation in current § 1.6015-1(h)(4), that penalties and interest on an underpayment also are not separate items from which a requesting spouse may obtain relief under § 1.6015-4. Rather, relief from penalties and interest on the underpayment will be determined based on the amount of relief from the underpayment to which the requesting spouse is entitled. If a requesting spouse remains liable for a portion of the underpayment after application of § 1.6015-4, the requesting spouse is not eligible for relief under

section 6015 for the penalties and interest related to that portion of the underpayment. Cf. *Weiler v. Commissioner*, T.C. Memo. 2003-255 (a requesting spouse is not relieved from liabilities for penalties and interest resulting from items attributable to the requesting spouse). This position is consistent with how the IRS currently treats relief from penalties and interest after determining the relief from the underlying tax. See IRM 25.15.3.4.1.1(2) (Revised 03/08/2013).

If an assessed deficiency is paid in full, or the unpaid tax reported on the joint return is later paid in full, but penalties and interest remain unpaid, under the proposed rule, a requesting spouse may be considered for relief from the penalties and interest under section 6015. The determination of relief from the penalties and interest is made by considering whether the requesting spouse would be entitled to relief from the underlying tax and not considering the penalties and interest as if they were separate items. A requesting spouse may be relieved from the penalties and interest even if relief in the form of a refund of the payments made on the underlying tax is barred (for example, § 1.6015-1(k)(2) (no refunds allowed under § 1.6015-3) or § 1.6015-1(k)(4) (refund barred by the limitations of sections 6511 or 6512(b))).

Proposed § 1.6015-1(n) provides attribution rules for a portion of an understatement or deficiency relating to the disallowance of certain items. Specifically, § 1.6015-1(n) addresses items that are otherwise not erroneous items, but are disallowed solely due to the increase of adjusted gross income (or modified adjusted gross income) over a phase-out threshold as a result of an erroneous item attributable to the nonrequesting spouse. One common example of this is when the nonrequesting spouse's omitted income increases adjusted gross income so that the Earned Income Tax Credit (EITC) is phased out and the understatement or deficiency partially represents the recapture of the refunded EITC.

Under proposed § 1.6015-1(n), the understatement or deficiency related to the item disallowed due to the increase to adjusted gross income will be attributable to the spouse whose erroneous item caused the increase to adjusted gross income, unless the evidence shows that a different result is appropriate. If the increase to adjusted gross income is the result of erroneous items of both spouses, the item disallowed due to the increase to adjusted gross income will be attributable to the requesting spouse in the same ratio as the amount of the item

or items attributable to the requesting spouse over the total amount of the items that resulted in the increase to adjusted gross income. Corresponding rules are proposed to be added to §§ 1.6015-2(b) and 1.6015-3(c)(2)(i) to provide that a requesting spouse knows or has reason to know of the item disallowed due to the increase in adjusted gross income if the requesting spouse knows or has reason to know of the erroneous item or items that resulted in the increase to adjusted gross income. Likewise, for purposes of proposed § 1.6015-4 and Rev. Proc. 2013-34, a requesting spouse knows or has reason to know of the portion of an understatement or deficiency related to an item attributable to the nonrequesting spouse under § 1.6015-1(n) if the requesting spouse knows or has reason to know of the nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income.

Examples are provided to illustrate how this rule applies in situations involving the EITC, the phase-out of itemized deductions, and the application of the alternative minimum tax. This rule, however, can be implicated in other situations. It should be noted that this proposed rule would not apply if there is another reason for disallowing the item, such as no qualifying child for the EITC, no substantiation for a claimed deduction, or the lack of any basis in law or fact for the deduction. In this situation, the normal attribution rules applicable to §§ 1.6015-2, 1.6015-3, and 1.6015-4 apply.

Proposed § 1.6015-1(o) provides a definition of abuse for purposes of proposed §§ 1.6015-2(b) and 1.6015-3(c)(vi). The definition of abuse is taken directly from Rev. Proc. 2013-34, section 4.03(2)(c)(iv).

## 2. Section 1.6015-2

Only minor substantive changes are proposed to current § 1.6015-2. The proposed amendments reorganize the section, update references, and provide clarification where needed. Proposed § 1.6015-2(a) changes the language in the existing regulations, "the requesting spouse elects the application of this section," to "the requesting spouse requests relief" consistent with the discussion earlier in this preamble. The definition of "understatement" in current § 1.6015-2(b) is removed as the definition will now be located in proposed § 1.6015-1(h)(7). Current § 1.6015-2(c) is redesignated as proposed § 1.6015-2(b), adds additional facts and circumstances from Rev. Proc. 2013-34 to consider in determining

whether a requesting spouse had reason to know, adds a knowledge rule to correspond to proposed § 1.6015-1(n) as discussed earlier in this preamble, and clarifies, consistent with the changes made in Rev. Proc. 2013-34, that abuse or financial control by the nonrequesting spouse will result in the requesting spouse being treated as not having knowledge or reason to know of the items giving rise to the understatement. Current § 1.6015-2(d) is redesignated as proposed § 1.6015-2(c) and provides an updated cross-reference to the most recent revenue procedure providing the criteria to be used in determining equitable relief, Rev. Proc. 2013-34. Current § 1.6015-2(e)(1) is redesignated as proposed § 1.6015-2(d)(1) and the word "only" is removed to clarify the rule. Current § 1.6015-2(e)(2) is redesignated as proposed § 1.6015-2(d)(2) and the example is updated to use more current years and dates, but otherwise no substantive changes were made.

## 3. Section 1.6015-3

Among other clarifying changes, these regulations propose to clarify the difference between full and partial relief under section 6015(c) and to reflect case law regarding the tax benefit rule of section 6015(d)(3)(B), including new examples.

Proposed § 1.6015-3(a) provides a revised heading and a cross-reference to the definition of deficiency in proposed § 1.6015-1(h)(8).

Section 6015(g)(3) provides that no credit or refund is allowed as a result of an allocation of a deficiency under section 6015(c). Proposed § 1.6015-3(c)(1) clarifies the existing regulations and provides that whether relief is available to a requesting spouse under section 6015(c) is not dependent on the availability of credit or refund. Thus, if a requesting spouse is eligible to allocate the entire deficiency to the nonrequesting spouse, the requesting spouse has received full relief even if the requesting spouse made payments on the deficiency and is not entitled to a refund of those payments because of section 6015(g)(3). Further, the requesting spouse is not eligible to be considered for relief (and a refund) under section 6015(f) for the amount of any paid liability because a prerequisite to relief under section 6015(f) is the unavailability of relief under section 6015(b) or (c) and the spouse received full relief under section 6015(c). A requesting spouse may still be considered for relief (and a refund) under section 6015(b) for the amount of any paid liability. If a requesting spouse only receives partial relief (for example,

some part of the deficiency is still allocated to the requesting spouse), then the requesting spouse may be considered for relief under section 6015(f) for the portion of the deficiency allocable to the requesting spouse. A new sentence is added to § 1.6015-3(c)(2)(i) to add a knowledge rule to correspond to proposed § 1.6015-1(n), which, as discussed earlier in this preamble, provides an attribution rule for the portion of a deficiency relating to the disallowance or reduction of an otherwise valid item solely due to the increase in AGI as a result of the disallowance of an erroneous item.

Proposed § 1.6015-3(d)(2)(i) illustrates that, under the tax benefit rule of section 6015(d)(3)(B), the amount of an erroneous item allocated to a requesting spouse may increase or decrease depending upon the tax benefit to the requesting and nonrequesting spouses. Thus, these proposed regulations adopt the holding of *Hopkins v. Commissioner*, 121 T.C. 73 (2003) (a requesting spouse was entitled to relief from her own item under the tax benefit rule of section 6015(d)(3)(B) because the nonrequesting spouse was the only person who reported income on the returns, and therefore, the only one who received any tax benefit from the item). In addition, five new examples have been added to § 1.6015-3(d)(5) to provide additional guidance on the application of the tax benefit rule of § 1.6015-3(d)(2)(i). *Example 7* demonstrates the application of § 1.6015-3(d)(2)(i)(B), which provides that each spouse's hypothetical separate taxable income may need to be determined to properly apply the tax benefit rule. *Example 8* demonstrates the holding in *Hopkins* by showing that a requesting spouse's allocated portion of a deficiency will be decreased when the nonrequesting spouse receives a tax benefit from the item. *Example 9* demonstrates the allocation of a liability when the erroneous item is a loss from a jointly-owned investment. *Example 10* demonstrates how the tax benefit rule works when the erroneous item is a loss from a jointly-owned investment. In addition, *Example 11* is added to demonstrate how the rule in § 1.6015-3(d)(2)(ii) regarding fraud works.

Section 1.6015-3(c)(2)(iv) currently provides that the requesting spouse's joint ownership (with the nonrequesting spouse) of the property that resulted in the erroneous item is a factor that may be relied upon in demonstrating that the requesting spouse had actual knowledge of the item. Under the tax benefit rule of § 1.6015-3(d)(2)(i), as stated earlier in this preamble, a requesting spouse can be relieved of liability for the requesting

spouse's own erroneous item if the item is otherwise allocable in full or in part to the nonrequesting spouse under section 6015(d). Therefore, proposed § 1.6015-3(c)(2)(iv) revises the current regulations to clarify that the requesting spouse's separate ownership of the erroneous item is also a factor that may be relied upon in demonstrating that the requesting spouse had actual knowledge of the item. Current § 1.6015-3(c)(2)(v) is redesignated as proposed § 1.6015-3(c)(2)(vi) and the discussion of community property in current § 1.6015-3(c)(iv) is removed and is now located in proposed § 1.6015-3(c)(2)(v). Proposed § 1.6015-3(c)(vi) is revised to clarify, consistent with the changes made in Rev. Proc. 2013-34, that abuse or financial control by the nonrequesting spouse will result in the requesting spouse being treated as not having actual knowledge of the items giving rise to the understatement.

#### 4. Section 1.6015-4

No substantive changes are proposed to current § 1.6015-4. The proposed amendments update references and provide a clarifying change consistent with proposed § 1.6015-3(c)(1), which provides the rule that refunds are not allowed under section 6015(c).

Proposed § 1.6015-4(a) was revised to provide a cross-reference to the definitions of unpaid tax, understatement, and deficiency in proposed §§ 1.6015-1(h)(6), (h)(7), and (h)(8).

Proposed § 1.6015-4(b) was revised to provide a cross-reference to proposed § 1.6015-1(k)(3). The paragraph also clarifies that if only partial relief is available under § 1.6015-3, then relief may be considered under § 1.6015-4 for the portion of the deficiency for which the requesting spouse remains liable.

Proposed § 1.6015-4(c) replaces the citation to Rev. Proc. 2000-15 (2000-1 CB 447) with Rev. Proc. 2013-34, which revised the factors used in determining if the requesting spouse is eligible for equitable relief under section 6015(f).

#### 5. Section 1.6015-5

A notice of proposed rulemaking (REG-132251-11) was published in the **Federal Register** (78 FR 49242) on August 13, 2013. Those regulations proposed changes to § 1.6015-5 to remove the two-year deadline for taxpayers to file requests for equitable relief under section 6015(f), and other changes related to the time and manner for requesting relief. These proposed regulations revise the notice of proposed rulemaking published on August 13, 2013 to add an effective date provision.

#### 6. Section 1.6015-6

The changes in proposed § 1.6015-6 are intended to update the current regulations to reflect existing practice and guidance. Proposed § 1.6015-6(a)(1) replaces the term "election" under § 1.6015-2 or § 1.6015-3 with "request for relief." Proposed § 1.6015-6(a)(2) includes a reference to Rev. Proc. 2003-19 (2003-1 CB 371), which provides guidance on a nonrequesting spouse's right to appeal a preliminary determination to IRS Appeals.

#### 7. Section 1.6015-7

Section 1.6015-7 was revised to reflect the amendments to section 6015(e) in the 2006 Act that, as noted earlier in this preamble, conferred jurisdiction on the United States Tax Court to review the IRS's denial of relief in cases in which taxpayers requested equitable relief under section 6015(f), without regard to whether the IRS has determined a deficiency. Prior to these amendments, the United States Tax Court lacked jurisdiction to review section 6015(f) determinations if no deficiency had been determined. The amendments apply to any liability for tax that arose on or after December 20, 2006, and any liability for tax that arose before December 20, 2006, but remained unpaid as of that date. Proposed § 1.6015-7(c) revises the current regulations to reflect the changes to the restrictions on collection and corresponding tolling of the collection statute under section 6502. On versions of the Form 8857 dated before June 2007 a requesting spouse could request relief under just one subsection of section 6015. For claims for relief that were made under sections 6015(b) and (c) (and the corresponding §§ 1.6015-2 and 1.6015-3), the IRS is prohibited from collecting against the requesting spouse (and the collection statute is tolled) beginning on the date the claim is filed. For requests for relief made solely under section 6015(f) (and the corresponding § 1.6015-4), the IRS is prohibited from collecting against the requesting spouse (and the collection statute is tolled) only for liabilities arising on or after December 20, 2006, or liabilities arising before December 20, 2006, but remaining unpaid as of that date. For requests for relief made solely under § 1.6015-4, the restrictions on collection and tolling of the collection statute do not start until December 20, 2006, for any requests filed before that date, assuming the tax remained unpaid as of that date. The restrictions on collection and tolling of the collection statute start as of the date the request is filed for

requests filed on or after December 20, 2006.

#### 8. Section 1.66-4

The only changes to the existing regulations under section 66 are non-substantive changes. Proposed § 1.66-4(a)(3) and (b) replace the citation to Rev. Proc. 2000-15 with Rev. Proc. 2013-34, which revised the factors used in determining whether a requesting spouse is eligible for equitable relief under section 66(c).

#### 9. Effective and Applicability Dates

Additionally, the effective and applicability date sections in the regulations under section 66 and section 6015 are reorganized to move the effective and applicability date sections within the specific regulation to which the dates apply. The separate effective date sections under §§ 1.66-5 and 1.6015-9 are removed.

#### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the "Addresses" heading. Treasury and the IRS request comments on all aspects of the proposed regulations. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Nancy Rose of the Office of the Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

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

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entries in numerical order as follows:

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

Section 1.66–1 also issued under 26 U.S.C. 66(c).

Section 1.66–2 also issued under 26 U.S.C. 66(c).

Section 1.66–3 also issued under 26 U.S.C. 66(c).

\* \* \* \* \*

■ **Par. 2.** Section 1.66–1 is amended by adding paragraph (d) to read as follows:

**§ 1.66–1 Treatment of community income.**

\* \* \* \* \*

(d) *Effective/applicability date.* This section is applicable beginning July 10, 2003.

■ **Par. 3.** Section 1.66–2 is amended by adding paragraph (e) to read as follows:

**§ 1.66–2 Treatment of community income where spouses live apart.**

\* \* \* \* \*

(e) *Effective/applicability date.* This section is applicable beginning July 10, 2003.

■ **Par. 4.** Section 1.66–3 is amended by adding paragraph (d) to read as follows:

**§ 1.66–3 Denial of the Federal income tax benefits resulting from the operation of community property law where spouses not notified.**

\* \* \* \* \*

(d) *Effective/applicability date.* This section is applicable beginning July 10, 2003.

■ **Par. 5.** Section 1.66–4 is amended by:

1. The last sentence of paragraphs (a)(3) and (b) are revised.
2. Paragraph (l) is added and reserved.
3. Paragraph (m) is added.

The revisions and additions read as follows:

**§ 1.66–4 Request for relief from the Federal income tax liability resulting from the operation of community property law.**

(a) \* \* \*

(3) \* \* \* Factors relevant to whether it would be inequitable to hold a

requesting spouse liable, more specifically described under the applicable administrative procedure issued under section 66(c) (Rev. Proc. 2013–34 (2013–2 CB 397) (See § 601.601(d)(2) of this chapter), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph (a).

(b) \* \* \* Factors relevant to whether it would be inequitable to hold a requesting spouse liable, more specifically described under the applicable administrative procedure issued under section 66(c) (Rev. Proc. 2013–34 (2013–2 CB 397) (See § 601.601(d)(2) of this chapter), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph (b).

\* \* \* \* \*

(l) [Reserved]

(m) *Effective/applicability date.* This section is applicable beginning July 10, 2003, except that paragraphs (a)(3) and (b) of this section will be applicable on the date of publication of a Treasury Decision adopting these rules as final regulations in the **Federal Register**.

**§ 1.66–5 [Removed]**

■ **Par. 6.** Section 1.66–5 is removed.

■ **Par. 7.** Section 1.6015–0 is amended by:

■ 1. In § 1.6015–1, entries for paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (h)(6), (h)(7), (h)(8), (k), (l), (m), (n), (o), and (p) are added and the entry for paragraph (h)(5) is revised.

■ 2. In § 1.6015–2, entries for paragraphs (b), (c), (d), and (e) are revised and the entries for paragraphs (e)(1) and (e)(2) are removed.

■ 3. In § 1.6015–3, entries for paragraphs (a) and (c)(2)(v) are revised and entries for paragraphs (c)(2)(vi), (d)(2)(i)(A), (d)(2)(i)(B), and (e) are added.

■ 4. In § 1.6015–4, an entry for paragraph (d) is added.

■ 5. In § 1.6015–5, an entry for paragraph (d) is added.

■ 6. In § 1.6015–6, an entry for paragraph (d) is added.

■ 7. In § 1.6015–7, entries for paragraphs (c)(1) and (c)(4)(iii) are revised and entries for paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (d) are added.

■ 8. In § 1.6015–8, an entry for paragraph (d) is added.

■ 9. Section 1.6015–9 entry is removed.

The revisions and additions read as follows:

**§ 1.6015–0 Table of contents.**

\* \* \* \* \*

**§ 1.6015–1 Relief from joint and several liability on a joint return.**

\* \* \* \* \*

(e) \* \* \*

(1) In general.

(2) Situations in which relief under § 1.6015–3 will not be considered to have been at issue in the prior proceeding.

(3) Meaningful participation.

(4) Examples.

(5) Collateral estoppel.

\* \* \* \* \*

(h) \* \* \*

(5) Request for relief.

(6) Unpaid tax and underpayment.

(7) Understatement.

(8) Deficiency.

\* \* \* \* \*

(k) Credit or refund.

(1) In general.

(2) No credit or refund allowed under § 1.6015–3.

(3) No circumvention of §§ 1.6015–1(k)(2) and 1.6015–3(c)(1).

(4) Limitations on credit or refund.

(5) Requesting spouse limited to credit or refund of payments made by the requesting spouse.

(l) [Reserved]

(m) Penalties and interest.

(n) Attribution of understatement or deficiency resulting from an increase to adjusted gross income.

(1) In general.

(2) Examples.

(o) Abuse by nonrequesting spouse.

(p) Effective/applicability date.

**§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.**

\* \* \* \* \*

(b) Know or reason to know.

(c) Inequity.

(d) Partial relief.

(1) In general.

(2) Example.

(e) Effective/applicability date.

**§ 1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.**

(a) Allocation of deficiency.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Actual knowledge and community property.

(vi) Abuse exception.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) In general.

(B) Calculating separate taxable income and tax due.

(e) Effective/applicability date.

**§ 1.6015–4 Equitable relief.**

(d) Effective/applicability date.

**§ 1.6015–5 Time and manner for requesting relief.**

\* \* \* \* \*

(d) Effective/applicability date.

§ 1.6015-6 *Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.*

\* \* \* \* \*

(d) Effective/applicability date.

§ 1.6015-7 *Tax Court review.*

\* \* \* \* \*

(c) \* \* \*

(1) Restrictions on collection.

(i) Restrictions on collection for requests for relief made on or after December 20, 2006.

(ii) Restrictions on collection for requests for relief made before December 20, 2006.

(iii) Rules for determining the period of the restrictions on collection.

\* \* \* \* \*

(4) \* \* \*

(iii) Assessment to which the request relates.

(d) Effective/applicability date.

§ 1.6015-8 *Applicable liabilities.*

\* \* \* \* \*

(d) Effective/applicability date.

■ **Par. 8.** Section 1.6015-1 is amended by:

■ 1. Paragraphs (a)(2), (e), (h)(1), and (h)(5) are revised.

■ 2. The last three sentences of paragraph (h)(4) are removed.

■ 3. Paragraphs (h)(6), (7), and (8) and (k) are added.

■ 4. Paragraph (l) is added and reserved.

■ 5. Paragraphs (m), (n), (o), and (p) are added.

The revisions and additions read as follows:

§ 1.6015-1 **Relief from joint and several liability on a joint return.**

(a) \* \* \*

(2) A requesting spouse may submit a single request for relief under §§ 1.6015-2, 1.6015-3, and 1.6015-4. Upon submitting a request for relief, the IRS will consider whether relief is appropriate under §§ 1.6015-2 and 1.6015-3 and, to the extent relief is unavailable under both of those provisions, under § 1.6015-4. Equitable relief under § 1.6015-4 is available only to a requesting spouse who fails to qualify for relief under §§ 1.6015-2 and 1.6015-3.

\* \* \* \* \*

(e) *Res judicata and collateral estoppel*—(1) *In general.* A requesting spouse is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised the issue of relief under section 6015.

(2) *Situations in which relief under § 1.6015-3 will not be considered to have been at issue in the prior*

*proceeding.* Relief under § 1.6015-3 will not be considered to have been at issue in a prior proceeding if the requesting spouse only raised the issue of relief under section 6015 in general and did not specify under which subsection relief was being requested, and the requesting spouse was not eligible for relief under § 1.6015-3 during the prior proceeding because the requesting spouse was not divorced, widowed, or legally separated, or had been a member of the same household as the nonrequesting spouse during the prior 12 months.

(3) *Meaningful participation.* A requesting spouse meaningfully participated in the prior proceeding if the requesting spouse was involved in the proceeding so that the requesting spouse could have raised the issue of relief under section 6015 in that proceeding. Meaningful participation is a facts and circumstances determination. Absent abuse as set forth in paragraph (i) of this section, the following is a nonexclusive list of acts to be considered in making the facts and circumstances determination: Whether the requesting spouse participated in the IRS Appeals process while the prior proceeding was docketed; whether the requesting spouse participated in pretrial meetings; whether the requesting spouse participated in discovery; whether the requesting spouse participated in settlement negotiations; whether the requesting spouse signed court documents, such as a petition, a stipulation of facts, motions, briefs, or any other documents; whether the requesting spouse participated at trial (for example, the requesting spouse was present or testified at the prior proceeding); and whether the requesting spouse was represented by counsel in the prior proceeding. No one act necessarily determines the outcome. The degree of importance of each act varies depending on the requesting spouse's facts and circumstances.

(i) Notwithstanding the fact that a requesting spouse performed any of the acts listed in paragraph (e)(3) of this section in the prior proceeding, the requesting spouse will not be considered to have meaningfully participated in the prior proceeding if the requesting spouse establishes that the requesting spouse performed the acts because the nonrequesting spouse abused (as described in paragraph (o) of this section) or maintained control over the requesting spouse, and the requesting spouse did not challenge the nonrequesting spouse for fear of the nonrequesting spouse's retaliation.

(ii) A requesting spouse did not meaningfully participate in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding.

(iii) In a case petitioned from a statutory notice of deficiency under section 6213, the fact that the requesting spouse did not have the ability to effectively contest the underlying deficiency is irrelevant for purposes of determining whether the requesting spouse meaningfully participated in the court proceeding for purposes of paragraph (e)(1) of this section.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

*Example 1.* In a prior court proceeding involving a petition from a notice of deficiency related to a joint income tax return, H and W were still married and filed a timely joint petition to the United States Tax Court. The petition stated that W was entitled to relief under section 6015 without specifying under which subsection she was requesting relief. Before trial, H negotiates with the IRS Chief Counsel attorney and settles the case. W did not meaningfully participate. A stipulated decision was entered that did not mention relief under section 6015. One year later W files a request for relief under section 6015. While W did not meaningfully participate in the prior court proceeding, because relief under section 6015 was at issue in that case, res judicata applies except with respect to relief under § 1.6015-3. Because W did not specify that she was requesting relief under § 1.6015-3, and W was not eligible to request relief under that section because she was still married to the nonrequesting spouse throughout the court proceeding, relief under § 1.6015-3 is not considered to have been at issue in that case. Thus, W is not barred by res judicata from raising relief under § 1.6015-3 in a later case. However, any later claim from W requesting relief under § 1.6015-2 or § 1.6015-4 would be barred by res judicata.

*Example 2.* Same facts as in *Example 1* of this paragraph (e)(4) except that H and W are divorced at the time the petition was filed. Because W was eligible to request relief under § 1.6015-3 as she was divorced from H, relief under § 1.6015-3 is considered to be at issue in the prior court proceeding and W is barred by res judicata from raising relief under § 1.6015-3 in a later case. Thus, any later claim from W requesting relief under any subsection of section 6015 would be barred by res judicata.

*Example 3.* The IRS issued a notice of deficiency on H and W's joint income tax return based on H's Schedule C business. H and W timely filed a petition in the United States Tax Court. W signed the petition and numerous other documents, participated in discussions regarding the case with the IRS Chief Counsel attorney, and ultimately agreed to a settlement of the case. W could have raised any issue, but W did not have any access to H's records regarding his

Schedule C business, over which H maintained exclusive control. Relief under section 6015 was never raised in the court proceeding. If W were to later file a request for relief under section 6015, W's claim would be barred by res judicata. Considering these facts and circumstances, W meaningfully participated in the prior court proceeding regarding the deficiency. The fact that W could not have effectively contested the underlying deficiency because she had no access to H's Schedule C records is not relevant to the determination of whether W meaningfully participated. Instead the meaningful participation exception looks to W's involvement in the prior court proceeding and her ability to raise relief under section 6015 as a defense.

*Example 4.* Same facts as *Example 3* of this paragraph (e)(4), except that W's participation in discussions with the IRS Chief Counsel attorney were clearly controlled by H, and W was fearful of H when she agreed to settle the case. In this situation, her involvement in the prior proceeding would not be considered meaningful participation because W was able to establish that H maintained control over her and that she did not challenge H for fear of the H's retaliation. If W were to later file a request for relief under section 6015, her claim would not be barred by res judicata.

*Example 5.* In March 2014, the IRS issued a notice of deficiency to H and W determining a deficiency on H and W's joint income tax return for tax year 2011. H and W timely filed a pro se petition in the United States Tax Court for redetermination of the deficiency. W signed the petition, but otherwise, H handled the entire litigation, from discussing the case with the IRS Chief Counsel attorney to agreeing to a settlement of the case. Relief under section 6015 was never raised. W signed the decision document that H had agreed to with the IRS Chief Counsel attorney. If W were to later file a claim requesting relief under section 6015, W's claim would not be barred by res judicata. Considering these facts and circumstances, W's involvement in the prior court proceeding regarding the deficiency did not rise to the level of meaningful participation.

*Example 6.* Same facts as in *Example 5* of this paragraph (e)(4) except that W also participated in settlement negotiations with the IRS Chief Counsel attorney that resulted in the decision document entered in the case. Considering these facts and circumstances—signing the petition and the decision document, along with participating in the negotiations that led to the settlement reflected in the decision document—W meaningfully participated in the prior court proceeding regarding the deficiency because W could have raised relief under section 6015. Any later claim from W requesting relief under section 6015 would be barred by res judicata.

*Example 7.* In a prior court proceeding involving a petition from a notice of deficiency, H and W hired counsel, C, to represent them in the United States Tax Court. W agreed to C's representation, but otherwise, only H met and communicated with C about the case. C signed and filed the

petition, discussed the case with the IRS Chief Counsel attorney, and agreed to a settlement of the case after discussing it with H. Relief under section 6015 was never raised. C signed the decision document on behalf of H and W. If W were to later file a claim requesting relief under section 6015, W's claim would not be barred by res judicata. Even though W was represented by counsel in the prior court proceeding regarding the deficiency, considering all the facts and circumstances, W's involvement in the prior court proceeding did not rise to the level of meaningful participation.

*Example 8.* In a prior court proceeding involving a petition from a notice of deficiency, H did not sign the petition or other court documents, participate in the Appeals or Counsel settlement negotiations, attend pretrial meetings, or hire separate counsel. H did, however, attend the trial and testify. Considering these facts and circumstances, H's participation in the trial is sufficient to establish that H meaningfully participated in the prior court proceeding regarding the deficiency because H's participation provided H with a definite opportunity to raise relief under section 6015 in that proceeding. Any later claim from H requesting relief under section 6015 would be barred by res judicata.

*Example 9.* The IRS issued a joint notice of deficiency to H and W determining a deficiency on H and W's joint income tax return based on H's Schedule C business. Only W timely filed a petition in the United States Tax Court. W conceded the deficiency shortly before trial and signed a decision document. W did not raise relief under section 6015. If W were to later file a claim requesting relief under section 6015, W's claim would be barred by res judicata. Because W was the only petitioner in the prior court proceeding, W's participation in that proceeding was meaningful participation.

(5) *Collateral estoppel.* Any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive, and the requesting spouse may be collaterally estopped from relitigating those issues.

\* \* \* \* \*

(h) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who filed a joint income tax return and requests relief from Federal income tax liability arising from that return under § 1.6015-2, § 1.6015-3, or § 1.6015-4.

\* \* \* \* \*

(5) *Request for relief.* A qualifying request under § 1.6015-2, § 1.6015-3, or § 1.6015-4 is the first timely request for relief from joint and several liability for the tax year for which relief is sought. A qualifying request also includes a requesting spouse's second request for relief from joint and several liability for the same tax year under § 1.6015-3 when the additional qualifications of

paragraphs (h)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under § 1.6015-3 at the time of the first request solely because the qualifications of § 1.6015-3(a) were not satisfied; and

(ii) At the time of the second request, the qualifications for relief under § 1.6015-3(a) were satisfied.

(6) *Unpaid tax and underpayment.* Unpaid tax and underpayment for purposes of § 1.6015-4 means the balance due shown on the joint return, reduced by the tax paid with the joint return. The balance due shown on the joint return is determined after application of the credits for tax withheld under section 31, any amounts paid as estimated income tax, any amounts paid with an extension of time to file, or any other credits applied against the total tax reported on the return. Tax paid with the joint return includes a check or money order remitted with the return or Form 1040-V, "Payment Voucher," or payment by direct debit, credit card, or other commercially acceptable means under section 6311. If the joint return is filed on or before the last day prescribed for filing under section 6072 (determined without regard to any extension of time to file under section 6081), the tax paid with the joint return includes any tax paid on or before the last day prescribed for payment under section 6151. If the joint return is filed after the last day prescribed for filing, the tax paid with the joint return includes any tax paid on or before the date the joint return is filed. A requesting spouse is not entitled to be considered for relief under § 1.6015-4 for any tax paid with the joint return. If the tax paid with the joint return completely satisfies the balance due shown on the return, then there is no unpaid tax for purposes of § 1.6015-4.

(7) *Understatement.* The term understatement means the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

(8) *Deficiency.* The term deficiency has the same meaning given to that term in section 6211 and § 301.6211-1 of this chapter.

\* \* \* \* \*

(k) *Credit or refund*—(1) *In general.* Except as provided in paragraphs (k)(2) through (5) of this section, a requesting spouse who is eligible for relief can receive a credit or refund of payments made to satisfy the joint income tax

liability, whether the liability resulted from an understatement or an underpayment.

(2) *No credit or refund allowed under § 1.6015-3.* A requesting spouse is not entitled to a credit or refund of any payments made on the joint income tax liability as a result of allocating the deficiency under § 1.6015-3. See section 6015(g)(3) and § 1.6015-3(c)(1).

(3) *No circumvention of §§ 1.6015-1(k)(2) and 1.6015-3(c)(1).* Section 1.6015-4 may not be used to circumvent the limitation of § 1.6015-3(c)(1) (such as, no refunds under § 1.6015-3). Therefore, relief is not available under this section to obtain a credit or refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3. For purposes of determining whether the requesting spouse qualifies for relief under § 1.6015-3, the fact that a refund was barred by section 6015(g)(2) and paragraph (k)(2) of this section does not mean that the requesting spouse did not receive full relief. A requesting spouse is entitled to full relief under § 1.6015-3 if the requesting spouse was eligible to allocate the deficiency in full to the nonrequesting spouse.

(4) *Limitations on credit or refund.* The availability of credit or refund is subject to the limitations provided by sections 6511 and 6512(b). Generally the filing of Form 8857, "Request for Innocent Spouse Relief," will be treated as the filing of a claim for credit or refund even if the requesting spouse does not specifically request a credit or refund. The amount allowable as a credit or refund, assuming the requesting spouse is eligible for relief, includes payments made after the filing of the Form 8857, as well as payments made within the applicable look-back period provided by section 6511(b).

(5) *Requesting spouse limited to credit or refund of payments made by the requesting spouse.* A requesting spouse is only eligible for a credit or refund of payments to the extent the requesting spouse establishes that he or she provided the funds used to make the payment for which he or she seeks a credit or refund. Thus, a requesting spouse is not eligible for a credit or refund of payments made by the nonrequesting spouse. A requesting spouse is also generally not eligible for a credit or refund of joint payments made with the nonrequesting spouse. A requesting spouse, however, may be eligible for a credit or refund of the requesting spouse's portion of an overpayment from a joint return filed with the nonrequesting spouse that was offset under section 6402 to the spouses' joint income tax liability, to the extent

that the requesting spouse can establish his or her contribution to the overpayment.

(l) [Reserved]

(m) *Penalties and interest.* Generally, a spouse who is entitled to relief under § 1.6015-2, § 1.6015-3, or § 1.6015-4 is also entitled to relief from related penalties, additions to tax, additional amounts, and interest (collectively, penalties and interest). Penalties and interest, however, are not separate erroneous items (as defined in paragraph (h)(4) of this section) from which a requesting spouse can be relieved separate from the tax. Rather relief from penalties and interest related to an understatement or deficiency will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. For penalties that relate to a particular erroneous item, see § 1.6015-3(d)(4)(iv)(B). Penalties and interest on an underpayment are also not separate items from which a requesting spouse may obtain relief under § 1.6015-4. Relief from penalties and interest on the underpayment will be determined based on the amount of relief from the underpayment to which the requesting spouse is entitled. If the underlying tax liability (whether an assessed deficiency or an underpayment) was paid in full after the joint return was filed but penalties and interest remain unpaid, the requesting spouse may be relieved from the penalties and interest if the requesting spouse is entitled to relief from the underlying tax. The fact that the requesting spouse is entitled to relief from the underlying tax but is not entitled to a refund because of § 1.6015-1(k) does not prevent the requesting spouse from being relieved from liability for the penalties and interest.

(n) *Attribution of understatement or deficiency resulting from an increase to adjusted gross income—(1) In general.* Any portion of an understatement or deficiency relating to the disallowance of an item (or increase to an amount of tax) separately listed on an individual income tax return solely due to the increase of adjusted gross income (or modified adjusted gross income or other similar phase-out thresholds) as a result of an erroneous item solely attributable to the nonrequesting spouse will also be attributable to the nonrequesting spouse unless the evidence shows that a different result is appropriate. If the increase to adjusted gross income is the result of an erroneous item(s) of both the requesting and nonrequesting spouses, the item disallowed (or increased tax) due to the increase to adjusted gross income will be attributable to the requesting spouse in the same ratio as

the amount of the item or items attributable to the requesting spouse over the total amount of the items that resulted in the increase to adjusted gross income.

(2) *Examples.* The following examples illustrate the rules of this paragraph (n):

*Example 1.* H and W file a joint Federal income tax return. After applying withholding credits there is a tax liability of \$500. Based on the earned income reported on the return and the number of qualifying children, H and W are entitled to an Earned Income Tax Credit (EITC) in the amount of \$1,500. The EITC satisfies the \$500 in tax due and H and W receive a refund in the amount of \$1,000. Later the IRS concludes that H had additional unreported income, which increased the tax liability on the return to \$1,000 and resulted in H and W's EITC being reduced to zero due to their adjusted gross income exceeding the maximum amount. The IRS determines a deficiency in the amount of \$2,000—\$1,500 of which relates to the EITC and \$500 of which relates to H's erroneous item—the omitted income. If W requests relief under section 6015, the entire \$2,000 deficiency is attributable to H because the EITC was disallowed solely due to the increase of adjusted gross income as a result of H's omitted income. W satisfies the attribution factor of § 1.6015-2(a)(2) and the threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under § 1.6015-3(d)(4)(ii), the portion of the deficiency related to the disallowance of the EITC is initially allocated to H.

*Example 2.* H and W file a joint Federal income tax return reporting a total tax liability of \$22,000. Later the IRS concludes that H had additional unreported income in the amount of \$20,000, which increased H and W's adjusted gross income and their alternative minimum taxable income. As a result, H and W now owe the Alternative Minimum Tax (AMT). The IRS determines a deficiency in the amount of \$5,250—\$250 of which relates to H and W's AMT liability as determined under section 55 and \$5,000 of which relates to the increase in H and W's section 1 income tax liability. If W requests relief under section 6015, the entire \$5,250 deficiency is attributable to H because H and W owe the AMT solely due to H's erroneous item—the omitted income. W satisfies the attribution factor of § 1.6015-2(a)(2) and the threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under § 1.6015-3(d)(4)(ii), the portion of the deficiency related to the AMT is initially allocated to H.

*Example 3.* H and W file a joint Federal income tax return reporting itemized deductions on Schedule A, "Itemized Deductions," in the amount of \$50,000. Later the IRS concludes that \$10,000 of W's expenses reported on her Schedule C, "Profit or Loss From Business," were not allowable, which increased H and W's adjusted gross income. As a result, H and W's itemized expenses are reduced to \$45,000 as their adjusted gross income exceeded the phase-out amount. The IRS determines a deficiency in the amount of \$5,000. If H requests relief

under section 6015, the entire \$5,000 deficiency is attributable to W because the itemized deductions were reduced solely due to the increase of adjusted gross income as a result of W's erroneous item—the Schedule C expenses. H satisfies the attribution factor of § 1.6015-2(a)(2) and the threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under § 1.6015-3(d)(2)(iv), the portion of the deficiency related to the disallowance of the Schedule A deductions is initially allocated to W.

*Example 4.* H and W file a joint Federal income tax return reporting itemized deductions on Schedule A in the amount of \$50,000. Later the IRS concludes that H had additional unreported income in the amount of \$4,000 and W had additional unreported income in the amount of \$6,000, which increased H and W's adjusted gross income. As a result, H and W's itemized expenses are reduced to \$45,000 as their adjusted gross income exceeded the phase-out amount. The IRS determines a deficiency in the amount of \$6,000—\$1,500 of which relates to H's erroneous item, \$2,500 of which relates to W's erroneous item, and \$2,000 of which relates to the reduced itemized deductions. Assuming the conditions for relief under section 6015 are otherwise satisfied, the \$2,500 deficiency from W's omitted income is attributable to W and the \$1,500 deficiency from H's omitted income is attributable to H. Because the increase to adjusted gross income as a result of both H and W's erroneous items reduced the itemized deductions, the portion of the deficiency related to the disallowed itemized deductions is partially attributable to both H and W. Of the \$2,000 deficiency from the disallowed itemized deductions, \$800 is attributable to H because 40 percent (\$4,000/\$10,000) of the items that resulted in the increase to adjusted gross income are attributable to H, and \$1,200 is attributable to W because 60 percent (\$6,000/\$10,000) of the items that resulted in the increase to adjusted gross income are attributable to W. If both H and W requested relief the most H could be relieved from is \$3700, the amount attributable to W (\$2500 + \$1200), and the most W could be relieved from is \$2300, the amount attributable to H (\$1500 + \$800).

(o) *Abuse by the nonrequesting spouse.* Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws. All the facts and circumstances are considered in determining whether a requesting spouse was abused. The impact of a nonrequesting spouse's alcohol or drug abuse is also considered in determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse's child or other family member

living in the household may constitute abuse of the requesting spouse.

(p) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 9.** Section 1.6015-2 is amended by:

- 1. Paragraph (a) introductory text is revised.
- 2. Paragraph (b) is removed.
- 3. Paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d).
- 4. Newly designated paragraph (b) is revised.
- 5. The last sentence of newly designated paragraph (c) is revised.
- 6. Newly designated paragraph (d) is revised.
- 7. Paragraph (e) is added.

The revisions and addition read as follows:

**§ 1.6015-2 Relief from liability applicable to all qualifying joint filers.**

(a) *In general.* A requesting spouse may be relieved from joint and several liability for tax (including related additions to tax, additional amounts, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse requests relief in accordance with §§ 1.6015-1(h)(5) and 1.6015-5, and—

\* \* \* \* \*

(b) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. For rules relating to a requesting spouse's actual knowledge, see § 1.6015-3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; any deceit or evasiveness of the nonrequesting spouse; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; the requesting spouse's involvement in business or household financial matters; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted

from the return that a reasonable person would question; any lavish or unusual expenditures compared with past spending levels; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns). A requesting spouse has knowledge or reason to know of the portion of an understatement related to an item attributable to the nonrequesting spouse under § 1.6015-1(n) if the requesting spouse knows or has reason to know of the nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in § 1.6015-1(o)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, the requesting spouse will be treated as not having knowledge or reason to know of the items giving rise to the understatement. If, however, the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013-4(d) applies.

(c) \* \* \* For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2013-34 (2013-2 CB 397), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(d) *Partial relief*—(1) *In general.* If a requesting spouse had no knowledge or reason to know of a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example.* The following example illustrates the rules of this paragraph (d):

*Example.* H and W are married and file their 2014 joint income tax return in March 2015. In April 2016, H is convicted of embezzling \$2 million from his employer during 2014. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during



2014, H transferred an additional \$10,000 from the individual account to H and W's joint bank account. Although H paid the household expenses using this joint account, W regularly received the bank statements relating to the account. W did not know or have reason to know of H's embezzling activities. W did, however, know or have reason to know of \$120,000 of the \$2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account and she regularly received bank statements showing the monthly deposits from H's individual account. Therefore, W may be relieved of the liability arising from \$1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from \$120,000 of the unreported embezzlement income of which she knew and had reason to know.

(e) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 10.** Section 1.6015-3 is amended by:

- 1. The paragraph heading and first sentence of paragraph (a) are revised.
- 2. Paragraphs (c)(1) and (c)(2)(iv) are revised.
- 3. A sentence is added at the end of paragraph (c)(2)(i).
- 4. Paragraph (c)(2)(v) is redesignated as paragraph (c)(2)(vi) and paragraph (c)(2)(v) is added.
- 5. Newly redesignated paragraph (c)(2)(vi) is revised.
- 6. Paragraphs (d)(2)(i) and (d)(5) introductory text are revised.
- 7. In paragraph (d)(5), *Examples 7, 8, 9, 10, and 11* are added.
- 8. Paragraph (e) is added.

The revisions and additions read as follows:

**§ 1.6015-3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.**

(a) *Allocation of deficiency.* A requesting spouse may allocate a deficiency (as defined in § 1.6015-1(h)(8)) if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date the request for relief is filed. \* \* \*

(c) \* \* \* (1) *No refunds.* Although a requesting spouse may be eligible to allocate the deficiency to the nonrequesting spouse, refunds are not authorized under this section. Refunds of paid liabilities for which a requesting spouse was entitled to allocate the deficiency under this section may be

considered under § 1.6015-2 but not under § 1.6015-4. See § 1.6015-1(k)(3).

(2) \* \* \* (i) \* \* \* A requesting spouse has actual knowledge of the portion of an understatement related to an item attributable to the nonrequesting spouse under § 1.6015-1(n) and allocable to the nonrequesting spouse under paragraph (d) of this section if the requesting spouse has actual knowledge of the nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income.

\* \* \* \* \*

(iv) *Factors supporting actual knowledge.* To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the Internal Revenue Service (IRS) will consider all the facts and circumstances, including but not limited to, whether the requesting spouse made a deliberate effort to avoid learning about the item to be shielded from liability; whether the erroneous item would have been allocable to the requesting spouse but for the tax benefit rule in paragraph (d)(2)(i) of this section; and whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. These factors, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item. If the requesting spouse had actual knowledge of an erroneous item, the portion of the deficiency with respect to that item will not be allocated to the nonrequesting spouse.

(v) *Actual knowledge and community property.* A requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns one-half of the bank account. Assuming there is no other indication that she asserted dominion and control over the item, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(v)

because she does not hold the account in her name.

(vi) *Abuse exception.* Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in § 1.6015-1(o)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, the limitation on the requesting spouse's ability to allocate the deficiency because of actual knowledge will not apply. The requesting spouse will be treated as not having knowledge of the items giving rise to the deficiency. If, however, the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013-4(d) applies.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) *Benefit on the return—(A) In general.* An erroneous item that would otherwise be allocated to one spouse is allocated to the second spouse to the extent that the second spouse received a tax benefit on the joint return and the first spouse did not receive a tax benefit. An erroneous item under this paragraph can be allocated to a requesting spouse or a nonrequesting spouse, but only a spouse who requests relief under this section may allocate the deficiency. A spouse who does not request relief under section 6015 remains fully liable for the deficiency. An allocation from a requesting spouse to a nonrequesting spouse reduces the amount for which a requesting spouse remains liable while an allocation from a nonrequesting spouse to a requesting spouse increases the amount for which a requesting spouse remains liable.

(B) *Calculating separate taxable income and tax due.* Under section 6015(d)(3)(A), the items giving rise to the deficiency must be allocated to each spouse in the same manner as the items would have been allocated if the spouses had filed separate returns. In determining whether a spouse received a tax benefit from the item, it may be necessary to calculate each spouse's hypothetical separate return taxable income, determined without regard to the erroneous items, and taking into consideration adjusted gross income,

allowable deductions and losses, and allowable credits against tax.

\* \* \* \* \*  
 (5) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to allocate the deficiency, that a request under section 6015 was timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse actually knew of the erroneous items allocable to

the other spouse. The examples are as follows:

\* \* \* \* \*  
*Example 7. Calculation of tax benefit based on taxable income.* (i) On their joint Federal income tax return for tax year 2009, H reports \$60,000 of wage income; W reports \$25,000 of wage income; and H and W report joint interest income of \$2,000 and joint ordinary income from investments in the amount of \$6,000. In addition, H and W properly deduct \$30,000 for their two personal exemptions and itemized deductions, and W erroneously reports a loss from her separate investment

in a partnership in the amount of \$20,000. On May 3, 2012, a \$5,000 deficiency is assessed with respect to their 2009 joint return. W dies in November 2012. H requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of W's \$20,000 loss (which is initially allocable to W).

(ii) After taking all sources of income and all allowable deductions into consideration, H's separate taxable income is \$49,000 and W's separate taxable income is \$14,000, calculated as follows:

	H	W
Wages .....	\$60,000	\$25,000
Interest Income .....	1,000	1,000
Investment Income .....	3,000	3,000
Adj. Gross Income .....	64,000	29,000
Exemptions and Deductions .....	(15,000)	(15,000)
Taxable Income .....	49,000	14,000
W's Disallowed Loss .....		(20,000)
Tax Benefit Not Used by W .....		(6,000)
Tax Benefit to W .....		(14,000)
Tax Benefit to H .....	(6,000)	

(iii) As W only used \$14,000 of her \$20,000 loss from her separate investment in a partnership to offset her separate taxable income, H benefited from the other \$6,000 of the disallowed loss used to offset his separate taxable income. Therefore, \$14,000 of the disallowed \$20,000 loss is allocable to W (7/10) and \$6,000 of the disallowed loss is allocable to H (3/10). H's liability is limited to \$1,500 (3/10 of the \$5,000 deficiency).

*Example 8. Nonrequesting spouse receives a benefit on the joint return from the requesting spouse's erroneous item.* (i) On their joint Federal income tax return for tax year 2008, W reports \$40,000 of wage income and H reports \$12,000 of wage income. In addition, H and W properly deduct \$20,000 for their two personal exemptions and itemized deductions, H erroneously deducts a casualty loss in the amount of \$5,000 related to a loss on his separately held property, and W erroneously takes a loss in the amount of \$7,000 from an investment in a tax shelter. H and W legally separate in 2010, and on October 21, 2011, a \$2,400 deficiency is assessed with respect to their 2008 joint return. H requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of H's \$5,000 loss and all of W's \$7,000 loss (which is allocable to W and for which H did not have actual knowledge).

(ii) The \$5,000 casualty loss is initially allocated to H. As H's separate taxable income is only \$2,000 (\$12,000 wage income less \$10,000—50 percent of the exemptions and itemized deductions), H only used \$2,000 of his \$5,000 casualty loss to offset his separate taxable income, and W benefited from the other \$3,000 of the disallowed loss, which offset a portion of her separate taxable income. Therefore, \$3,000 of the disallowed loss is allocable to W even though the loss

is H's item, and \$2,000 of the loss is allocable to H. The \$7,000 tax shelter loss is also allocable to W as H did not have knowledge of the facts that made the tax shelter item unallowable as a loss. H's allocation percentage is 1/6 (\$2,000/\$12,000) and H's liability is limited to \$400 (1/6 of \$2,400 deficiency). The IRS may collect up to \$400 from H and up to \$2,400 from W (although the total amount collected may not exceed \$2,400).

(iii) If the IRS could establish that H had knowledge of the facts that made the deduction for his casualty loss unallowable, the entire \$5,000 casualty loss would be allocable to H. H's allocation percentage would be 5/12 (\$5,000/\$12,000) and H's liability would be limited to \$1,000 (5/12 of \$2,400 deficiency).

(iv) If W also requested innocent spouse relief (and H did not have knowledge of the facts that made his loss unallowable), there would be no remaining joint and several liability, and the IRS would be permitted to collect \$400 from H (1/6 (\$2,000/\$12,000) of the \$2,400 deficiency) and \$2,000 (5/6 (\$10,000/\$12,000) of \$2,400 deficiency) from W. If the IRS could establish that W had knowledge of the facts that made the deduction for the casualty loss unallowable, W would then be liable for the entire \$2,400 deficiency, while H would remain liable for up to \$400.

*Example 9. Allocation of liability based on joint erroneous loss item.* (i) On their joint Federal income tax return for tax year 2009, H reports \$100,000 of wage income and W reports \$50,000 of wage income. In addition, H and W properly deduct \$40,000 for their two personal exemptions and itemized deductions, and erroneously report a loss in the amount of \$50,000 from a jointly-held investment in a tax shelter. H and W divorce

in 2011, and on August 14, 2012, a \$12,000 deficiency is assessed with respect to their 2009 joint return. W requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of the \$50,000 loss.

(ii) Under paragraph (d)(2)(iv) of this section, in the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item related to a jointly-owned investment is generally allocated 50 percent to each spouse. Thus, \$25,000 of the loss is allocated to each spouse. In determining the effect, if any, of the tax benefit rule of § 1.6015-1(d)(2)(i), H's separate taxable income is \$80,000: \$100,000 wage income minus \$20,000, or 50 percent of the exemptions and itemized deductions; and W's separate taxable income is \$30,000: \$50,000 minus \$20,000. As both H's and W's separate taxable income exceeds their allocated share of the disallowed loss, no additional amount is allocated between the spouses. W's allocation percentage is 1/2 (\$25,000/\$50,000) and W's liability is limited to \$6,000 (1/2 of \$12,000 deficiency). The IRS may collect up to \$6,000 from W and up to \$12,000 from H (although the total amount collected may not exceed \$12,000).

(iii) If the IRS could establish that W had knowledge of the facts that made the loss unallowable, both H and W would then remain jointly and severally liable for the \$12,000 deficiency.

*Example 10. Calculation of tax benefit based on joint erroneous item.* Assume the same facts as in *Example 9* of this paragraph (d)(5), except that W's wage income is only \$40,000. W's separate taxable income would then be only \$20,000 (\$40,000 wage income minus \$20,000—50 percent of the exemptions and itemized deductions). W

would only be able to use \$20,000 of the \$25,000 loss from the tax shelter to offset her separate taxable income. Accordingly, H benefited from the other \$5,000 of the disallowed loss, which was used to offset a portion of his separate taxable income. Therefore, \$20,000 of the disallowed loss is allocable to W, and \$30,000 is allocable to H: \$25,000 (H's 50 percent of the disallowed loss) plus \$5,000 (the portion of W's 50 percent that is allocable to H because H received a tax benefit). W's allocation percentage is  $\frac{2}{5}$  ( $\frac{\$20,000}{\$50,000}$ ) and W's liability is limited to \$4,800 ( $\frac{2}{5}$  of \$12,000 deficiency). The IRS may collect up to \$4,800 from W and up to \$12,000 from H (although the total amount collected may not exceed \$12,000).

*Example 11. Allocation of erroneous item based on fraud of the nonrequesting spouse.* During 2009, W fraudulently accesses H's brokerage account to sell stock that H had separately received from an inheritance. W deposits the funds from the sale in a separate bank account to which H did not have access. H and W file a joint Federal income tax return for tax year 2009. The return did not include the income from the sale of the stock. H and W divorce in November 2010. The divorce decree states that W committed forgery and defrauded H with respect to his brokerage account. The IRS commences an audit in March 2011 and determines a deficiency based on the omission of the income from the sale of the stock. H requests innocent spouse relief. Under paragraph (d)(2)(iii) of this section, items of investment income are generally allocated to the spouse who owned the investment, which in this case would be H. Under paragraph (d)(2)(ii) of this section, however, the IRS may allocate any item between the spouses if the IRS determines that the allocation is appropriate due to fraud by one or both spouses. The IRS determines that W committed fraud with respect to H and as a result it is appropriate to allocate the deficiency to W under paragraph (d)(2)(ii).

(e) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 11.** Section 1.6015-4 is revised to read as follows:

**§ 1.6015-4 Equitable relief.**

(a) A requesting spouse who files a joint return for which an understatement or deficiency (as defined by § 1.6015-1(h)(7) and (8)) was determined or for which there was unpaid tax (as defined by § 1.6015-1(h)(6)), and who does not qualify for full relief under § 1.6015-2 or § 1.6015-3, may be entitled to equitable relief under this section. The Internal Revenue Service (IRS) has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015-3(c)(1). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3. See § 1.6015-1(k)(3). If the requesting spouse is only eligible for partial relief under § 1.6015-3 (*i.e.*, some portion of the deficiency is allocable to the requesting spouse), then the requesting spouse may be considered for relief under this section with respect to the portion of the deficiency for which the requesting spouse was not entitled to relief.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2013-34 (2013-1 IRB 397), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(d) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 12.** Section 1.6015-5 is amended by adding paragraph (d) to read as follows:

**§ 1.6015-5. Time and manner for requesting relief.**

\* \* \* \* \*

(d) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 13.** Section 1.6015-6 is amended by revising the first sentence of paragraph (a)(1), adding a sentence at the end of paragraph (a)(2), and adding paragraph (d) to read as follows:

**§ 1.6015-6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.**

(a) \* \* \* (1) When the Internal Revenue Service (IRS) receives a request for relief under § 1.6015-2, § 1.6015-3, or § 1.6015-4, the IRS must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's request for relief. \* \* \*

(2) \* \* \* For guidance concerning the nonrequesting spouse's right to appeal the preliminary determination to IRS Appeals, see Rev. Proc. 2003-19 (2003-1 CB 371), or other guidance published by the Treasury Department and the IRS (see § 601.601(d)(2) of this chapter).

\* \* \* \* \*

(d) *Effective/applicability date.* This section will be applicable on the date of

publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 14.** In § 1.6015-7, paragraphs (b), (c)(1), (c)(3), and (c)(4)(iii) are revised and paragraph (d) is added to read as follows:

**§ 1.6015-7 Tax Court review.**

\* \* \* \* \*

(b) *Time period for petitioning the Tax Court.* Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review the denial of relief under § 1.6015-1 within 90 days after the date the Internal Revenue Service's (IRS) final determination is mailed by certified or registered mail (the 90-day period). If the IRS does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files a request for relief under section 6015, the requesting spouse may petition the Tax Court to review the request at any time after the expiration of the 6-month period and before the expiration of the 90-day period. The Tax Court also may review a request for relief if the Tax Court has jurisdiction under another section of the Internal Revenue Code, such as section 6213(a) or section 6330(d). This paragraph (b) applies to liabilities arising on or after December 20, 2006, or arising prior to December 20, 2006, and remaining unpaid as of that date. For liabilities arising prior to December 20, 2006, which were fully paid prior to that date, the requesting spouse may petition the Tax Court to review the denial of relief as discussed above, but only with respect to denials of relief involving understatements under § 1.6015-2, § 1.6015-3, or § 1.6015-4.

(c) *Restrictions on collection and suspension of the running of the period of limitations—(1) Restrictions on collection for requests for relief made on or after December 20, 2006.* Unless the IRS determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a spouse requesting relief under § 1.6015-2, § 1.6015-3, or § 1.6015-4 (except for certain requests for relief made solely under § 1.6015-4) for the collection of any assessment to which the request relates until the expiration of the 90-day period described in paragraph (b) of this section, or, if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. For requests for relief made solely under § 1.6015-4, the restrictions on collection only apply if the liability arose on or after December 20, 2006, or arose prior to December 20, 2006, and remained

unpaid as of that date. The restrictions on collection begin on the date the request is filed.

(ii) *Restriction on collection for requests for relief made before December 20, 2006.* Unless the IRS determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse requesting relief under § 1.6015-2 or § 1.6015-3 for the collection of any assessment to which the request relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. The restrictions on collection begin on the date the request is filed with the IRS. For requests for relief made solely under § 1.6015-4, the restrictions on collection do not begin until December 20, 2006, and only apply with respect to liabilities remaining unpaid on or after that date.

(iii) *Rules for determining the period of the restrictions on collection.* For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if the requesting

spouse appeals the Tax Court's decision, the IRS may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under paragraphs (c)(1)(i) and (ii) of this section means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

\* \* \* \* \*

(3) *Suspension of the running of the period of limitations.* The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which the request under § 1.6015-2, § 1.6015-3, or § 1.6015-4 relates is suspended for the period during which the IRS is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. If the requesting spouse, however, signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the IRS.

(4) \* \* \*

(iii) *Assessment to which the request relates.* For purposes of this paragraph (c), the assessment to which the request relates is the entire assessment of the understatement or the balance due shown on the return to which the request relates, even if the request for relief is made with respect to only part of that understatement or balance due.

(d) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 15.** Section 1.6015-8 is amended by adding paragraph (d) to read as follows:

§ 1.6015-8 **Applicable liabilities.**

\* \* \* \* \*

(d) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 1.6015-9 [Removed]

■ **Par. 16.** Section 1.6015-9 is removed.

§§ 1.6015-3 and 1.6015-8 [Amended]

■ **Par. 17.** For each entry in the "Section" column remove the language in the "Remove" column and add the language in the "Add" column in its place.

Section	Remove	Add
1.6015-3(c)(4) <i>Example 4</i> (ii), (iii), (iv), and (v), first sentence .....	<i>Example 5</i> .....	<i>Example 4.</i>
1.6015-3(c)(4) <i>Example 5</i> (ii), (iii), and (iv), first sentence .....	<i>Example 6</i> .....	<i>Example 5.</i>
1.6015-8(c) <i>Example 1</i> , fifth sentence .....	6015(b) .....	6015.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2015-29609 Filed 11-19-15; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2015-0786]

RIN 1625-AA11

**Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes amending the Columbus Day weekend

regulated navigation area on Biscayne Bay in Miami, Florida. The proposed amended regulation extends the Biscayne Bay regulated navigation enforcement period to New Year's Eve and Fourth of July events. It also expands the boundaries of the regulated navigation area south to Turkey Point, east to Elliott Key, west to the shoreline, and north to the Julia Tuttle Causeway. These regulations are necessary to protect the public during Columbus Day weekend, New Year's Eve events, and Fourth of July events; periods that have historically had a significant concentration of persons and vessels on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are: Required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-0786 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Benjamin R. Colbert, Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email [Benjamin.R.Colbert@uscg.mil](mailto:Benjamin.R.Colbert@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
 E.O. Executive Order  
 FR Federal Register

NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

## II. Background, Purpose, and Legal Basis

Recreational boating traffic on the waters of Biscayne Bay increases significantly during Columbus Day, New Year's Eve, and Fourth of July events. In recent years, recreational vessel speed, especially in crossing navigational channels, contributed to incidents that resulted in severe injury and death. This proposed regulation seeks to increase public safety on the waters of Biscayne Bay during holidays known for increased vessel traffic by requiring vessels to travel at a maximum speed of 15 knots. It also subjects recreational vessels to the control by Coast Guard and local law enforcement authorities.

The legal basis for this proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend, New Year's Eve, and the Fourth of July.

## III. Discussion of Proposed Rule

The District Commander for the Coast Guard's Seventh District proposes to establish a regulated navigational area in the Biscayne Bay from noon on the Saturday preceding Columbus Day to 2 a.m. on Columbus Day; from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne. This regulated navigation area would encompass waters of the Biscayne Bay between Julia Tuttle Causeway Bridge and Turkey Point in Homestead, Florida.

All vessels within the proposed regulated navigation area are: (1) Required to transit the regulated navigation area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our

analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

E.O.s 12866 and 13563 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant. For the following reasons: (1) The regulated navigation area will be enforced for less than 2 days each year for Columbus Day events and less for New Year's Eve and Fourth of July events; (2) although, during the enforcement period, vessels are required to transit the area at no more than 15 knots, are subject to control by the Coast Guard, and are required to follow the instructions of all law enforcement vessels in the area, the regulated navigation area does not prohibit vessels from transiting the area; (3) during the enforcement period, vessels will be able to operate in waters that are not encompassed within the regulated navigation area without the restrictions imposed by the regulated navigation area; and (4) advance notification will be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in Section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a regulated navigation area which will be enforced for less than 48 hours. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

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

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public

comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for 33 CFR part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.779 to read as follows:

#### § 165.779 Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL.

(a) *Regulated area.* The regulated navigation area encompasses all waters of Biscayne Bay between Julia Tuttle and Turkey Point contained within the following points: beginning at Point 1 in position 25°48'43" N, 80°08'29" W; thence south to Point 2 in position 25°29'07" N, 80°10'44" W; thence southwest to Point 3 in position 25°25'51" N, 80°12'00" W; thence west to Point 4 in position 25°25'51" N, 80°19'42" W; thence north to Point 5 in position 25°29'10" N, 80°20'58" W; thence northwest to Point 6 in position 25°37'35" N, 80°18'28" W; thence northwest to Point 7 in position 25°48'44" N, 80°11'17" W; thence back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local

officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* All vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(d) *Enforcement period.* (1) This section will be in enforced annually on Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne.

(2) Columbus Day is the federally recognized holiday occurring annually on the second Monday in October.

Dated: November 13, 2015.

**S.A. Buschman,**

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2015-29533 Filed 11-19-15; 8:45 am]

BILLING CODE 9110-04-P

#### DEPARTMENT OF AGRICULTURE

##### Forest Service

#### 36 CFR Part 294

RIN 0596-AD26

#### Roadless Area Conservation; National Forest System Lands in Colorado

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to reinstate the North Fork Coal Mining Area exception of the Colorado Roadless Rule. The Colorado Roadless Rule is a State-specific rule that provides direction for conserving and managing approximately 4.2 million acres of Colorado Roadless Areas (CRAs) on National Forest System (NFS) lands within the state of Colorado. The North Fork Coal Mining Area exception allowed for temporary road construction for coal exploration and/or coal-related surface activities in an area defined as the North Fork Coal Mining Area, which was inadvertently reported as 19,100 acres in 2012, and was actually 19,500 acres. The Forest Service, on behalf of the Department, has prepared a supplemental environmental impact statement (SEIS) addressing specific environmental disclosure deficiencies

identified by the District Court of Colorado. In addition, the Department is proposing to correct certain CRA boundaries associated with the North Fork Coal Mining Area based on updated information. The Forest Service invites written comments on both the proposed rule and supplemental draft environmental impact statement.

**DATES:** Comments on this proposed rule must be received in writing by January 4, 2016. Comments concerning the supplemental draft environmental impact statement contained in this proposed rule must be received in writing by January 4, 2016.

**ADDRESSES:** Comments may be submitted electronically via the internet to [go.usa.gov/3JQwJ](http://go.usa.gov/3JQwJ) or to [www.regulations.gov](http://www.regulations.gov). Send written comments to: Colorado Roadless Rule, 740 Simms Street, Golden, CO 80401.

All comments, including names and addresses, will be placed in the project record and available for public inspections and copying.

The public may inspect comments received on this proposed rule at USDA, Forest Service, Ecosystem Management Coordination Staff, 1400 Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments should call 202-205-0895 ahead to facilitate an appointment and entrance to the building. Comments may also be inspected at USDA, Forest Service Rocky Mountain Regional Office, Strategic Planning Staff, 740 Simms, Golden, Colorado, between 8 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments at the Regional Office should call 303-275-5156 ahead to facilitate an appointment and entrance to the building.

**FOR FURTHER INFORMATION CONTACT:** Ken Tu, Interdisciplinary Team Leader, Rocky Mountain Regional Office at 303-275-5156.

Individuals using telecommunication devices for the deaf may call the Federal Information Relay Services at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In July 2012, the USDA promulgated the Colorado Roadless Rule, a State-specific regulation for conserving and managing approximately 4.2 million acres of CRAs on NFS lands. The Rule addressed State-specific concerns while conserving roadless area characteristics. One State-specific concern involved continued exploration and development of coal resources in the North Fork Valley area of the Grand Mesa,

Uncompahgre, and Gunnison (GMUG) National Forests. The Colorado Roadless Rule addressed this State-specific concern by defining an area called the North Fork Coal Mining Area and developing an exception that allowed temporary road construction for coal-related activities within that defined area.

In July 2013, High Country Conservation Advocates, WildEarth Guardians, and Sierra Club challenged the Forest Service consent decision to the Bureau of Land Management (BLM) modifying two existing coal leases, the BLM's companion decision to modify the leases, the BLM's authorization of exploration in the lease modification areas, and the North Fork Coal Mining Area exception of the Colorado Roadless Rule. In June 2014, the District Court of Colorado found the environmental documents supporting the four decisions to be in violation of NEPA. The deficiencies identified by the Court associated with the Colorado Roadless Rule included: Failure to disclose greenhouse gas emissions associated with potential mine operations; failure to disclose greenhouse gas emissions associated with combustion of coal potentially mined from the area; and failure to address a report about coal substitution submitted during a public comment period. In September 2014, the District Court of Colorado vacated the exploration plan, the lease modifications, and the North Fork Coal Mining Area exception of the Colorado Roadless Rule (36 CFR 294.43(c)(1)(ix)) but otherwise left the Rule intact and operational.

The final 2012 Colorado Roadless Rule was developed collaboratively between the USDA, Forest Service, State of Colorado, and interested publics. The North Fork Coal Mining Area exception was developed by a 13-member, bipartisan task force established under Colorado Revised Statute § 36-7-302 to make recommendations to the Governor regarding management of roadless areas in Colorado national forests. Between June 8, 2005, with the signing of Colorado Senate bill 05-243 which created the Roadless Task Force and November 13, 2006, with then Governor Owen signing the Colorado State Petition, the task force held nine public meetings throughout the State and six deliberative meetings of the task force members that were open to the public, and reviewed and considered over 40,000 public comments. Comments were both supportive and opposed to coal extraction. The task force recommended a Colorado Roadless Rule not apply to about 55,000 acres of roadless areas in the GMUG National

Forests for activities related to and in support of underground coal mining.

On November 13, 2006 then-Governor Bill Owens submitted a petition to the USDA to develop a State-specific roadless rule. The petition reflected the task force recommendations and included the North Fork Coal Mining Area exception. Governor Owens stated that the petition weighed Colorado's interests and reflected the concerns of the entire State. The 2006 petition attempted to strike a balance between those that supported coal extraction and those that opposed it by proposing that a roadless rule not apply to the North Fork Valley. Potential coal resources within roadless areas on the Pike-San Isabel, Routt, White River, and San Juan National Forests were not included in the petition.

After Governor Owens submitted the State's petition, Bill Ritter, Jr. was elected Governor of Colorado. In April 2007, then-Governor Ritter resubmitted the petition with minor modifications. Governor Ritter supported the concept of having the Colorado Roadless Rule not apply to the North Fork Coal Mining Area but explicitly asked the area remain in the Colorado roadless inventory. In 2010, John Hickenlooper was elected Governor of Colorado. Governor Hickenlooper also supported having a North Fork Coal Mining Area exception.

Throughout the development of the Colorado Roadless Rule, the USDA, Forest Service, and State of Colorado attempted to strike a balance between those that support and oppose coal mining in CRAs. The North Fork Coal Mining Area reflects this effort to find common ground. In November 2006, Governor Owens petitioned approximately 55,000 acres be considered as the North Fork Coal Mining Area, which included all or portions of Currant Creek, Electric Mountain, Flatirons, Flattops-Elk Park, Pilot Knob, and Sunset CRAs. In July 2008, the North Fork Coal Mining Area was reduced to approximately 29,000 acres in the proposed rule and included all or portions of Currant Creek, Electric Mountain, Flatirons, Pilot Knob, and Sunset CRAs. In April 2011, the North Fork Coal Mining Area was further reduced to approximately 20,000 acres in the revised proposed rule and included all or portions of Currant Creek, Electric Mountain, Flatirons, Pilot Knob, and Sunset CRAs. In July 2012, the North Fork Coal Mining Area was reported in error as 19,100 acres in the final rule. The actual acreage was 19,500, and included all or portions of Flatirons, Pilot Knob, and Sunset CRAs. The changes made to the North Fork

Coal Mining Area were a direct result of public comments and the desire to balance economic concerns with roadless values.

Throughout the rulemaking process, a total of five formal comment periods were held by the State and Forest Service resulting in 24 public meetings and over 312,000 comments. In addition, five meetings open to the public were held by the Roadless Area Conservation National Advisory Committee, which provided recommendations to the Secretary of Agriculture. The USDA believes there is an appropriate balance between conserving roadless area characteristics and the state-specific concerns in the continued exploration and development of coal resources in the July 2012 final rule where less than 0.5 percent of the CRAs were designated as the North Fork Coal Mining Area.

*Need for Rulemaking*

The State of Colorado maintains that coal mining in the North Fork Coal Mining Area provides an important economic contribution and stability for the communities of the North Fork Valley. USDA and the Forest Service are committed to contributing to energy security, and carrying out the government’s overall policy to foster and encourage orderly and economic development of domestic mineral resources.

All existing Federal coal leases within CRAs occur in the North Fork Valley near Paonia, Colorado on the GMUG National Forests. Coal from this area meets the Clean Air Act definition for compliant and super-compliant coal, which means it has high energy value and low sulphur, ash and mercury

content. There are two mines currently holding leases within CRAs. One is operating, producing approximately 5.2 million tons of coal annually. The second is currently idle due to a fire and flood within their mine operation. The final rule accommodates continued coal mining opportunities within the North Fork Coal Mining Area. At approximately 19,500 acres, this area is less than 0.5% of the total 4.2 million acres of CRAs. The North Fork Coal Mining Area exception allows for the construction of temporary roads for exploration and surface activities related to coal mining for existing and future coal leases. The reinstatement of this exception does not approve any future coal leases, nor does it make a decision about the leasing availability of any coal within the State. Those decisions would need to undergo separate environmental analyses, public input, and decision-making.

*Supplemental Environmental Impact Statement*

A Supplemental Environmental Impact Statement (SEIS) has been prepared to complement the 2012 Final EIS for the Colorado Roadless Rule. The SEIS is limited in scope to address the deficiencies identified by the District Court of Colorado in *High Country Conservation Advocates v. United States Forest Service (13–01723, D. Col)*, correction of boundary information, and to address scoping comments. In conjunction with the 2012 Final EIS, the SEIS discloses the environmental consequences of reinstating the North Fork Coal Mining Area exception into the Colorado Roadless Rule.

Three alternatives are addressed in detail in the SEIS. Alternative A is the

No Action Alternative, and would continue the current management under the Colorado Roadless Rule without a North Fork Coal Mining Area exception. Alternative A would manage the 19,500 acres of CRA within the vacated North Fork Coal Mining Area as non-upper tier roadless. Alternative B (proposed action), would reinstate the North Fork Coal Mining Area exception, allowing temporary road construction for coal mining related activities on 19,700 acres of NFS lands within CRAs. Alternative C (exclusion of “wilderness capable” lands) would establish the North Fork Coal Mining Area exception, but exclude lands identified as “wilderness capable” during the 2007 GMUG Forest Plan revision process. Alternative C would allow temporary road construction for coal mining activities on 12,600 acres of NFS lands within CRAs.

In addition, all alternatives include boundary correction of CRAs based on more accurate inventory of forest road locations obtained since the promulgation of the 2012 Colorado Roadless Rule. These corrections will add 65 acres into the CRAs, and subtract 35 acres from CRAs along the existing road system. The court identified deficiencies were addressed in the SEIS in the following manner:

1. Failure to disclose greenhouse gas emissions associated with potential mine operations—The SEIS estimates greenhouse gas emissions associated with mining of the coal based on three potential production levels (low, average and air quality permitted). Table 1 displays results for Alternative B (proposed action).

**TABLE 1—ESTIMATED ANNUAL GROSS LIFECYCLE GREENHOUSE GAS EMISSIONS FROM POTENTIAL COAL MINING FOR ALTERNATIVE B UNDER THREE PRODUCTION SCENARIOS, IN ANNUAL TONS OF CARBON DIOXIDE EQUIVALENTS**

Alternative B	Low scenario	Average scenario	Permitted scenario (max air quality permit values)
Coal Production (annual tons) .....	5,300,000	10,000,000	15,500,000
	carbon dioxide equivalents		
Carbon dioxide—extraction .....	100,000	200,000	300,000
Methane—extraction .....	1,200,000	4,200,000	6,300,000
Nitrous oxide—extraction .....	0	0	0
Total .....	1,300,000	4,400,000	6,600,000

2. Failure to disclose greenhouse gas emissions associated with combustion of coal potentially mined from the area—The SEIS includes a lifecycle

analysis of greenhouse gas emissions that includes downstream effects of combustion of coal based on three potential production levels. Table 2

displays results for Alternative B (proposed action).



TABLE 2—ESTIMATED ANNUAL GROSS LIFECYCLE GREENHOUSE GAS EMISSIONS FROM POTENTIAL TRANSPORTATION AND COMBUSTION OF COAL FOR ALTERNATIVE B UNDER THREE PRODUCTION SCENARIOS, IN METRIC TONS OF CARBON DIOXIDE EQUIVALENTS

Alternative B	Low scenario	Average scenario	Permitted scenario (max air quality permit values)
Coal Production (annual tons) .....	5,300,000	10,000,000	15,500,000
	carbon dioxide equivalents		
Carbon dioxide—combustion .....	11,600,000	22,000,000	34,500,000
All—rail transport .....	600,000	1,200,000	1,800,000
Carbon dioxide—overseas shipping .....	100,000	200,000	300,000
Total .....	12,300,000	23,400,000	36,600,000

3. Failure to address a report about coal substitution submitted during a public comment period—The SEIS includes a lifecycle analysis of greenhouse gas emissions that includes the downstream effects of substituted energy sources if the North Fork Coal Mining Area exception is not reinstated (Alternative A).

Changes in gross production and consumption of coal from the North Fork Coal Mining Area are expected to have an effect on production and consumption of other fuel sources, including alternative supplies of coal, natural gas, and other energy supplies such as renewables, especially in later years of the analysis. The SEIS characterizes market responses and substitution effects in order to estimate net changes in energy production and consumption. The ICF International's Integrated Planning Model (IPM®) was used to predict how production and consumption of other sources of coal and natural gas, as well as alternative sources of energy (e.g., renewables, bio/waste fuel) respond to, substitute, or offset for changes in the supply of low sulfur bituminous coal from the North Fork Coal Mining Area.

Assuming that total gross production of underground coal from the North Fork Coal Mining Area increases by 172 million tons over the period 2016 to 2054 for Alternative B, compared to Alternative A, production from other substitute sources of underground coal around the nation are likely to decrease, in many cases, in response to an increase in North Fork Coal Mining Area underground coal production. These decreases in other underground coal mining would offset, in part, some of the 172 million tons of underground coal production from the North Fork Coal Mining Area, resulting in net domestic underground coal production of 91 million tons. These results are

estimated using response coefficients derived from IPM® modeling results.

Production of substitute sources of surface coal and natural gas across the country are estimated to decrease by 23 million tons and 271 BCF, in response to increases in North Fork Coal Mining Area coal production. Total electricity generation is assumed to remain constant across the three alternatives, so change in total electricity generation is equal to zero for Alternative B, compared to A. However, the mix of energy sources used to generate the electricity will change, in response to increases in North Fork Coal Mining Area coal production.

These shifts in the mixtures of energy used to generate electricity, as well as the production of different types of energy will change carbon dioxide emissions. Total carbon dioxide emissions is estimated to increase by 131 million tons under Alternative B, compared to Alternative A.

4. The SEIS addresses the social cost of carbon as related to the Colorado Roadless Rule. A social cost of carbon calculation was completed as part of the present net value analysis considering the 2010, 2013, and 2015 Technical Update of the social cost of carbon for Regulatory Impact Analysis Under Executive Order 12866—Interagency Working Group on social cost of carbon.

Social cost of carbon estimates represent global measures because emissions of greenhouse gasses from within the U.S. contribute to damages around the world. The total social cost of carbon values therefore account for global damages caused by greenhouse gas emissions. The SEIS discusses greenhouse gas estimates in the context of (i) total or global social cost of carbon estimates and (ii) domestic (U.S.) estimate represented by applying 7 percent to 23 percent of social cost of carbon estimates, and (iii) a forest

estimate for the GMUG national forest boundary.

Discussion of these accounting stances is intended to help the decision maker and the public understand the relative importance of considering greenhouse gas damages as a global problem, in comparison to the more traditional domestic benefit cost stance adopted for regulatory impact analysis and NEPA effects analysis for public land management decision-making.

Present net value results, which include the social cost of carbon calculation, estimated under the global view are primarily negative, with values as low as negative \$12 billion in net damages to positive \$1.9 billion in net benefits for Alternative B, compared to Alternative A. Present net value ranges from negative \$6.8 billion to positive \$1.3 billion for Alternative C, relative to Alternative A. Midpoint present net value estimates range from negative \$0.8 to negative \$3.4 billion in net damages for Alternatives B and C, compared to Alternative A.

#### Regulatory Considerations

##### *Regulatory Planning and Review*

USDA consulted with the Office of Management and Budget and determined this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866.

##### *Regulatory Flexibility Act and Consideration of Small Entities*

USDA certifies the proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as determined in the 2012 Regulatory Flexibility Analysis. Therefore notification to the Small Business Administration's Chief Council for Advocacy is not required pursuant to Executive Order 13272.

*Energy Effects*

The Colorado Roadless Rule and the North Fork Coal Mining Area exception do not constitute a “significant energy action” as defined by Executive Order 13211. No novel legal or policy issues regarding adverse effects to supply, distribution, or use of energy are anticipated beyond what has been addressed in the 2012 FEIS or the Regulatory Impact Analysis prepared in association with the final 2012 Colorado Roadless Rule. The proposed reinstatement of the North Fork Coal Mining Area exception does not restrict access to privately held mineral rights, or mineral rights held through existing claims or leases, and allows for disposal of mineral materials. The proposed rule does not prohibit future mineral claims or mineral leasing in areas otherwise open for such. The rulemaking provides a regulatory mechanism for consideration of requests for modification of restriction if adjustments are determined to be necessary in the future.

*Federalism*

USDA has determined the proposed rule conforms with the Federalism principles set out in Executive Order 13132 and does not have Federalism implications. The rulemaking would not impose any new compliance costs on any State; and the rulemaking would not have substantial direct effects on States, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government.

The proposed rule is based on a petition submitted by the State of Colorado under the Administrative Procedure Act at 5 U.S.C. 553(e) and pursuant to USDA regulations at 7 CFR 1.28. The State’s petition was developed through a task force with local government involvement. The State of Colorado is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for implementation of NEPA.

*Takings of Private Property*

USDA analyzed the proposed rule in accordance with the principles and criteria contained in Executive Order 12630. The Agency determined the proposed rule does not pose the risk of a taking of private property.

*Civil Justice Reform*

USDA reviewed the proposed rule in context of Executive Order 12988. The Agency has not identified any State or local laws or regulations that are in

conflict with this proposed rule or would impede full implementation of this proposed rule. However, if this proposed rule were adopted, (1) all State and local laws and regulations that conflict with this rulemaking or would impede full implementation of this rulemaking would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this rulemaking would not require the use of administrative proceedings before parties could file suit in court.

*Tribal Consultation*

USDA provided an introductory letter and the Notice of Intent for the Colorado Roadless Rule and the supplemental draft EIS to the Ute, Ute Mountain Ute, and Southern Ute Indian Tribes in context of Executive Order 13175. No specific requests from any tribes were made for additional information or meetings. No letters from any tribes have been received concerning the proposed action.

*Unfunded Mandates*

USDA has assessed the effects of the Colorado Roadless Rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more by State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of title II of the Unfunded Mandates Reform Act of 1995 is not required.

*Paperwork Reduction Act*

This rulemaking does not call for any additional recordkeeping, reporting requirements, or other information collection requirements as defined in 5 CFR 1320 that are not already required by law or not already approved for use. The proposed rule imposes no additional paperwork burden on the public. Therefore the Paperwork Reduction Act of 1995 does not apply to this proposal.

**List of Subjects in 36 CFR Part 294**

National Forests, Recreation areas, Navigation (air), and State petitions for inventoried roadless area management.

For the reasons set forth in the preamble, the Forest Service proposes to amend part 294 of Title 36 of the Code of Federal Regulations by reinstating 36 CFR 294.43(c)(1)(ix) to read as follows:

**PART 294—SPECIAL AREAS****Subpart D—Colorado Roadless Area Management**

■ 1. The authority citation for part 294, subpart D continues to read as follows:

**Authority:** 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

■ 2. Amend § 294.43 by revising paragraph (c)(1)(ix) to read as follows:

**§ 294.43 Prohibition on road construction and reconstruction.**

(c) \* \* \*  
(1) \* \* \*

(ix) A temporary road is needed for coal exploration and/or coal-related surface activities for certain lands with Colorado Roadless Areas in the North Fork Coal Mining Area of the Grand Mesa, Uncompahgre, and Gunnison National Forests as defined by the North Fork Coal Mining Area displayed on the final Colorado Roadless Areas map. Such roads may also be used for collecting and transporting coal mine methane. Any buried infrastructure, including pipelines, needed for the capture, collection, and use of coal mine methane, will be located within the rights-of-way of temporary roads that are otherwise necessary for coal-related surface activities including the installation and operation of methane venting wells.

\* \* \* \* \*

Dated: November 6, 2015.

**Robert Bonnie,**

*Under Secretary, Natural Resources and Environment.*

[FR Doc. 2015–29592 Filed 11–19–15; 8:45 am]

**BILLING CODE 3411–15–P**

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 215**

[Docket DARS–2015–0051]

RIN 0750–AI75

**Defense Federal Acquisition Regulation Supplement: Promoting Voluntary Post-Award Disclosure of Defective Pricing (DFARS Case 2015–D030)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to stipulate that DoD contracting officers shall request a limited-scope audit, unless a full-scope audit is appropriate for the circumstances, in the interest of promoting voluntary contractor disclosure of defective pricing identified by the contractor after contract award.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D030, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D030” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D030.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D030” on your attached document.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D030 in the subject line of the message.

- *Fax:* 571–372–6094.

- *Mail:* Defense Acquisition

Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone 571–372–6176.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to stipulate that DoD contracting officers shall request a limited-scope audit when a contractor voluntarily discloses defective pricing after contract award, unless a full-scope audit is appropriate for the circumstances. In response to the Better Buying Power 2.0 initiative on “Eliminating Requirements Imposed on Industry where Costs Outweigh Benefits,” contractors recommended several changes to 41 U.S.C. chapter 35, Truthful Cost or Pricing Data (formerly the Truth in Negotiations Act) and to the related DFARS guidance. Specifically, contractors recommended that DoD clarify policy guidance to reduce repeated submissions of certified cost or pricing data. Frequent submissions of such data are used as a defense against defective pricing claims by DoD after contract award, since data

that are frequently updated are less likely to be considered outdated or inaccurate and, therefore, defective. Better Buying Power 3.0 called for a revision of regulatory guidance regarding the requirement for contracting officers to request an audit even if a contractor voluntarily discloses defective pricing after contract award.

**II. Discussion and Analysis**

This proposed rule amends DFARS 215.407–1(c) to—

- Require DoD contracting officers to request a limited-scope unless a full-scope audit is appropriate for the circumstances, when contractors voluntarily disclose defective pricing after contract award;

- Indicate that to determine the appropriate scope of the audit, the contracting officer should consult with Defense Contract Audit Agency; and

- Clarify that voluntary disclosure of defective pricing does not waive Government entitlement to the recovery of any overpayment plus interest on the overpayments, or rights to pursue defective pricing claims.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of the proposed rule is to stipulate that DoD contracting officers shall request a limited-scope audit when a contractor voluntarily discloses defective pricing after contract award, unless a full-scope audit is appropriate for the circumstances. This rule will apply to all DoD contractors, including

small entities, who are required to submit certified cost or pricing data. If those small entities usually submit cost or pricing data frequently in order to avoid defective pricing claims, then this rule may encourage them to reduce the number of such submissions.

There is no change to reporting or recordkeeping as a result of this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the requirements.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D030), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 215**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 215 is proposed to be amended as follows:

**PART 215—CONTRACTING BY NEGOTIATION**

■ 1. The authority citation for part 215 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add sections 215.407 and 215.407–1 to subpart 215.4 to read as follows:

**215.407 Special cost or pricing areas.**

**215.407–1 Defective certified cost or pricing data.**

(c)(i) When contractors voluntarily disclose defective pricing after contract award, contracting officers shall request a limited-scope audit (*e.g.*, limited to the affected cost elements of the defective pricing disclosure) unless a full-scope audit is appropriate for the circumstances (*e.g.*, nature or dollar amount of the defective pricing disclosure). To determine the appropriate scope of the audit, the contracting officer should consult with

Defense Contract Audit Agency (DCAA). At a minimum, the contracting officer shall request that DCAA evaluate—

(A) Completeness of the contractor's voluntary disclosure on the affected contract;

(B) Accuracy of the contractor's cost impact calculation for the affected contract; and

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407-1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

[FR Doc. 2015-29555 Filed 11-19-15; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 217 and 234

[Docket DARS-2015-0042]

RIN 0750-AI62

#### Defense Federal Acquisition Regulation Supplement: Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (DFARS Case 2015-D008)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015, which amended a section of the National Defense Authorization Act for Fiscal Year 2010, to extend and modify contract authority for advanced component development and prototype units.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015-D008, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D008" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D008" on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015-D008 in the subject line of the message.

○ *Fax:* 571-372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Janetta Brewer, telephone: 571-372-6104.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition. However, there is no new impact on contract cost because section 819(b) of the NDAA for FY 2010 (which is unchanged in 2015) continues to place a limitation on costs associated with any contract line item (option or otherwise) for the delivery of initial or additional items. The rule also extends this authority at DFARS 234.005-1(2) to September 30, 2019, from September 30, 2014.

##### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily provides greater flexibility to DoD when contracting for major system acquisitions. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of the rule is to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition.

The rule will apply to DoD major defense acquisition program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a substantial number of small entities.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives available that would meet the objectives of the statute.

DoD invites comments from small business concerns and other interested

parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 601. Such comments should be submitted separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D008) in correspondence.

#### IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35.

#### List of Subjects in 48 CFR Parts 217 and 234

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217 and 234 are proposed to be amended as follows:

- 1. The authority citation for parts 217 and 234 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 217—SPECIAL CONTRACTING METHODS

- 2. Amend section 217.202 by revising paragraph (2) to read as follows:

##### 217.202 Use of options.

\* \* \* \* \*

(2) See 234.005–1 for limitations on the use of contract options for the provision of advanced component development, prototype, or initial production of technology developed under the contract or the delivery of initial or additional items.

#### PART 234—MAJOR SYSTEM ACQUISITION

##### 234.005–1 [Amended]

- 3. Amend section 234.005–1—
  - a. In paragraph (1) introductory text, by removing “component development or prototype of technology” and adding “component development, prototype, or initial production of technology” in its place, and removing “additional prototype items” and adding “additional items” in its place; and
  - b. In paragraph (2), by removing “September 30, 2014” and adding “September 30, 2019” in its place.

[FR Doc. 2015–29552 Filed 11–19–15; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 225

[Docket DARS–2015–0053]

RIN 0750–AI77

#### Defense Federal Acquisition Regulation Supplement: Buy American and Balance of Payments Program— Clause Prescription (DFARS Case 2015–D037)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D037, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D037” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D037.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D037” on your attached document.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D037 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Tresa Sullivan, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571–372–6089.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to clarify when it is appropriate to not include DFARS clause 252.225–7001, Buy American and Balance of Payments Program, with regard to exceptions to the Buy American statute and Balance of Payment Program. The prescription for use of DFARS clause 252.225–7001 does not clearly make a distinction with regard to when an exception to the Buy American statute or Balance of Payments Program applies. As written, procurement offices may inaccurately believe that it is permissible to omit the clause if either situation occurs. However, the clause is required in solicitations and contracts unless (1) the acquisition is for supplies for use within the United States and an exception to the Buy American statute applies (e.g., nonavailability or public interest), or (2) the acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies to internal procedures for Government contracting officers. This proposed rule clarifies how clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies. However, an initial regulatory flexibility analysis has

been performed and is summarized as follows:

The objective of this proposed rule is to clarify the prescription for use of DFARS clause 252.225-7001, Buy American and Balance of Payments Program, to state that the clause does not apply when (1) the acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, or (2) the acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

DoD does not expect this proposed rule to have a significant impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

This proposed rule does not add any new reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015-D037), in correspondence.

## V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition and related clauses.

### List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is proposed to be amended as follows:

## PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### 225.1100 [Amended]

■ 2. Remove “Subparts” in two places and add “subparts” in their place.

■ 3. Amend section 225.1101 by—

■ a. Revising paragraph (2)(i)(C);

■ b. Redesignating paragraphs (2)(i)(D) and (E) as paragraphs (2)(i)(E) and (F); and

■ c. Adding a new paragraph (2)(i)(D).

The revision and addition read as follows:

### 225.1101 Acquisition of supplies.

\* \* \* \* \*

(2)(i) \* \* \*

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, *e.g.*, nonavailability or public interest (see FAR 25.103 and 225.103); or

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501);

\* \* \* \* \*

[FR Doc. 2015-29558 Filed 11-19-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 225 and 252

[Docket DARS-2015-0052]

RIN 0750-AI76

### Defense Federal Acquisition Regulation Supplement: Duty-Free Entry Threshold (DFARS Case 2015-D036)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the threshold for duty-free entry on foreign supplies that are not qualifying country supplies or eligible foreign supplies.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to DFARS Case 2015-D036 by any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015-D036” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015-D036.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015-D036” on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015-D036 in the subject line of the message.

○ *Fax:* 571-372-6094.

○ *Mail:* Defense Acquisition

Regulations System, Attn: Ms. Kyoung Lee, OUSD(AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kyoung Lee, telephone: 571-372-6093.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD is proposing to revise DFARS 225.9, Customs and Duties, and the clause at DFARS 252.225-7013, Duty-Free Entry, by increasing the duty-free entry threshold on nonqualifying country supplies and ineligible foreign supplies from \$200 to \$300. The current threshold was established on April 30, 2003 based on the estimated cost to process a duty-free entry certificate at the time. This proposed rule makes an upward adjustment of the \$200 threshold to \$300 based on the U.S. Consumer Price Index (CPI) located at <http://www.bls.gov/CPI/>.

#### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only makes an upward adjustment of an administrative threshold. However, an initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603 and is summarized as follows:

The objective of this rule is to revise DFARS 225.9, Customs and Duties, and the clause at DFARS 252.225–7013, Duty-Free Entry, by increasing the duty-free entry threshold on nonqualifying country supplies and ineligible foreign supplies from \$200 to \$300. The current threshold, established in 2003, was based on the estimated cost to process a duty-free entry certificate at the time. This rule proposes to make the upward adjustment to reflect annual inflation rates (based on the U.S. Consumer Price Index) that have occurred in the last 12 years.

Current data indicates, on average, approximately 31,500 duty-free entry certificates on foreign supplies for DoD per year. DoD does not expect a change in the estimated duty-free entry processes. As such, small entities will not be materially affected by this rule.

This rule does not impose any additional reporting, recordkeeping, and other compliance requirements. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D036), in correspondence.

### VI. Paperwork Reduction Act

The rule affects the information collection requirements in the clause at

DFARS 252.225–7013, currently approved under OMB Control Number 0704–0229, titled Foreign Acquisition, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because this rule only makes an upward adjustment of the duty-free entry threshold from the \$200 to \$300.

### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 225 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 225—FOREIGN ACQUISITION

#### 225.901 [Amended]

■ 2. In section 225.901, amend paragraph (3) by removing “\$200” and adding “\$300” in its place.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.225–7013 [Amended]

■ 3. Amend section 252.225–7013 by—

■ a. Removing the clause date “(NOV 2014)” and adding “(DATE)” in its place; and

■ b. Amending paragraph (b)(3) by removing “\$200” and adding “\$300” in its place.

[FR Doc. 2015–29557 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 239

[Docket DARS–2015–0046]

RIN 0750–AI72

### Defense Federal Acquisition Regulation Supplement; Long-Haul Telecommunications (DFARS Case 2015–D023)

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a definition of “long-haul telecommunications.”

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D023, using any of the following methods:

○ Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D023” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D023.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DARS Case 2015–D023 on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D023 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kyoung Lee, OUSD(AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kyoung Lee, telephone 571–372–6093.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD is proposing to amend DFARS 239.7401 to add a definition of “long-haul telecommunications.” The rule also amends DFARS 239.7402 to provide a pointer to internal Government procedures in DFARS Procedures, Guidance, and Information (PGI) to identify the Defense Information Systems Agency as the sole procurement activity for long-haul telecommunications requirements as addressed in DoD Directive 5105.19, Defense Information Systems Agency.

#### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only adds a definition of “long-haul telecommunications” and provides a pointer to DFARS PGI for procedures internal to DoD. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this proposed rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add a definition of “long-haul telecommunications” so that contracting officers will know when the procedures at DFARS Procedures, Guidance, and Information 239.7402 are applicable.

The requirements under this rule will apply to long-haul telecommunications (Product Service Code D304) requirements as addressed in DoD Directive 5105.19, Defense Information Systems Agency (DISA). According to data available in the Federal Procurement Data System (FPDS) for fiscal year 2014 and through July 31, 2015, DoD awarded 13,596 new long-haul telecommunications contracts. Approximately 3 percent (451) of the total were awarded to small entities (comprised of 222 unique small entities).

This rule does not create any new reporting or recordkeeping requirements. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D023) in correspondence.

### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 239

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 239 is proposed to be amended as follows:

#### PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for part 239 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 239.7401 by—

■ a. Removing the alphabetical paragraph designation from each definition; and

■ b. Adding, in alphabetical order, a new definition for “*Long-haul telecommunications*”.

The addition reads as follows:

##### 239.7401 Definitions.

\* \* \* \* \*

*Long-haul telecommunications* means all general and special purpose long-distance telecommunications facilities and services (including commercial satellite services, terminal equipment and local circuitry supporting the long-haul service) to or from the post, camp, base, or station switch and/or main distribution frame (except for trunk lines to the first-serving commercial central office for local communications services).

\* \* \* \* \*

■ 3. Amend section 239.7402 by adding paragraph (d) to read as follows:

##### 239.7402 Policy.

\* \* \* \* \*

(d) *Long-haul telecommunications services*. When there is a requirement for procurement of long-haul telecommunications services, follow PGI 239.7402(d).

[FR Doc. 2015–29554 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 241

[Docket DARS–2015–0050]

RIN 0750–AI74

#### Defense Federal Acquisition Regulation Supplement: Contract Term Limit for Shared Energy Savings Contract Services (DFARS Case 2015–D018)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the contract term for shared energy savings contract services.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D018, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D018” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D018.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D018” on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D018 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Janetta L. Brewer, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Janetta L. Brewer, telephone 571–372–6104.



**SUPPLEMENTARY INFORMATION:****I. Background**

DoD is proposing to revise the DFARS to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority.

**II. Discussion and Analysis**

The proposed rule revises DFARS 241.103 by adding paragraph (2) to state that contracting officers may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not-to-exceed 25 years. Experience has indicated that a period of less than 25 years is frequently insufficient to amortize the capital cost. Twenty-five years allows a greater volume and variety of energy conservation measures, and is consistent with non-DoD agency practice for similar contracts.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only seeks to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the contract term for contracts awarded under the statutory authority of 10 U.S.C. 2913. Section 2913 requires DoD to develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of such contracts. DoD is authorized by section 2913 to contract with utility service providers to implement energy conservation measures on military bases. Section 2913 does not indicate a term limit for contracts executed under this authority, and this has created ambiguity and inconsistency throughout DoD on the term limit that is imposed on contracts awarded under the authority. Additionally, the ambiguity has resulted in a hesitation to enter shared energy savings contracts, contrary to the intent of section 2913.

The proposed rule is not anticipated to have a significant economic impact on small business entities. The number of contract awards made under the authority of 10 U.S.C. 2913 is not currently tracked by DoD's business systems. However, it is estimated that approximately 25 shared energy savings projects are initiated across DoD each year, with approximately 17 being awarded annually. It is believed that most awards are made to large utility providers, with generally 25% or more of the renovation and operations & maintenance work executed under the awards being subcontracted to local small business by the utility provider.

This rule does not impose new recordkeeping or reporting requirements. This rule only serves to clarify the maximum contract term that may be authorized for these awards. Any burden caused by this rule is expected to be minimal and will not be any greater on small entities than it is on large businesses.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to this rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D018), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 241**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 241 is proposed to be amended to read as follows:

**PART 241—ACQUISITION OF UTILITY SERVICES**

■ 1. The authority citation for part 241 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 241.103 by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and adding a new paragraph (2) to read as follows:

**241.103 Statutory and delegated authority.**

\* \* \* \* \*

(2) The contracting officer may enter into a shared energy savings contract under 10 U.S.C. 2913 for a period not to exceed 25 years.

\* \* \* \* \*

[FR Doc. 2015–29553 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 130808697–5999–01]

**RIN 0648–XC808**

**Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Multi-Year Specifications for Monitored and Prohibited Harvest Species Stock Categories**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to implement annual catch limits (ACL) and, where necessary, other annual reference points (overfishing limits (OFL) and acceptable biological catches (ABC)) for certain stocks in the monitored and prohibited

harvest species categories under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed ACLs are: Jack mackerel, 31,000 metric tons (mt); northern subpopulation of northern anchovy, 9,750 mt; central subpopulation of northern anchovy, 25,000 mt; and krill, zero. Additionally, an OFL of 39,000 mt, an ABC of 9,750 mt and an annual catch target (ACT) of 1,500 mt is being proposed for the northern subpopulation of northern anchovy. This rule is intended to conserve and manage these stocks off the U.S. West Coast. If the ACL for any one of these stocks is reached, then fishing for that stock will be closed until it reopens at the start of the next fishing season.

**DATES:** Comments must be received by December 21, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0145, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0145](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0145), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.
- **Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Pacific Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The six species managed under the CPS FMP are Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy (northern and central subpopulations), market squid and krill. The CPS FMP is implemented by regulations at 50 CFR part 660, subpart I.

Management unit stocks in the CPS FMP are classified under three management categories: Actively managed; monitored; and prohibited harvest species. Active stocks are characterized by periodic stock assessments, and/or periodic or annual adjustments of target harvest levels. Management of monitored stocks, in contrast, generally involves tracking landings against the relevant ACL (previously the ABCs) and qualitative comparison to available abundance data, but without regular stock assessments or annual adjustments to target harvest levels. Species in both categories may be subject to management measures such as catch allocation, gear regulations, closed areas, closed seasons, or other forms of “active” management. For example, trip limits and a limited entry permit program are already in place for all CPS finfish. The monitored category includes jack mackerel, two subpopulations of northern anchovy stock and market squid. Krill is the only stock in the prohibited harvest category. The monitored stocks have not been managed to a hard quota like the active category stocks by NMFS (although the state of California manages market squid with an annual limit). Instead, landings have been monitored against harvest reference levels to determine if overfishing is occurring and to gauge the need for more active management such as requiring periodic stock assessments and regular adjustments to a quota. Catches of the three finfish stocks in the monitored category—northern anchovy (northern and central subpopulations) and jack mackerel—have remained well below their respective ABC (now proposed ACL levels for jack mackerel and the central anchovy population) since implementation of the CPS FMP in 2000, with average catches over the last 10 years of approximately 7,300 mt,

270 mt and 660 mt for the central and northern subpopulations of northern anchovy and jack mackerel, respectively.

In September 2011, NMFS approved Amendment 13 to the CPS FMP, which modified the framework process used to set and adjust fishery specifications and for setting ACLs and accountability measures (AMs); Amendment 13 was intended to ensure the FMP conforms with the 2007 amendments to the MSA and NMFS’ revised MSA National Standard 1 guidelines at 50 CFR part 600. Specifically, Amendment 13 maintained the existing reference points and the primary harvest control rules for the monitored stocks (jack mackerel, northern anchovy and market squid), including the large buffer built into the ABC control rule for the finfish stocks, as well as the overfishing criteria for market squid, but modified these reference points and control rules to align with the revised advisory guidelines and to comply with the new statutory requirement to establish a process for setting ACLs and AMs. This included a default management framework under which the OFL for each monitored stock was set equal to the maximum sustainable yield (MSY) value and ABC was reduced from the OFL by 75 percent as an uncertainty buffer (based on the existing ABC control rule where ABC equals 25 percent of OFL/MSY). This default framework is used unless there is determined to be a more appropriate OFL, as is the case for the northern subpopulation of northern anchovy, or stock specific ABC control rule like the proxy for the Fishing rate that is expected to result in maximum sustainable yield ( $F_{MSY}$  proxy) for market squid of Egg Escapement  $\geq 30$  percent. ACLs are then set equal to the ABC or could be set lower than the ABC, along with annual catch targets (ACTs), if deemed necessary. These control rules and harvest policies for monitored CPS stocks are simpler and more precautionary than those used for actively managed stocks in recognition of the low fishing effort and low landings for these stocks, as well as the lack of current estimates of stock biomass.

Through this action, NMFS proposes to implement the ACLs shown in Table 1 below for jack mackerel, the two subpopulations of northern anchovy, and krill, as well as an OFL, ABC and ACT for the northern subpopulation of northern anchovy.

TABLE 1—PROPOSED ACLS FOR MONITORED CPS FINFISH, INCLUDING PROPOSED OFL, ABC, AND ACT FOR THE NORTHERN SUBPOPULATION OF NORTHERN ANCHOVY

Stock	OFL	ABC	ACL	ACT
Jack mackerel .....	126,000 mt .....	31,000 mt .....	31,000 mt	
Northern anchovy, (northern subpopulation).	39,000 mt .....	9,750 mt .....	9,750 mt .....	1,500 mt.
Northern anchovy, (central subpopulation).	100,000 mt .....	25,000 mt .....	25,000 mt	
Market squid .....	$F_{MSY}$ proxy resulting in Egg Escapement $\geq$ 30%.	$F_{MSY}$ proxy resulting in Egg Escapement $\geq$ 30%.	ACL not required (Less than 1-year lifecycle and no overfishing).	
Krill .....	Undefined .....	Undefined .....	0	

The OFLs and ABCs listed in Table 1 for jack mackerel, the central subpopulation of northern anchovy, market squid and krill are included for information purposes only. The OFL and ABC specifications for those stocks are set in the FMP; NMFS does not propose to establish or revise them by this proposed rule.

These proposed catch levels and reference points were recommended to NMFS by the Pacific Council and were based on recommendations from its advisory bodies according to the framework in the FMP established through Amendment 13, including OFL and ABC recommendations from its Science and Statistical Committee (SSC). The proposed ACLs for these monitored stocks would be in place for the calendar year fishing season (January 1–December 31), and would remain in place for each subsequent calendar year until new scientific information becomes available to warrant changing them, or if landings increase and consistently reach the ABC/ACL level and it necessitates a change to active management under the FMP. These management benchmarks provide a means to monitor these stocks on an annual basis. Each year, the total harvest of each stock will be assessed against the ACL until such time as the Pacific Council chooses to reassess the management of these stocks, new scientific information regarding these stocks becomes available, or harvest approaches or exceeds the ACL. These benchmarks implicitly include a postseason AM; harvest levels are monitored annually to assess whether a stock should become actively managed.

Per the framework that was established through Amendment 13, the OFLs for the central subpopulation of northern anchovy and jack mackerel are set based on MSY values that were established through Amendment 8 to the FMP. In 2015, Amendment 14 to the CPS FMP established an  $F_{MSY}$  of 0.3 as the MSY reference point for the northern subpopulation of northern

anchovy in the CPS FMP. However, because the framework in the FMP for setting ABCs is based on applying a percentage to numerical MSY/OFLs, it was necessary to determine a numerical OFL value through the specifications process. Because the northern subpopulation of the northern anchovy is currently lightly fished and effort has been inconsistent over time, it was determined that using a catch time series as a way of setting the OFL was not appropriate as it likely was an unreliable indicator of stock status. Therefore, the best available scientific information on the population and biology of northern subpopulation northern anchovy was compiled to develop an OFL. The available information included two separate estimates of biomass; the average of these two estimates was approximately 130,000 mt. After reviewing this information, the SSC recommended that the OFL be set by multiplying the average of these two biomass estimates (130,000 mt), by an  $F_{MSY}$  0.3, which is also the  $F_{MSY}$  value for Pacific mackerel. This is appropriate because, biologically, anchovy populations are likely to be as or more productive than Pacific mackerel. This calculation results in an OFL of 39,000 mt and with the established uncertainty buffer of 75 percent, an ABC of 9,750 mt. Although the proposed ACL for this stock is equal to the ABC, to further account for uncertainty surrounding the reference points for this stock, anchovy's role as forage, and because annual catch levels have been sustainably below the ACL, the Pacific Council recommended, and NMFS is proposing, an ACT of 1,500 mt.

Market squid, because of its short life-cycle, falls under the statutory exception from the requirement to set ACLs and AMs. Section 303(a)(15) of the MSA states that the requirement for ACLs “shall not apply to a fishery for species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species.”

Market squid have a lifecycle of less than 1 year and have not been determined to be subject to overfishing; therefore, an ACL is not required and is not being proposed for market squid.

NMFS is not proposing to establish or change specifications for krill by this rulemaking. Krill are a prohibited harvest species. The targeting, harvesting and transshipment of krill are all explicitly prohibited; therefore, the ACL for krill is zero. Because the harvest level is zero, setting an OFL or ABC for krill would serve no function and is not being proposed in this rule.

If the proposed ACL and/or ACT levels are reached, or are expected to be reached, for one of these fisheries, the directed fishery would be closed until the beginning of the next fishing season. The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure. Additionally, nearing or exceeding one of these ACLs or the ACT would trigger a review of whether the fishery should be moved into the actively managed category of the FMP.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

The primary action being implemented through this rule as it relates to potential economic impacts on small entities is the establishment of multi-year ACLs for the two sub-stocks of northern anchovy and for jack mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set ACLs for these fisheries based on the harvest control rules in the FMP.

On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 79 FR 33650, 33656 (June 12, 2014). NMFS conducted its analysis for this action in light of the new size standards.

The entities that would be affected by the proposed action are the vessels that harvest jack mackerel and northern anchovy as part of the West Coast CPS purse seine fleet. Jack mackerel and northern anchovy are components of the CPS purse seine fishery off the U.S. West Coast, which generally fishes a complex of species, including Pacific sardine, Pacific mackerel and market squid. Currently there are 58 vessels permitted in the Federal CPS limited entry fishery off California. Annually 28 to 45 (average 39) of these CPS vessels landed anchovy and jack mackerel over the last five years. Approximately 26 baitfish licenses are issued annually in the state of Washington to harvest northern anchovy. Since 2009, the state of Oregon has not required a permit to harvest anchovy in Oregon waters. Jack mackerel is currently not fished in Oregon and Washington.

The average annual per vessel revenue in 2013 for the West Coast CPS finfish small purse seine fleet, as well as the few vessels that target anchovy off of Oregon and Washington, was below \$20.5 million; therefore, all of these vessels are considered small businesses under the SBA size standards. Because each affected vessel is a small business,

this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. The corresponding annual revenues from these species averaged to about \$60,000 and \$653,000, for jack mackerel and anchovy respectively.

To evaluate whether this proposed rule could potentially reduce the profitability of the affected vessels, NMFS compared current and average recent historical landings to the proposed ACLs. The proposed multi-year ACL (maximum fishing level for each year) for the northern anchovy central subpopulation is 25,000 mt and the proposed northern subpopulation ACL is 9,750 mt. In 2014, 10,511 mt of the northern anchovy central subpopulation and 112 mt of northern anchovy northern subpopulation were landed. The annual average harvest from 2004 to 2014 for the central and northern subpopulations of northern anchovy is 7,300 mt and 270 mt, respectively. The proposed jack mackerel ACL is 31,000 mt. In 2014, approximately 1,800 mt of jack mackerel were landed and average annual landings of jack mackerel over the last ten years is 549 mt. Prior landings of these stocks have been well below the proposed ACLs. Therefore, although the establishment of ACLs for these stocks is considered a new management measure for these fisheries, based on current and historical landings of these stocks, this proposed action will not result in changes in current fishery operations. As a result, it is unlikely that the ACLs proposed in this rule will limit the profitability of the fleets catching these stocks and thus would not impose a significant economic impact.

The economic impact to the fleet from the proposed action cannot be viewed in isolation. CPS finfish vessels typically harvest a number of other species, including Pacific sardine, Pacific mackerel, squid, and tuna, making these fisheries only components of a multi-species CPS fishery. Vessels rely on multiple species for profitability

because each CPS stock is highly associated with different ocean conditions and different time periods, and so are harvested at various times throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore as abundance levels and markets fluctuate, the CPS fishery as a whole relies on a group of species for annual revenues. Accordingly, even if the revenue derived from the specific fisheries addressed in this proposed rule decline, such a decline will have only a small impact, if at all, on the profits of CPS fishery vessels.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013 and June 12, 2014 final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. All entities subject to this action are small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

There are no reporting, recordkeeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

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

Dated: November 17, 2015.

**Samuel D. Rauch III,**

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

[FR Doc. 2015-29684 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register

Vol. 80, No. 224

Friday, November 20, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), the Assembly of the Administrative Conference of the United States will hold a meeting to consider three proposed recommendations and to conduct other business. This meeting will be open to the public.

**DATES:** The meeting will take place on Friday, December 4, 2015, 9:00 a.m. to 2:00 p.m. The meeting may adjourn early if all business is finished.

**ADDRESSES:** The meeting will be held at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 (Main Conference Room).

**FOR FURTHER INFORMATION CONTACT:** Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202-480-2088; email [smcgibbon@acus.gov](mailto:smcgibbon@acus.gov).

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

*Agenda:* The Assembly will consider three proposed recommendations as described below:

*Technical Assistance by Federal Agencies in the Legislative Process.* This recommendation offers best practices for agencies when providing Congress with technical drafting assistance. It is intended to apply to situations in which Congress originates the draft legislation and asks an agency to review and provide expert technical feedback on the draft without necessarily taking an official substantive position. The recommendation urges agencies and Congress to engage proactively in mutually beneficial outreach and education. It highlights the practice of providing congressional requesters with redline drafts showing how proposed bills would affect existing law; suggests that agencies consider ways to involve appropriate agency experts in the process; and urges agencies to maintain a strong working relationship between legislative affairs and legislative counsel offices.

*Declaratory Orders.* This recommendation identifies contexts in which agencies should consider the use of declaratory orders in administrative adjudications. It also highlights best practices relating to the use of declaratory orders, including explaining the agency's procedures for issuing declaratory orders, ensuring adequate opportunities for public participation in the proceedings, responding to petitions for declaratory orders in a timely manner, and making declaratory orders and other dispositions of petitions readily available to the public.

*Designing Federal Permitting Programs.* This recommendation describes different types of permitting systems and provides factors for agencies to consider when designing or reviewing permitting programs. The recommendation discusses both "general" permits (which are granted so long as certain requirements are met) and "specific" permits (which involve fact-intensive, case-by-case determinations), as well as intermediate or hybrid permitting programs. It encourages agencies that adopt permitting systems to design them so as to minimize burdens on the agency and regulated entities while maintaining required regulatory protections.

Additional information about the proposed recommendations and the

order of the agenda, as well as other materials related to the meeting, can be found at the 64th Plenary Session page on the Conference's Web site: (<http://www.acus.gov/meetings-and-events/plenary-meeting/64th-plenary-session>).

*Public Participation:* The Conference welcomes the attendance of the public at the meeting, subject to space limitations, and will make every effort to accommodate persons with disabilities or special needs. Members of the public who wish to attend in person are asked to RSVP online at the 64th Plenary Session Web page listed above, no later than two days before the meeting, in order to facilitate entry. Members of the public who attend the meeting may be permitted to speak only with the consent of the Chairman and the unanimous approval of the members of the Assembly. If you need special accommodations due to disability, please inform the Designated Federal Officer noted above at least 7 days in advance of the meeting. The public may also view the meeting through a live webcast, which will be available at: <http://new.livestream.com/ACUS/64thPlenarySession>.

*Written Comments:* Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking "Submit a Comment" on the 64th Plenary Session Web page listed above or by mail addressed to: December 2015 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EST), Monday, November 30, to assure consideration by the Assembly.

Dated: November 17, 2015.

**Shawne McGibbon,**  
General Counsel.

[FR Doc. 2015-29674 Filed 11-19-15; 8:45 am]

**BILLING CODE 6110-01-P**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of December 1, 2015 President's Global Development Council Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Council on Global Development will meet on December 1, 2015 in Washington, DC at 12:15 p.m. Eastern Time. The meeting will be open to the public via live webcast. Details for the webcast can be found at <http://www.whitehouse.gov/administration/advisory-boards/global-development-council>. The purpose of this meeting is to solicit public input on key global development issues. The President's Global Development Council will focus the discussion on issues of financial inclusion.

**DATES:**

*Date:* Tuesday, December 1, 2015.

*Time:* 12:15 p.m. Eastern Time.

**ADDRESSES:** The President's Global Development Council will convene its meeting in Washington, DC. The public is invited to submit written statements to the President's Global Development Council by any of the following methods:

*Electronic Statements*

- Send written statements to the President's Global Development Council's electronic mailbox at [gdc@usaid.gov](mailto:gdc@usaid.gov) with the subject line "GDC Statement"; or

*Paper Statements*

- Send paper statements in triplicate to Jayne Thomisee, Executive Director and Designated Federal Officer, President's Global Development Council, Office of the Administrator, Room 6.8.21, U.S. Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20004.

In general, all statements will be posted on the President's Global Development Council Web page (<http://www.usaid.gov/gdc>) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Jayne Thomisee, 202-712-5506.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the President's Global Development Council on December 1, 2015 in Washington, DC at 12:15 p.m. Eastern Time. The meeting will be broadcast on the internet via live webcast. Details for the webcast are available at <http://www.whitehouse.gov/>

*administration/advisory-boards/global-development-council*. The purpose of this meeting is to solicit public input on key global development issues. The President's Global Development Council will focus the discussion on issues of financial inclusion.

Dated: November 13, 2015.

**Jayne Thomisee,**

*Executive Director & Policy Advisor.*

[FR Doc. 2015-29703 Filed 11-19-15; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF AGRICULTURE****Economic Research Service****Submission for OMB Review; Comment Request**

November 16, 2015.

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 regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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), *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 within 30 days of this notification. 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.

**Economic Research Service**

*Title:* Generic Clearance for Survey Research Studies.

*OMB Control Number:* 0536—NEW.

*Summary of Collection:* The Economic Research Service (ERS) of the U.S. Department of Agriculture is requesting approval for a generic clearance that will allow them to conduct research to improve the quality of data collection by developing, testing, and evaluating its survey instruments, methodologies, technology, interview processes, and respondent recruitment protocols. The primary objective of ERS is providing timely research and analysis to public and private decision makers on topics related to agriculture, food, the environment, and rural America. Data collection for this collection is authorized by the 7 U.S.C. 2204(a).

*Need and use of the Information:* The information collected will be used by staff from the ERS and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted. Specifically, the information will be used to reduce respondent burden while simultaneously improving the quality of the data collected in these surveys.

*Description of Respondents:*

Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

*Number of Respondents:* 10,500.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 16,800.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2015-29666 Filed 11-19-15; 8:45 am]

**BILLING CODE 3410-18-P**

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance for the Special Nutrition Programs Quick Response Surveys (SNP QRS)**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on

this proposed information collection. This is a new collection to conduct short quick turnaround surveys of State and local agencies providing food, education and other services in the Child Nutrition and Supplemental Nutrition and Safety Programs administered at the federal level by the Food and Nutrition Service (FNS). These programs include the Special Supplemental Nutrition Program for Women, Infants, and Children, National School Lunch Program, School Breakfast Program, Special Milk Program, Fresh Fruit and Vegetable Program, Summer Food Service Program, the Child and Adult Care Food Program, and the Food Distribution Programs.

**DATES:** Written comments must be received on or before January 19, 2016.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Written comments may be sent to Janis Johnston, Ph.D., Senior Technical Advisor, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Janis Johnston at 703-305-2576 or via email to [janis.johnston@fns.usda.gov](mailto:janis.johnston@fns.usda.gov). Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project, contact Janis Johnston, Ph.D., Senior Technical Advisor, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Special Nutrition Programs Quick Response Surveys (SNP QRS).

*Form Number:* N/A.

*OMB Number:* 0584-NEW.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Generic Collection.

*Abstract:* The Food and Nutrition Service (FNS) intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow FNS to conduct short quick turnaround surveys of State, Local and Tribal agencies that receive food, funds and nutrition information through the Child Nutrition and Supplemental Nutrition and Safety Programs.

These programs include the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Fresh Fruit and Vegetable Program (FFVP), Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP), and the Food Distribution Programs. WIC provides Federal grants to States for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. NSLP is a federally assisted meal program operating in approximately 100,000 public and non-profit private schools and residential childcare institutions. School districts that participate in NSLP receive cash subsidies and donated commodities from USDA for each meal they serve. SBP is also a federally assisted meal program operating in over 89,000 public and nonprofit private schools and residential childcare institutions. FFVP provides free fresh fruits and vegetables to students in participating elementary schools during the school day. The fresh fruits and vegetables are provided separately from the lunch or breakfast meal, in one or more areas of the school. When school is not in session, the SFSP provides meals to all children under 19 years of age at approved SFSP sites in areas with significant concentrations of low-income children. CACFP subsidizes nutritious meals and snacks served to children and adults in participating day care facilities. Meals also are provided to children in emergency shelters and eligible after school programs. The Food Distribution Programs include the Commodity Supplemental Food Program (CSFP), the Food Distribution

Program on Indian Reservations (FDPIR), and The Emergency Food Assistance Program (TEFAP). CSFP provides nutritious USDA commodity foods and administrative funds to supplement the diets of low-income seniors at least 60 years of age.<sup>1</sup> FDPIR provides USDA commodity foods to low-income households, including the elderly living on Indian reservations, and to Native American families residing in designated areas near reservations. TEFAP provides USDA commodity foods and administrative funds to States, which then provide the food to local agencies that they have selected, usually food banks, which then distribute the food to soup kitchens and food pantries that directly serve the public.

The Healthy Hunger-Free Kids Act of 2010 (Pub. L. 111-296, Sec. 305) mandates programs under its authorization to cooperate with USDA program research and evaluation activities. Traditionally, FNS conducts program-specific large studies to collect information on numerous features of each program. Such studies often take several years to complete. The Quick Response Surveys provide a system for rapidly collecting current information on a specific feature or issue, and, therefore, enable FNS to administer the programs more effectively.

Following standard OMB requirements, FNS will submit a change request to OMB for each data collection activity undertaken under this generic clearance. The respondents will be identified at the time that each change request is submitted to OMB. FNS will provide OMB with the instruments and supporting materials describing the research project and specific pre-testing activities.

*Affected Public:* Respondent categories of affected public and the corresponding study participants will include: State, local and Tribal agencies. Respondents will include: (1) State Program Directors including WIC State agency directors, WIC State nutrition education and breastfeeding coordinators, directors of the Child Nutrition programs (NSLP/SBP, FFVP), directors of SFSP and CACFP, directors of State Distributing agencies (CSFP, TEFAP) and Indian Tribal Organization contacts for FDPIR; (2) Local-level

<sup>1</sup> CSFP originally included supplemental foods for pregnant, breastfeeding, and postpartum women, infants, and children, but changes in the program turned the focus towards low-income adults age 60 and older. Women, infants and children who were certified as of February 6, 2014, may continue receiving CSFP benefits until they are no longer eligible under the program rules that existed in 2014.

program administrators including School Food Authorities, Local Education Agencies, Schools, Local WIC Agencies and Sites, SFSP Sponsors and Sites, TEFAP Eligible Recipient Agencies (ERAs), TEFAP Emergency

Food Organizations (EFOs), and CACFP Sponsors and Providers.

Number of Respondents: 21,023 annually.

Frequency of Responses: 1.98 times per year.

Average Burden Hours per Response: 0.28 hours.

Total Annual Burden Hours: 11,597 hours. See the table below for estimated total annual burden for each type of respondent.

Program	Data collection activity	Respondent	Number of respondents (annual)	Frequency of responses (annual)	Annual responses	Average burden (hours per response)	Annual burden hours	Number of non-respondents (annual)	Frequency of responses (annual)	Annual responses (non-response)	Average burden (hours per non-response)	Annual burden hours (non-response)	Total annual burden
WIC	Contact Info Request.	WIC State Agency	100	1	100	1	100	0	1	0	0.017	0	100
WIC	Survey	WIC State Agency	100	2	200	0.33	67	0	2	0	0.017	0	67
WIC	Survey	Local WIC Agency	1275	2	2550	0.33	850	310	2	620	0.017	11	861
WIC	Survey	Local WIC Site	2000	2	4000	0.33	1333	500	2	1000	0.017	17	1350
NSLP/SBP/FFVP	Contact Info Request.	Child Nutrition State Agency.	54	1	54	1	54	0	1	0	0.017	0	54
NSLP/SBP/FFVP	Survey	Child Nutrition State Agency.	54	2	108	0.33	36	0	2	0	0.017	0	36
NSLP/SBP/FFVP	Survey	SFA	1400	2	2800	0.33	933	350	2	700	0.017	12	945
NSLP/SBP/FFVP	Survey	School	1500	1	1500	0.33	500	375	1	375	0.017	6	506
SFSP	Contact Info Request.	State Agency	54	1	54	1	54	0	1	0	0.017	0	54
SFSP	Survey	State Agency	54	2	108	0.33	36	0	2	0	0.017	0	36
SFSP	Survey	Sponsors	1500	2	3000	0.33	1000	375	2	750	0.017	13	1013
SFSP	Survey	Sites	2100	2	4200	0.33	1400	525	2	1050	0.017	18	1418
CACFP	Contact Info Request.	State Agency	54	1	54	1.00	54	0	1	0	0.017	0	54
CACFP	Survey	State Agency	54	2	108	0.33	36	0	2	0	0.017	0	36
CACFP	Survey	Sponsors	1750	3	5250	0.33	1750	438	3	1314	0.017	22	1772
CACFP	Survey	Sites	1950	2	3900	0.33	1300	488	2	976	0.017	16	1316
TEFAP	Contact Info Request.	State Agency	54	1	54	1.00	54	0	1	0	0.017	0	54
TEFAP	Survey	State Agency	54	2	108	0.33	36	0	2	0	0.017	0	36
TEFAP	Survey	ERAs	300	2	600	0.33	200	75	2	150	0.017	3	203
TEFAP	Survey	EFOs	2100	2	4200	0.33	1400	525	2	1050	0.017	18	1418
FDPIR	Contact Info Request.	State Agencies/ITOs	105	1	105	1	105	0	1	0	0.017	0	105
FDPIR	Survey	State Agencies/ITOs	105	2	210	0.33	70	0	2	0	0.017	0	70
FDPIR	Survey	Tribes	276	1	276	0.33	92	69	1	69	0.017	1.15	93
<b>Total</b>			<b>16,993</b>	<b>1.97</b>	<b>33,539</b>	<b>0.51</b>	<b>11,460</b>	<b>4,030</b>	<b>2.00</b>	<b>8,054</b>	<b>0.017</b>	<b>137.15</b>	<b>11,597</b>

Assumptions:

1. Each State agency will be asked to provide contact information for their respective local agencies. This request will be annual and take 1 hour per response
2. Two QRS for each State Agency per year for each program; 20 minutes per QRS (maximum).
3. Two QRS for each "primary" local agency (SFA, Sponsor, etc.) per year for each program; 20 minutes per QRS (maximum).
4. One QRS for each "secondary" local agency (sites, schools, etc.) per year for each program; 20 minutes per QRS (maximum).

Dated: November 3, 2015.

**Yvette S. Jackson,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2015-29479 Filed 11-19-15; 8:45 am]

**BILLING CODE 3410-30-P**

**COMMISSION ON CIVIL RIGHTS**

**Notice of Public Meeting of the Hawai'i State Advisory Committee for the Purpose To Discuss Its Reporting on Micronesian Immigration to Hawai'i**

**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 (FACA) that a meeting of the Hawai'i State Advisory Committee (Committee)

to the Commission will be held on Wednesday, December 9, 2015, for the purpose to discuss its reporting on Micronesian immigration to Hawai'i.

This meeting is available to the public through the following toll-free call-in number: 888-329-8862, conference ID: 4866305. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free 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 entitled to make comments during the open period at the end of the meeting. Members of

the public may also submit written comments. The comments must be received in the Western Regional Office of the Commission by January 8, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Peter Minarik, Regional Director, Western Regional Office, at [pminarik@usccr.gov](mailto:pminarik@usccr.gov). Persons who desire additional information should contact the Western Regional Office, at (213) 894-3437, (or for hearing impaired TDD 913-551-1414), or by email to [pminarik@usccr.gov](mailto:pminarik@usccr.gov). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for



public viewing prior to and after the meeting at <http://facadatabase.gov/committee/meetings.aspx?cid=263> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Western Regional Office at the above email or street address.

*Agenda:*

2:00 p.m.—Committee discussion on Micronesian immigration to Hawai'i  
3:00 p.m.—Public comment  
Adjournment

**DATES:** Wednesday, December 9, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Peter Minarik, DFO, at (213) 894-3437 or [pminarik@usccr.gov](mailto:pminarik@usccr.gov).

Dated: November 16, 2015.

**David Mussatt,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 2015-29586 Filed 11-19-15; 8:45 am]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Special Census Program.

*OMB Control Number:* 0607-0368.

*Form Number(s):*

**SC-1, Special Census Enumerator Questionnaire**—This interview form will be used to collect special census data at regular housing units (HU), and eligible units in Transitory Locations (TL) such as RV parks, marinas, campgrounds, hotels or motels.

**SC-1 (SUPP), Special Census Enumeration Continuation Questionnaire**—This interview form will be used to collect special census data at a regular HU or eligible units in a TL, when there are more than five members in a household.

**SC-1 (Phone/WYC), Special Census Phone/WYC Questionnaire**—This interview form will be used to collect special census data when a respondent calls the local Special Census Office.

**SC-2, Special Census Individual Census Report**—This interview form will be used to collect special census

data at group quarters (GQ) such as hospitals, prisons, boarding and rooming houses, college dormitories, military facilities, and convents.

**SC-3 (RI), Special Census Enumeration Reinterview Form**—This interview form is a quality assurance form used by enumerators to conduct an independent interview at a sample of HUs. Special Census office staff will compare the data collected on this form with the original interview to make sure the original enumerator followed procedures.

**SC-116, Special Census Group Quarters (GQ) Enumeration Control Sheet**—This form will be used by Special Census enumerators to list residents/clients at GQs.

**SC-117, Special Census Transitory Locations (TL) Enumeration Record**—This form will be used by Special Census office staff to collect contact information for TLs, to schedule interviews for the TLs, to determine the type of TL, and to estimate the number of interviews to be conducted at the TL.

**SC-351, Special Census Group Quarters (GQ) Initial Contact Checklist**—This checklist will be used by enumerators to collect GQ contact information and to determine the type of GQ.

**SC-920, Special Census Address Listing Page**—This form will list existing addresses from the Census Bureau's Master Address File (MAF). Special Census enumerators will update these addresses, if needed, at the time of enumeration.

**SC-901, Special Census Address Listing Notes Page**—This form will be used by the enumerator to write notes about any extenuating circumstances regarding the listing of an address found on the SC-920, Address Listing Page. The Enumerator will use the line number from the Address Listing page and note any issues encountered that might need further explanation regarding the unit/address.

**SC-921(HU), Special Census Housing Unit Add Page**—This form will be used by enumerators to add housing units (HUs) that are observed to exist on the ground, that are not contained on the address listing page.

**SC-921(GQ), Special Census Group Quarter Add Page**—This form will be used by enumerators to add Group Quarters (GQs) that are observed to exist on the ground, that are not contained on the address listing page.

**SC-921(TU), Special Census Transitory Unit Add Page**—This form will be used by enumerators to add Transitory Units (e.g., hotels, motels, RV parks, marinas) that are observed to

exist on the ground, that are not contained on the address listing page.

**SC-1(F), Special Census Information Sheet**—This sheet contains the Confidentiality Notice and the Flash Card information for use at Housing Units. The Confidentiality Notice is required by the Privacy Act of 1974. The Flash Card portion of the Information Sheet shows the set of flashcards that will be shown to respondents as an aid in answering certain questions. Special Census field staffs are required by law to give an Information Sheet to each person from whom they request census-related information.

**SC-31/SC-31(S), Special Census Group Quarters Information Sheet**—This sheet contains the Confidentiality Notice and the Flash Card information for use at Group Quarters. The Confidentiality Notice is required by the Privacy Act of 1974. The Flash Card portion of the Information Sheet shows the set of flashcards that will be shown to respondents as an aid in answering certain questions. Special Census field staffs are required by law to give an Information Sheet to each person from whom they request special census related information.

**SC-26, Special Census Notice of Visit Form**—This form is the form that enumerators will leave at addresses where they are not able to make contact. The notice indicates that a special census enumerator was there and will return to conduct an interview. It also provides a telephone number that the respondent can use to contact the enumerator and/or the Special Census Office.

**SC-3309, Language Identification Flashcard**—This form will be used by enumerators to identify the language spoken by a respondent when a language barrier is encountered.

*Type of Request:* Regular Submission.

*Number of Respondents:* 248,430.

*Average Hours per Response:* Based on previous experience with special censuses and the fact that the Special Census forms and procedures are very similar to (and in many cases exactly the same as) those used in the 2010 Decennial Census, we estimate burden hours as shown below. Please note that the burden hours in the **Federal Register** notice published on September 2, 2015 in pages 53102 and 53103 are incorrect due to a calculation error. The burden hours below are the correct burden hours for special census respondents.

**SC-1 or, Special Census Enumerator Questionnaire.**

**SC-1 (Phone/WYC)**—248,430 respondents × 10 min. = 41,405 hours.

*SC-1(SUPP), Continuation Questionnaire*—10,000 respondents × 1.75 min. = 292 hour.

*SC-2, Individual Census Report*—8,333 respondents × 5 min. = 695 hours.

*SC-3(RI), Enumeration Reinterview Questionnaire*—55,000 respondents × 7 min. = 6,417 hours.

*SC-116, Group Quarters Enumeration Control Sheet*—42 respondents × 10 min. = 7 hours.

*SC-117, Transitory Location Enumeration Record*—42 respondents × 10 min. = 7 hours.

*SC-351, Initial Contact Checklist (Group Quarters)*—42 respondents × 10 min. = 7 hours.

*SC-920, Address Listing Page*—200,000 respondents × 1 min. = 3,334 hours.

*SC-921(HU), Housing Unit Add Page*—50,000 respondents × 1 min. = 834 hours.

*SC-921(GQ), Group Quarters/Transitory Unit Add Page.*

*SC-921(TU)*—13 respondents × 1 min. = .22 hour.

Estimated total annual burden = 52,998 hours.

*Burden Hours:* 52,998.

*Needs and Uses:* Local jurisdictions determine the need for and uses of their special census data. Some governmental units request a special census for proper infrastructure planning and others make a request because they must have the updated data to qualify for some sources of funding. Local governmental units use special census data to apply for available funds from both the state and Federal governments. Many states distribute these funds based on Census Bureau population statistics. This fact, along with local population shifts or annexations of territory, prompts local officials to request special censuses. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, water treatment facilities, etc.

The Census Bureau also uses special census data as part of its local population estimates calculation and to update the Census Bureau's Master Address File (MAF) and Topographically Integrated Geographic Encoding and Referencing (TIGER) System.

Information quality is an integral part of the pre-dissemination review of the information disseminated by the Census Bureau (fully described in the Census Bureau's Information Quality Guidelines). Information quality is also integral to the information collections conducted by the Census Bureau and is incorporated into the clearance process required by the Paperwork Reduction Act.

*Affected Public:* The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. The Special Census Program will include a library of standard forms that will be used for the Special Censuses we anticipate conducting throughout this decade. While no additional documentation will be provided to OMB in advance of conducting any Special Census which utilizes the library of standard forms, any deviation from the standard forms, such as an additional question requested by a specific governmental unit, will be forwarded to OMB for approval. In addition, the Special Census program will provide OMB an annual report summarizing the activity for the year.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 196.

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

Dated: November 17, 2015.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015-29651 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-864, C-475-833, C-570-027, C-580-879, C-583-857]

#### Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Matt Renkey at (202) 482-2312 (India); Robert Palmer at (202) 482-9068 (Italy); Myrna Lobo at (202) 482-2371 (the Republic of Korea); Emily Halle at (202) 482-0176 (the People's Republic of

China); Kristen Johnson at (202) 482-4793 (Taiwan), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 23, 2015, the Department of Commerce (the "Department") initiated the countervailing duty investigations of certain corrosion-resistant steel products ("corrosion-resistant steel") from India, Italy, the People's Republic of China ("the PRC"), the Republic of Korea ("Korea"), and Taiwan.<sup>1</sup> Simultaneously the Department initiated antidumping duty ("AD") investigations of corrosion-resistant steel from India, Italy, the PRC, Korea, and Taiwan.<sup>2</sup> The countervailing duty ("CVD") investigations and the AD investigations cover the same class or kind of merchandise.

##### Alignment With AD Final Determination

On November 10, 2015, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended ("the Act"), United States Steel Corporation; Nucor Corporation; Steel Dynamics, Inc.; ArcelorMittal USA, LLC; AK Steel Corp.; and, California Steel Industries (collectively, "Petitioners") requested an alignment of the final CVD determinations with the final AD determinations of corrosion-resistant steel from India, Italy, the PRC, Korea, and Taiwan. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determinations with the final AD determinations. Consequently, the final CVD determinations will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than March 5, 2016, unless postponed.<sup>3</sup>

<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015) ("Initiation Notice").

<sup>2</sup> See *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015).

<sup>3</sup> We note that the current deadline for the final AD determination is March 5, 2015, which is a Saturday. Pursuant to Department practice, the signature date will be the next business day, which is Monday, March 7, 2016. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 13, 2015.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2015-29721 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Application No. 90-7A007]

#### Export Trade Certificate of Review

**ACTION:** Notice of application for an amended Export Trade Certificate of Review by United States Surimi Commission ("USSC"), Application No. 90-7A007.

**SUMMARY:** The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review ("Certificate") from USSC. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at [etca@trade.gov](mailto:etca@trade.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2015). Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application. Under 15 CFR 325.6(a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary through OTEA on the application.

**Request for Public Comments:** Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 90-7A007."

#### Summary of the Application

*Applicant: United States Surimi Commission*

*Contact: c/o Mundt MacGregor LLP, 271 Wyatt Way NE., Suite 106, Bainbridge Island, Washington 98110.*

*Application No.: 90-7A007.*

*Date Deemed Submitted: November 12, 2015.*

*Proposed Amendment:*

1. Remove the following members as Member of the Certificate: Alaska Ocean Seafood Limited Partnership; Highland Light Seafoods Limited Liability Company; and Alaska Trawl Fisheries, Inc.

2. Replace the existing Member American Seafoods Company with American Seafoods Company LLC, and add as new Members three entities affiliated with American Seafoods Company LLC: American Seafoods Japan, Ltd.; AS Europe ApS; and American Seafoods China (Dalian) Ltd.

3. Add as new Members six entities that are affiliated with the existing Member Arctic Storm, Inc.: Arctic Storm International, Inc.; Arctic Fjord, Inc.; AF International, Inc.; Fjord Seafoods LLC; Arctic Storm Management Group LLC; and Fjord Fisheries General Partnership;

4. Replace the existing Member Glacier Fish Company with Glacier Fish Company LLC; and add as a new

Member an affiliated company, ASM Export Co.

5. Replace the existing Member The Starbound Limited Partnership with Starbound LLC, and add as a new Member an affiliated company, NWPI, Inc.

*USSC's proposed amendment of its Export Trade Certificate of Review would result in the following entities as Members under the Certificate:*

1. American Seafoods Company LLC
2. American Seafoods Japan, Ltd.
3. AS Europe ApS
4. American Seafoods China (Dalian) Ltd.
5. Arctic Storm, Inc.
6. Arctic Storm International, Inc.
7. Fjord Fisheries General Partnership
8. Arctic Fjord, Inc.
9. AF International, Inc.
10. Fjord Seafood LLC
11. Arctic Storm Management Group LLC
12. Glacier Fish Company, LLC
13. ASM Export Co.
14. Starbound LLC
15. Aleutian Spray Fisheries, Inc.
16. NWPI, Inc.

Dated: November 16, 2015.

**Joseph Flynn,**

*Director, Office of Trade and Economic Analysis, International Trade Administration.*

[FR Doc. 2015-29645 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-802]

#### International Trade Data System Test Concerning the Electronic Submission of Certain Documentation Required for Imports of Uranium From the Russian Federation Using the Document Imaging System

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) announces, in coordination with U.S. Customs and Border Protection (CBP), a test of the International Trade Data System (ITDS) involving the electronic submission to CBP of forms and certifications related to importation of uranium products from the Russian Federation (Russia), using the Document Image System (DIS) of the Automated Commercial Environment (ACE). CBP and Commerce have developed this program to test and assess the electronic transmission to CBP of certain import documentation for incoming shipments subject to the

applicable provisions of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Suspension Agreement).<sup>1</sup> The test will involve forms and certifications required by the Suspension Agreement for shipments of uranium products from Russia that must be filed with CBP at the time of entry when an entry has been filed in ACE. Under this test, such documents must be submitted using DIS. This test applies to all entry types filed in ACE at any port. The electronic submission to CBP of such documentation through DIS is in addition to, and does not replace, the timely filing of the documentation required by the Suspension Agreement with Commerce's (E&C) electronic filing system, Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), available at [access.trade.gov](http://access.trade.gov).<sup>2</sup>

**DATES:** The test will commence no earlier than November 20, 2015 and will continue until concluded by publication of a notice in the **Federal Register** ending the test. Comments on, and applications to participate in, the test will be accepted through the duration of the test.

**ADDRESSES:** To submit comments concerning this test program, send an email to Josephine Baiamonte ([Josephine.Baiamonte@dhs.gov](mailto:Josephine.Baiamonte@dhs.gov)), Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, and cc: Wendy Frankel ([Wendy.Frankel@trade.gov](mailto:Wendy.Frankel@trade.gov)), Director, Customs Liaison Unit, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce. In the subject line of an email, please use,

<sup>1</sup> See *Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 57 FR 492220, 49235 (October 30, 1992); *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994); *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996); *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997); and *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation*, 73 FR 7705 (February 11, 2008).

<sup>2</sup> All submissions to E&C must be filed electronically using ACCESS. See 19 CFR 351.303(b)(2)(i). Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with E&C's APO/ Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines. See 19 CFR 351.303(b)(2)(ii).

“*Comment on E&C DIS Test FRN.*” Any party seeking to participate in this test should contact their CBP client representative. Interested parties without an assigned CBP client representative should send an email message to Steven Zaccaro at [steven.j.zaccaro@cbp.dhs.gov](mailto:steven.j.zaccaro@cbp.dhs.gov) with the subject heading “*E&C DIS Test FRN-Request to Participate.*”

**FOR FURTHER INFORMATION CONTACT:** For technical questions related to ACE, contact your assigned CBP client representative. Interested parties without an assigned CBP client representative should direct their questions to Steven Zaccaro at [steven.j.zaccaro@cbp.dhs.gov](mailto:steven.j.zaccaro@cbp.dhs.gov). For Participating Government Agencies' (PGA) related questions, contact Emi Wallace (CBP) at [emi.r.wallace@cbp.dhs.gov](mailto:emi.r.wallace@cbp.dhs.gov), and for E&C related questions contact Sally C. Gannon or Sam Zengotitabengoa, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0162 or (202) 482-4195, respectively.

**SUPPLEMENTAL INFORMATION:**

**Background**

*I. International Trade Data System and ACE*

This test is in furtherance of the ITDS, which is statutorily authorized by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109-347. The purpose of ITDS, as defined by section 4 of the SAFE Port Act of 2006, is to eliminate redundant information filing requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. On October 13, 2015, CBP promulgated regulations providing that, as of November 1, 2015, ACE is a CBP authorized Electronic Data Interchange System which may be used for the filing of entries and entry summaries. See *Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry)*, 80 FR 61278 (October 13, 2015).

*II. Document Imaging System*

DIS allows importers who file entries in ACE to file documentation electronically through DIS and into ACE to meet CBP and PGA reporting

requirements. This documentation must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States. The documentation will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making, as appropriate. The documentation filed using DIS will be used to fulfill merchandise entry and entry summary filing requirements, eliminate the need to file that documentation in paper format, and allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, DIS will eliminate the necessity for the submission and subsequent manual processing by CBP of paper documents because the forms and certifications filed using DIS do not have to be filed in paper format. All DIS participants are required to use a software program that has completed ACE certification testing for DIS. For information, terms and conditions, procedures and rules, and requirements regarding the use of DIS please see *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). For a list of PGA forms and documents which may be transmitted to ACE using DIS, please see <http://www.cbp.gov/trade/ace/features>.

*III. Test Rules, Terms and Conditions*

For approved participants, this test applies to all modes of transportation for uranium products from Russia subject to the Suspension Agreement. This test applies only to entries filed in ACE. Entries under this test may be filed at any port. Under the test, importers will be required to electronically transmit certain information, including scanned documents, which must be filed with CBP at the time of entry, pursuant to the Suspension Agreement. Imaged documentation sent in by DIS must be an accurate, complete, unaltered, unmodified and faithful copy of the original. Both the original document and the imaged document must be retained by the filer and importer for five years from the date of submission and both are subject to CBP's laws and regulations concerning recordkeeping.<sup>3</sup> Examples of the types of scanned images that will be submitted to the DIS under this test are:

<sup>3</sup> 19 U.S.C. 1508-1509; 19 CFR part 163.

Antidumping/Countervailing Duty (AD/CVD) Foreign Government Export License: Uranium products from Russia; AD/CVD Foreign Government Export Certificate: Uranium products from Russia; AD/CVD Declaration of Intent to Re-Export: Uranium products from Russia; AD/CVD Processor Certification: Uranium Products from Russia; AD/CVD End-User Certification: Uranium products from Russia; AD/CVD Purchase and/or Delivery Order: Uranium products from Russia; AD/CVD Origin Certification: Uranium products from any country including Russia; and AD/CVD Anticircumvention Certification: Uranium products from any country including Russia. All documentation required for entries of Russian uranium products must still be timely filed with Commerce, in accordance with the Suspension Agreement's requirements, through ACCESS, E&C's electronic filing system.

#### IV. Test Participation Criteria and Participation Procedure

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing the appropriate DIS information. Requests to participate in this test will be accepted throughout the duration of the test. To be eligible to apply for this test, the applicant must be a self-filing importer or broker who has the ability to file entries in ACE. All test participants are required to use a software program that has completed ACE certification testing for DIS. Applicants will be notified of their acceptance into the test and of the date they may begin participation.

#### V. Anticipated Process Changes

For participants accepted into the test, the current paper process for the submission to CBP of documentation for shipments of Russian uranium products subject to the Suspension Agreement will be replaced by the submittal of scanned document images through DIS. Entry data submissions will be subject to validation edits and any applicable PGA business rules programmed into ACE. Once entry data has cleared the initial stage of validation edits and PGA business rules, the filer will receive messages as to the status of the shipment from the time of entry data submission until the time of release. Once all of the PGAs have concluded their review of the shipment and have unset any remaining holds, CBP will send a "One U.S.G." release message to the filer to indicate that the filer has fulfilled all U.S. Government filing requirements at the port of entry for the

shipment. Filers should note, however, that the filing of documentation with CBP through DIS does not replace the separate filing requirements with Commerce pursuant to the Suspension Agreement's requirements, as noted above.

#### VI. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. Participation in ACE tests is not confidential, and a name(s) of an approved participant(s) may be disclosed by CBP.

Dated: November 12, 2015.

#### Paul Piquado,

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2015-29722 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology.

*Title:* NIST Generic Clearance for Usability Data Collections.

*OMB Control Number:* 0693-0043.

*Form Number(s):* None.

*Type of Request:* Regular Submission.

*Number of Respondents:* 8,500.

*Average Hours per Response:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an empirical study.

*Burden Hours:* 5,000 Hours.

*Needs and Uses:* NIST will conduct information collections of usability data involving usage of technological devices (such as Web sites, handheld computers, cell phones, and robots.) This information will enable NIST researchers to study human-computer interactions and help establish guidelines and standards for more effective and efficient interactions.

*Affected Public:* Individual or households; State, Local or Tribal Government; Federal Government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow

the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

#### Glenna Mickelson,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2015-29665 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-P**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

RIN 0648-XE267

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation, Maintenance, and Repair of the Northeast Gateway Liquefied Natural Gas Port and the Algonquin Pipeline Lateral Facilities in Massachusetts Bay

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

**ACTION:** Notice; proposed incidental harassment authorization and receipt of application for five-year regulations; request for comments and information.

**SUMMARY:** NMFS has received a request from Excelerate Energy, L.P. (Excelerate) and Tetra Tech, Inc. (Tetra Tech), on behalf of the Northeast Gateway<sup>®</sup> Energy Bridge<sup>™</sup>, L.P. (Northeast Gateway or NEG) and Algonquin Gas Transmission, L.L.C. (Algonquin) for an authorization to take small numbers of 14 species of marine mammals, by Level B harassment, incidental to operating, maintaining, and repairing a liquefied natural gas (LNG) port and the Algonquin Pipeline Lateral (Pipeline Lateral) facilities by NEG and Algonquin, in Massachusetts Bay. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to NEG and Algonquin to incidentally take, by Level B harassment, small numbers of marine mammals during the specified activity for a period of 1 year. NMFS is also requesting comments, information, and suggestions concerning NEG's application and the structure and content of future regulations.

**DATES:** Comments and information must be received no later than December 21, 2015.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments on this action is [ITP.Guan@noaa.gov](mailto:ITP.Guan@noaa.gov). Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, and is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS is not responsible for comments sent to addresses other than those provided here.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking 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 regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or

stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

**Summary of Request**

On June 9, 2015, NMFS received an application from Excelerate and Tetra Tech, on behalf of Northeast Gateway and Algonquin, for an authorization to take 14 species of marine mammals by Level B harassment incidental to operations, maintenance, and repair of an LNG port and the Pipeline Lateral facilities in Massachusetts Bay. They are: North Atlantic right whale, humpback whale, fin whale, sei whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, short-beaked common dolphin, killer whale, Risso’s dolphin, harbor porpoise, harbor seal, and gray seal. Since LNG Port and Pipeline Lateral operation, maintenance, and repair activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. NMFS first issued an IHA to Northeast Gateway and Algonquin to allow for the incidental harassment of small numbers of marine mammals resulting from the construction and operation of the NEG Port and the Algonquin Pipeline Lateral (72 FR 27077; May 14, 2007). Subsequently, NMFS issued five one-year IHAs for the take of marine mammals incidental to the operation of the NEG Port activity pursuant to section 101(a)(5)(D) of the MMPA (73 FR 29485, May 21, 2008; 74 FR 45613, September 3, 2009; 75 FR 53672, September 1, 2010; and 76 FR 62778, October 11, 2011). On December

22, 2014, NMFS issued an IHA to NEG and Algonquin to take marine mammals incidental to the operations of the NEG Port as well as maintenance and repair activities (79 FR 78806, December 31, 2014). The current IHA expires on December 21, 2015.

Because the LNG Port facility and Algonquin Pipeline Lateral operation and maintenance activities will be ongoing in the foreseeable future, Excelerate and Tetra Tech have submitted an application for both an IHA under section 101(a)(5)(D) to cover the next one-year period of operations and maintenance/repair, and regulations under section 101(a)(5)(A) to cover the same activities for a subsequent 5-year period. In this FR notice NMFS is (1) proposing to issue a one-year IHA to cover the period from [x-y], with a 30-day public comment period; and (2) announcing its notice of receipt of the application for five-year regulations, also with a 30-day public comment period. Following a decision on the proposed IHA, NMFS will proceed with consideration of proposed regulations pursuant to section 101(a)(5)(A) of the MMPA.

**Description of the Specified Activity**

The proposed NEG and Algonquin activities include the following:

**NEG Port Operations:** The NEG Port operations involve docking of LNG vessels and regasification of LNG for delivery to shore. Noises generated during these activities, especially from the LNG vessel’s dynamics positioning thrusters during docking, could result in takes of marine mammals in the Port vicinity by level B behavioral harassment.

**NEG Port Maintenance and Repair:** Regular maintenance and occasional repair of the NEG Port are expected to occur throughout the NEG Port operation period. Machinery used during these activities generate noises that could result in takes of marine mammals in the Port vicinity by Level B behavioral harassment.

**Algonquin Pipeline Lateral Routine Operations and Maintenance:** The Algonquin Pipeline Lateral that is used for gas delivery would be inspected regularly to ensure proper operations. The work would be done using support vessels operating in dynamic positioning mode. Noises generated from these activities could result in takes of marine mammals in the vicinity of Pipeline Lateral by Level B behavioral harassment.

**Unplanned Pipeline Repair Activities:** Unplanned repair activities may be required from time to time at a location along the Algonquin Pipeline Lateral in

west Massachusetts Bay, as shown in Figure 2.1 of the IHA application. The repair would involve the use of a dive vessel operating in dynamic positioning mode. Noise generated from this activity could result in takes of marine mammals in the vicinity of repair work by Level B behavioral harassment.

An IHA was previously issued to NEG and Algonquin for this activity on December 22, 2014 (79 FR 78806; December 31, 2014), based on activities described on Excelerate and Tetra Tech’s IHA application submitted in June 2014 and on the **Federal Register** notice for the proposed IHA (78 FR 69049; November 18, 2013). The latest

IHA application submitted by Excelerate and Tetra Tech on October 9, 2015, contains the same information on project descriptions as described in the June 2014 IHA application. There is no change on the NEG and Algonquin’s proposed LNG Port and Pipeline Lateral operations and maintenance and repair. Please refer to these documents for a detailed description of NEG and Algonquin’s proposed LNG Port and Pipeline Lateral operations and maintenance and repair activities.

**Description of Marine Mammals in the Area of the Specified Activities**

General information on the marine mammal species found in

Massachusetts Bay can be found in Waring *et al.* (2014), which is available at the following URL: [http://www.nmfs.noaa.gov/pr/sars/pdf/ao2013\\_tm228.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/ao2013_tm228.pdf). Refer to that document for information on these species.

Marine mammal species that potentially occur in the vicinity of the Northeast Gateway facility can be found in the IHA application and in the earlier **Federal Register** notice for the proposed IHA (78 FR 69049; November 18, 2013). These species are summarized in Table 1 below.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Species	ESA status	MMPA status	Abundance	Range	Occurrence
North Atlantic right whale	Endangered	Depleted	465	N. Atlantic	Occasional.
Humpback whale	Endangered	Depleted	823	N. Atlantic	Occasional.
Fin whale	Endangered	Depleted	1618	N. Atlantic	Occasional.
Sei whale	Endangered	Depleted	357	N. Atlantic	Occasional.
Minke whale	Not listed	Non-depleted	20741	N. Atlantic	Occasional.
Long-finned pilot whale	Not listed	Non-depleted	21515	N. Atlantic	Occasional.
Atlantic white-sided dolphin	Not listed	Non-depleted	48819	N. Atlantic	Occasional.
Bottlenose dolphin	Not listed	Non-depleted	11548	N. Atlantic	Uncommon.
Common dolphin	Not listed	Non-depleted	173486	N. Atlantic	Uncommon.
Killer whale	Not listed	Non-depleted	Unknown	N. Atlantic	Uncommon.
Risso’s dolphin	Not listed	Non-depleted	18250	N. Atlantic	Uncommon.
Harbor porpoise	Not listed	Non-depleted	79833	N. Atlantic	Uncommon.
Harbor Seal	Not listed	Non-depleted	75834	N. Atlantic	Occasional.
Gray seal	Not listed	Non-depleted	Unknown	N. Atlantic	Occasional.

**Potential Effects of the Specified Activity on Marine Mammals**

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., pile removal and pile driving) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The “Estimated Take by Incidental Harassment” section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact Analysis” section will include the analysis of how this specific activity

will impact marine mammals and will consider the content of this section, the “Estimated Take by Incidental Harassment” section, the “Proposed Mitigation” section, and the “Anticipated Effects on Marine Mammal Habitat” section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate “functional hearing groups” for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of

frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia*, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds (true seals): functional hearing is estimated between 75 Hz to 100 kHz; and
- Otariid pinnipeds (sea lions and fur seals): functional hearing is estimated between 100 Hz to 48 kHz.

Species found in the vicinity of NEG LNG port and Algonquin Pipeline Lateral operations and maintenance and repair area include five low-frequency

cetacean species (North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale), six mid-frequency cetacean species (long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, Risso's dolphin, and killer whale), one high-frequency cetacean species (harbor porpoise), and two pinniped species (harbor seal and gray seal) (Table 1).

The proposed NEG LNG port operations and maintenance and repair activities could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Acoustic masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also

affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.* 2009) and cause increased stress levels (*e.g.*, Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level (SPL)) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, vessel docking, and stationing while operating dynamic positioning (DP) thrusters, dredging and pipe laying associated with LNG Port and Pipeline Lateral maintenance and repair, and LNG regasification activities, contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification are expected to be biologically significant if the change affects growth, survival, and/or reproduction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007). Currently NMFS uses 160 dB re 1  $\mu$ Pa (rms) at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1  $\mu$ Pa (rms)

for non-impulse noises (such as operating DP thrusters, dredging, pipe laying, and LNG regasification). No impulse noise is expected from the NEG and Algonquin's proposed LNG Port and Pipeline Lateral operation, maintenance, and repair activities. For the NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities, only the 120 dB re 1  $\mu$ Pa (rms) threshold is considered because only non-impulse noise sources would be generated.

#### Potential Effects on Marine Mammal Habitat

The proposed action area is considered biologically important habitat for the North Atlantic right, fin, humpback, and minke whales during part of the seasons, and it is adjacent to the Stellwagen Bank National Marine Sanctuary. There is no critical habitat in the vicinity of the proposed action area.

#### NEG Port Operations

Operation of the NEG Port will not result in short-term effects; however, long-term effects on the marine environment, including alteration of the seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise, will result from Port operations. Specifically, a small area (0.14 acre) along the Pipeline Lateral has been permanently altered (armored) at two cable crossings. In addition, the structures associated with the NEG Port (flowlines, mooring wire rope and chain, suction anchors, and pipeline end manifolds) occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 43 acres (worst case scenario based on severe 100-year storm with Energy Bridge Regasification Vehicle (EBRVs) occupying both submerged turret loading (STL) buoys) will be subject to disturbance due to chain sweep while the buoys are occupied. Given the relatively small size of the NEG Port area that will be directly affected by Port operations, NMFS does not anticipate that habitat loss will be significant.

EBRVs are currently authorized to withdraw an average of 4.97 million gallons per day (mgd) and 2.6 billion gallons per year of sea water for general ship operations during cargo delivery activities at the NEG Port. However, as we explained in the FR notice for the current IHA (78 FR 69049; November 18, 2013), during the operations of the NEG Port facility, it was revealed that significantly more water usage is needed than what was originally evaluated in the final USCG Environmental Impact Statement/Environmental Impact Report



(EIS/EIR). The updates for the needed water intake and discharge temperature are:

- 11 billion gallons of total annual water use at the Port;
- Maximum daily intake volume of up to 56 mgd at a rate of 0.45 feet per second when an EBRV is not able to achieve the heat recovery system (HRS: it is the capability of reducing water use during the regasification process) mode of operation; and,
- Maximum daily change in discharge temperature of 12 °C (21.6 °F) from ambient from the vessel's main condenser cooling system.

Under the requested water-use scenario, Tetra Tech (2011) conducted an environmental analysis on the potential impacts to marine mammals and their prey. To evaluate impacts to phytoplankton under the increased water usage, the biomass of phytoplankton lost from the Massachusetts Bay ecosystem was estimated based on the method presented in the final EIS/EIR. Phytoplankton densities of 65,000 to 390,000 cells/gallon were multiplied by the annual planned activities of withdrawal rate of 11 billion gallons to estimate a loss of  $7.15 \times 10^{14}$  to  $4.29 \times 10^{15}$  cells per year. Assuming a dry-weight biomass of  $10^{-10}$  to  $10^{-11}$  gram per cell (g/cell), an estimated 7.2 kg to 429 kg of biomass would be lost from Massachusetts Bay under the proposed activity, up to approximately 4.2 times that estimated in the final EIS/EIR for the permitted operational scenario. An order of magnitude estimate of the effect of this annual biomass loss on the regional food web can be calculated assuming a 10 percent transfer of biomass from one trophic level to the next (Sumich 1988) following the method used in the final EIS/EIR. This suggests that the loss of 7.2 kg to 429 kg of phytoplankton will result in the loss of about 0.7 kg to 42.9 kg of zooplankton, less than 0.1 kg to 4.3 kg of small planktivorous fish, and up to 0.4 kg of large piscivorous fish (approximately equivalent to a single 1-pound striped bass). Relative to the biomass of these trophic levels in the project area, this biomass loss is minor and consistent with the findings in the final EIS/EIR.

In addition, zooplankton losses will also increase proportionally to the increase in water withdrawn. The final EIS/EIR used densities of zooplankton determined by the sampling conducted by the Massachusetts Water Resource Authority (MWRA) to characterize the area around its offshore outfall and assumed a mean zooplankton density of  $34.9 \times 10^3$  organisms per  $m^3$ . Applying

this density, the water withdrawal volume under the proposed activity would result in the entrainment of  $2.2 \times 10^{10}$  zooplankton individuals per trip or  $1.5 \times 10^{12}$  individuals per year. Assuming an average biomass of  $0.63 \times 10^{-6}$  g per individual, this would result in the loss of 14.1 kg of zooplankton per shipment or 916.5 kg of zooplankton per year. As discussed for phytoplankton, biomass transfers from one trophic level to the next at a rate of about 10 percent. Therefore, this entrainment of zooplankton would result in loss of about 91.6 kg of planktivorous fish and 9.2 kg of large piscivorous fish (approximately equivalent to two 9-pound striped bass). These losses are minor relative to the total biomass of these trophic levels in Massachusetts Bay.

Finally, ichthyoplankton (fish eggs and larvae) losses and equivalent age one juvenile fish estimates under the proposed activity were made based on actual monthly ichthyoplankton data collected in the port area from October 2005 through December 2009 and the proposed activity withdrawal volume of 11 billion gallons per year evenly distributed among months (0.92 billion gallons per month) as a worst-case scenario, representing the maximum number of Port deliveries during any given month. Similarly, the lower, upper, and mean annual entrainment estimates are based on the lower and upper 95 percent confidence limits, of the monthly mean ichthyoplankton densities, and the monthly mean estimates multiplied by the monthly withdrawal rate of 0.92 billion gallons per month. At this withdrawal rate approximately 106 million eggs and 67 million larvae are estimated to be lost (see Table 4.2–2 of the IHA application). The most abundant species and life stages estimated to be entrained under the proposed activity are cunner post yolk-sac larvae (33.3 million), yellowtail flounder/*Labridae* eggs (27.4 million) and hake species eggs (18.7 million). Together, these species and life stages accounted for approximately 46 percent of the total entrainment estimated. Entrainment was estimated to be highest in June through July when 97.4 million eggs and larvae (approximately 57 percent of the annual total) were estimated to be entrained. However, the demand for natural gas and corresponding Port activities will likely be greatest during the winter heating season (November through March) when impacts from entrainment will likely be lower.

These estimated losses are not significant given the very high natural mortality of ichthyoplankton. This

comparison was done in the final EIS/EIR where ichthyoplankton losses based on historic regional ichthyoplankton densities and a withdrawal rate of approximately 2.6 billion gallons per year were represented by the equivalent number of age one fish. Under the final EIS/EIR withdrawal scenario, equivalent age one losses due to entrainment ranged from 1 haddock to 43,431 sand lance (Tetra Tech 2010). Equivalent age one losses under the conditions when no NEG Port operations occurrence were recalculated using Northeast Gateway monitoring data in order to facilitate comparisons between the permitted scenario and the updated scenario. Using Northeast Gateway monitoring data, withdrawal of 2.6 billion gallons per year would result in equivalent age one losses ranging from less than 1 haddock to 5,602 American sand lance. By comparison, equivalent age one losses under the proposed activity withdrawal rate of 11 billion gallons per year ranged from less than 1 haddock to 23,701 sand lance and were generally similar to or less than those in the final EIS/EIR. Substantially more equivalent age one Atlantic herring, pollock, and butterfish were estimated to be lost under the final EIS/EIR at a withdrawal rate of 2.6 billion gallons per year, while substantially more equivalent age one Atlantic cod, silver hake and hake species, cunner, and Atlantic mackerel are estimated to be lost under the proposed activity.

Although no reliable annual food consumption rates of baleen whales are available for comparison, based on the calculated quantities of phytoplankton, zooplankton, and ichthyoplankton removal analyzed above, it is reasonable to conclude that baleen whale predation rates would dwarf any reasonable estimates of prey removals by NEG Port operations.

#### *NEG Port Maintenance*

As stated earlier, NEG LNG Port will require scheduled maintenance inspections using either divers or remote operated vehicles (ROVs). The duration of these inspections are not anticipated to be more than two 8-hour working days. An EBRV will not be required to support these annual inspections. Water usage during the LNG Port maintenance would be limited to the standard requirements of NEG's normal support vessel. As with all vessels operating in Massachusetts Bay, sea water uptake and discharge is required to support engine cooling, typically using a once-through system. The rate of seawater uptake varies with the ship's horsepower and activity and therefore will differ between vessels and

activity type. For example, the *Gateway Endeavor* is a 90-foot vessel powered with a 1,200 horsepower diesel engine with a four-pump seawater cooling system. This system requires seawater intake of about 68 gallons per minute (gpm) while idling and up to about 150 gpm at full power. Use of full power is required generally for transit. A conservatively high estimate of vessel activity for the *Gateway Endeavor* would be operation at idle for 75 percent of the time and full power for 25 percent of the time. During the routine activities this would equate to approximately 42,480 gallons of seawater per 8-hour work day. When compared to the engine cooling requirements of an EBRV over an 8-hour period (approximately 18 million gallons), the *Gateway Endeavour* uses about 0.2 percent of the EBRV requirement. To put this water use into context, potential effects from the waters-use scenario of 56 mgd have been concluded to be orders of magnitude less than the natural fluctuations of Massachusetts Bay and Cape Cod Bay and not detectable. Water use by support vessels during routine port activities would not materially add to the overall impacts.

Certain maintenance and repair activities may also require the presence of an EBRV at the Port. Such instances may include maintenance and repair on the STL Buoy, vessel commissioning, and any onboard equipment malfunction or failure occurring while a vessel is present for cargo delivery. Because the requested water-use scenario allows for daily water use of up to 56 mgd to support standard EBRV requirements when not operating in the HRS mode, vessels would be able to remain at the Port as necessary to support all such maintenance and repair scenarios. Therefore, NMFS considers that NEG Port maintenance and repair would have negligible impacts to marine mammal habitat in the proposed activity area.

#### *Unanticipated Algonquin Pipeline Lateral Maintenance and Repair*

As stated earlier, proper care and maintenance of the Algonquin Pipeline Lateral should minimize the likelihood of an unanticipated maintenance and/or repair event; however, unanticipated activities may occur from time to time if facility components become damaged or malfunction. Unanticipated repairs may range from relatively minor activities requiring minimal equipment and one or two diver/ROV support vessels to major activities requiring larger construction-type vessels similar to those used to support the

construction and installation of the facility.

Major repair activities, although unlikely, may include repairing or replacement of pipeline manifolds or sections of the Pipeline Lateral. This type of work would likely require the use of large specialty construction vessels such as those used during the construction and installation of the NEG Port and Algonquin Pipeline Lateral. The duration of a major unplanned activity would depend upon the type of repair work involved and would require careful planning and coordination.

Turbidity would likely be a potential effect of Algonquin Pipeline Lateral maintenance and repair activities on listed species. In addition, the possible removal of benthic or planktonic species, resulting from relatively minor construction vessel water use requirements, as measured in comparison to EBRV water use, is unlikely to affect in a measurable way the food sources available to marine mammals. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

#### **Proposed Mitigation Measures**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat.

For the proposed NEG LNG Port operations and maintenance and repair activities, Excelsior and Tetra Tech worked with NMFS to develop mitigation measures to minimize the potential impacts to marine mammal populations in the project vicinity as a result of the LNG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities. The primary purpose of these proposed mitigation measures is to ensure that no marine mammal would be injured or killed by vessels transiting the LNG Port facility, and to minimize the intensity of

noise exposure of marine mammals in the activity area. For the proposed NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair, the following mitigation measures are proposed.

#### (a) General Marine Mammal Avoidance Measures

All vessels shall utilize the International Maritime Organization (IMO)-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the NEG Port and/or the repair/maintenance area at the earliest practicable point of transit in order to avoid the risk of whale strikes.

Upon entering the TSS and areas where North Atlantic right whales are known to occur, including the Great South Channel Seasonal Management Area (GSC-SMA) and the Stellwagen Bank National Marine Sanctuary (SBNMS), the Energy Bridge Regasification Vessels (EBRV™) shall go into “Heightened Awareness” as described below.

(1) Prior to entering and navigating the modified TSS, the Master of the vessel shall:

- Consult Navigational Telex (NAVTEX), NOAA Weather Radio, the NOAA Right Whale Sighting Advisory System (SAS) or other means to obtain current right whale sighting information as well as the most recent Cornell acoustic monitoring buoy data for the potential presence of marine mammals;
- Post a look-out to visually monitor for the presence of marine mammals;
- Provide the US Coast Guard (USCG) required 96-hour notification of an arriving EBRV to allow the NEG Port Manager to notify Cornell of vessel arrival.

(2) The look-out shall concentrate his/her observation efforts within the 2-mile radius zone of influence (ZOI) from the maneuvering EBRV.

(3) If marine mammal detection was reported by NAVTEX, NOAA Weather Radio, SAS and/or an acoustic monitoring buoy, the look-out shall concentrate visual monitoring efforts towards the areas of the most recent detection.

(4) If the look-out (or any other member of the crew) visually detects a marine mammal within the 2-mile radius ZOI of a maneuvering EBRV, he/she will take the following actions:

- The Officer-of-the-Watch shall be notified immediately; who shall then relay the sighting information to the Master of the vessel to ensure action(s) can be taken to avoid physical contact with marine mammals.

• The sighting shall be recorded in the sighting log by the designated look-out.

In accordance with 50 CFR 224.103(c), all vessels associated with NEG Port and Pipeline Lateral activities shall not approach closer than 500 yards (460 m) to a North Atlantic right whale and 100 yards (91 m) to other whales to the extent physically feasible given navigational constraints. In addition, when approaching and departing the project area, vessels shall be operated so as to remain at least 1 kilometer away from any visually-detected North Atlantic right whales.

In response to active right whale sightings and active acoustic detections, and taking into account exceptional circumstances, EBRVs as well as repair and maintenance vessels shall take appropriate actions to minimize the risk of striking whales. Specifically vessels shall:

(1) Respond to active right whale sightings and/or Dynamic Management Areas (DMAs) reported on the Mandatory Ship Reporting (MSR) or SAS by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less if the vessel is within the boundaries of a DMA or within the circular area centered on an area 8 nautical miles (nm) in radius from a sighting location;

(2) Respond to active acoustic detections by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less within an area 5 nm in radius centered on the detecting auto-detection buoy (AB); and

(3) Respond to additional sightings made by the designated look-outs within a 2-mile radius of the vessel by slowing the vessel to 10 knots or less and concentrating monitoring efforts towards the area of most recent sighting.

All vessels operated under NEG and Algonquin must follow the established specific speed restrictions when calling at the NEG Port. The specific speed restrictions required for all vessels (*i.e.*, EBRVs and vessels associated with maintenance and repair) consist of the following:

(1) Vessels shall reduce their maximum transit speed while in the TSS from 12 knots or less to 10 knots or less from March 1 to April 30 in all waters bounded by straight lines connecting the following points in the order stated below unless an emergency situation dictates for an alternate speed. This area shall hereafter be referred to as the Off Race Point Seasonal Management Area (ORP-SMA) and

tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 70°30' W. 41°40' N. 69°57' W.  
42°30' N. 69°45' W. 42°12' N. 70°15' W.  
41°40' N. 69°45' W. 42°12' N. 70°30' W.  
42°04.8' N. 70°10' W. 42°30' N. 70°30' W.

(2) Vessels shall reduce their maximum transit speed while in the TSS to 10 knots or less unless an emergency situation dictates for an alternate speed from April 1 to July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area shall hereafter be referred to as the GSC-SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 69°45' W. 41°40' N. 69°45' W.  
42°30' N. 67°27' W. 42°30' N. 69°45' W.  
42°09' N. 67°08.4' W. 41°00' N. 69°05' W.

(3) Vessels are not expected to transit the Cape Cod Bay or the Cape Cod Canal; however, in the event that transit through the Cape Cod Bay or the Cape Cod Canal is required, vessels shall reduce maximum transit speed to 10 knots or less from January 1 to May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12' N. latitude and the Cape Cod Canal. This area shall hereafter be referred to as the Cape Cod Bay Seasonal Management Area (CCB-SMA).

(4) All Vessels transiting to and from the project area shall report their activities to the mandatory reporting Section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

(5) All Vessels greater than or equal to 300 gross tons (GT) shall maintain a speed of 10 knots or less, unless an emergency situation requires speeds greater than 10 knots.

(6) All Vessels less than 300 GT traveling between the shore and the project area that are not generally restricted to 10 knots will contact the Mandatory Ship Reporting (MSR) system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 kilometers) of any sighting location, when traveling in any of the seasonal management areas (SMAs) or when traveling in any active DMA.

(b) NEG Port-Specific Operations

In addition to the general marine mammal avoidance requirements identified above, vessels calling on the NEG Port must comply with the following additional requirements:

(1) EBRVs shall travel at 10 knots maximum speed when transiting to/from the TSS or to/from the NEG Port/Pipeline Lateral area. For EBRVs, at 1.86 miles (3 km) from the NEG Port, speed will be reduced to 3 knots and to less than 1 knot at 1,640 ft (500 m) from the NEG buoys, unless an emergency situation dictates the need for an alternate speed.

(2) EBRVs that are approaching or departing from the NEG Port and are within the Area to be Avoided (ATBA) surrounding the NEG Port, shall remain at least 1 km away from any visually-detected North Atlantic right whale and at least 100 yards (91 m) away from all other visually-detected whales unless an emergency situation requires that the vessel stay its course. During EBRV maneuvering, the Vessel Master shall designate at least one look-out to be exclusively and continuously monitoring for the presence of marine mammals at all times while the EBRV is approaching or departing from the NEG Port.

(3) During NEG Port operations, in the event that a whale is visually observed within 1 km of the NEG Port or a confirmed acoustic detection is reported on either of the two ABs closest to the NEG Port (western-most in the TSS array), departing EBRVs shall delay their departure from the NEG Port, unless an emergency situation requires that departure is not delayed. This departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 1 km from the NEG Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the NEG Port, or visually within 1 km from the NEG Port.

Vessel captains shall focus on reducing dynamic positioning (DP) thruster power to the maximum extent practicable, taking into account vessel and Port safety, during the operation activities. Vessel captains will shut down thrusters whenever they are not needed.

(c) Planned and Unplanned Maintenance and Repair Activities NEG Port

(1) The Northeast Gateway shall conduct empirical source level measurements on all noise emitting

construction equipment and all vessels that are involved in maintenance/repair work.

(2) If DP systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1  $\mu$ Pa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed above.

(3) Northeast Gateway shall provide the NMFS Headquarters Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30 days notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Northeast Gateway shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

#### Pipeline Lateral

(1) Pipeline maintenance/repair vessels less than 300 GT traveling between the shore and the maintenance/repair area that are not generally restricted to 10 knots shall contact the MSR system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 km) of any sighting location, when travelling in any of the seasonal management areas (SMAs) as defined above.

(2) Maintenance/repair vessels greater than 300 GT shall not exceed 10 knots, unless an emergency situation that requires speeds greater than 10 knots.

(3) Planned maintenance and repair activities shall be restricted to the period between May 1 and November 30 when most of the majority of North Atlantic right whales are absent in the area.

(4) Unplanned/emergency maintenance and repair activities shall be conducted utilizing anchor-moored dive vessel whenever operationally possible.

(5) Algonquin shall also provide the NMFS Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30-day notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work

must be conducted. Algonquin shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(6) If DP systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1  $\mu$ Pa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(7) In the event that a whale is visually observed within 0.5 mile (0.8 kilometers) of a repair or maintenance vessel, the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew shall be put on a heightened state of alert and the marine mammal shall be monitored constantly to determine if it is moving toward the repair or maintenance area.

(8) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1  $\mu$ Pa @ 1 meter or higher when a right whale is sighted within or approaching at 500 yards (457 meters) from the vessel. The source level of 139 dB corresponds to 120 dB received level at 500 yards (457 meters). Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (500 yards [457 meters]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(9) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1  $\mu$ Pa @ 1 meter or higher when a marine mammal other than a right whale is sighted within or approaching at 100 yards (91 meters) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (100 yards [91 meters]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(10) Algonquin and associated contractors shall also comply with the following:

- Operations involving excessively noisy equipment (source level exceeding 139 dB re 1  $\mu$ Pa @ 1 meter) shall "ramp-up" sound sources, allowing whales a chance to leave the area before sounds reach maximum levels. In addition, Northeast Gateway, Algonquin, and other associated

contractors shall maintain equipment to manufacturers' specifications, including any sound-muffling devices or engine covers in order to minimize noise effects. Noisy construction equipment shall only be used as needed and equipment shall be turned off when not in operation.

- Any material that has the potential to entangle marine mammals (e.g., anchor lines, cables, rope or other construction debris) shall only be deployed as needed and measures shall be taken to minimize the chance of entanglement.

- For any material that has the potential to entangle marine mammals, such material shall be removed from the water immediately unless such action jeopardizes the safety of the vessel and crew as determined by the Captain of the vessel.

- In the event that a marine mammal becomes entangled, the marine mammal coordinator and/or protected species observer (PSO) will notify NMFS (if outside the SBNMS), and SBNMS staff (if inside the SBNMS) immediately so that a rescue effort may be initiated.

(11) All maintenance/repair activities shall be scheduled to occur between May 1 and November 30; however, in the event of unplanned/emergency repair work that cannot be scheduled during the preferred May through November work window, the following additional measures shall be followed for Pipeline Lateral maintenance and repair related activities between December and April:

- Between December 1 and April 30, if on-board PSOs do not have at least 0.5-mile visibility, they shall call for a shutdown. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down.

- Prior to leaving the dock to begin transit, the barge shall contact one of the PSOs on watch to receive an update of sightings within the visual observation area. If the PSO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel shall hold for 30 minutes and again get a clearance to leave from the PSOs on board. PSOs shall assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

- Transit route, destination, sea conditions and any marine mammal sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 1,000 meters of the vessel shall result in a high alert and slow speed of 4 knots or

less and a sighting within 750 meters shall result in idle speed and/or ceasing all movement.

- The material barges and tugs used in repair and maintenance shall transit from the operations dock to the work sites during daylight hours when possible provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug shall be 5 knots.

- All repair vessels must maintain a speed of 10 knots or less during daylight hours.

All vessels shall operate at 5 knots or less at all times within 5 km of the repair area.

#### Acoustic Monitoring Related Activities

Vessels associated with maintaining the AB network operating as part of the mitigation/monitoring protocols shall adhere to the following speed restrictions and marine mammal monitoring requirements.

(1) In accordance with 50 CFR 224.103 (c), all vessels associated with NEG Port activities shall not approach closer than 500 yards (460 meters) to a North Atlantic right whale.

(2) All vessels shall obtain the latest DMA or right whale sighting information via the NAVTEX, MSR, SAS, NOAA Weather Radio, or other available means prior to operations.

#### Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(4) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(5) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures that include vessel speed reduction, noise level related shutdown measures, and ramping up procedures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

#### Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Tetra Tech submitted a marine mammal monitoring plan as part of the IHA application. It can be found at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The plan may be modified or supplemented based on

comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
  - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
  - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
- (4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

#### Proposed Monitoring Measures

##### (a) Vessel-Based Visual Monitoring

Vessel-based monitoring for marine mammals shall be done by trained lookouts during NEG LNG Port and Pipeline Lateral operations and maintenance and repair activities. The observers shall monitor the occurrence of marine mammals near the vessels during LNG Port and Pipeline Lateral related activities. Lookout duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the activities; and documenting "take by harassment." The vessel look-outs assigned to visually monitor for the presence of

marine mammals shall be provided with the following:

(1) Recent NAVTEX, NOAA Weather Radio, SAS and/or acoustic monitoring buoy detection data;

(2) Binoculars to support observations;

(3) Marine mammal detection guide sheets; and

(4) Sighting log.

(b) NEG LNG Port Operations

All individuals onboard the EBRVs responsible for the navigation duties and any other personnel that could be assigned to monitor for marine mammals shall receive training on marine mammal sighting/reporting and vessel strike avoidance measures.

While an EBRV is navigating within the designated TSS, there shall be three people with look-out duties on or near the bridge of the ship including the Master, the Officer-of-the-Watch and the Helmsman-on-watch. In addition to the standard watch procedures, while the EBRV is transiting within the designated TSS, maneuvering within the ATBA, and/or while actively engaging in the use of thrusters, an additional look-out shall be designated to exclusively and continuously monitor for marine mammals.

All sightings of marine mammals by the designated look-out, individuals posted to navigational look-out duties, and/or any other crew member while the EBRV is transiting within the TSS, maneuvering within the ATBA and/or when actively engaging in the use of thrusters, shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master. The Master or Officer-of-the-Watch shall ensure the required reporting procedures are followed and the designated marine mammal look-out records all pertinent information relevant to the sighting.

Visual sightings made by look-outs from the EBRVs shall be recorded using a standard sighting log form. Estimated locations shall be reported for each individual and/or group of individuals categorized by species when known. This data shall be entered into a database and a summary of monthly sighting activity shall be provided to NMFS. Estimates of take and copies of these log sheets shall also be included in the reports to NMFS.

(c) Planned and Unplanned Maintenance and Repair

Two qualified and NMFS-approved PSOs shall be assigned to each vessel that will use DP systems during maintenance and repair related activities. PSOs shall operate individually in designated shifts to

accommodate adequate rest schedules. Additional PSOs shall be assigned to additional vessels if AB data indicates that sound levels exceed 120 dB re 1  $\mu$ Pa, further then 100 meters (328 feet) from these vessels.

All PSOs shall receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after review of their resume. All PSOs shall have direct field experience on marine mammal vessels and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

PSOs (one primary and one secondary) shall be responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist and the secondary PSO will serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals and sea turtles. Specifically PSO's shall:

(1) Monitor at all hours of the day, scanning the ocean surface by eye for a minimum of 40 minutes every hour.

(2) Monitor the area where maintenance and repair work is conducted beginning at daybreak using 25x power binoculars and/or hand-held binoculars. Night vision devices must be provided as standard equipment for monitoring during low-light hours and at night.

(3) Conduct general 360° visual monitoring during any given watch period and target scanning by the observer shall occur when alerted of a whale presence.

(4) Alert the vessel superintendent or construction crew supervisor of visual detections within 2 miles (3.31 kilometers) immediately.

(5) Record all sightings on marine mammal field sighting logs. Specifically, all data shall be entered at the time of observation, notes of activities will be kept, and a daily report prepared and attached to the daily field sighting log form. The basic reporting requirements include the following:

- Beaufort sea state;
- Wind speed;
- Wind direction;
- Temperature;
- Precipitation;
- Glare;
- Percent cloud cover;
- Number of animals;
- Species;
- Position;
- Distance;
- Behavior;
- Direction of movement; and
- Apparent reaction to construction activity.

In the event that a whale is visually observed within the 2-mile (3.31-kilometers) zone of influence (ZOI) of a DP vessel or other construction vessel that has shown to emit noise with source level in excess of 139 dB re 1  $\mu$ Pa @ 1 m, the PSO will notify the repair/maintenance construction crew to minimize the use of thrusters until the animal has moved away, unless there are divers in the water or an ROV is deployed.

(d) Acoustic Monitoring

Northeast Gateway shall deploy 10 ABs within the Separation Zone of the TSS for the operational life of the Project. The ABs shall be used to detect a calling North Atlantic right whale an average of 5 nm from each AB. The AB system shall be the primary detection mechanism that alerts the EBRV Master to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described above. Northeast Gateway shall conduct short-term passive acoustic monitoring to document sound levels during:

(1) The initial operational events in the 2015–2016 winter heating season;

(2) Regular deliveries outside the winter heating season should such deliveries occur; and

(3) Scheduled and unscheduled maintenance and repair activities.

Northeast Gateway shall conduct long-term monitoring of the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Pipeline Lateral using marine autonomous recording units (MARUs) when there is anticipated to be more than 5 LNG shipments in a 30-day period or over 20 shipments in a six-month period.

The acoustic data collected shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback and right whales) within approximately 10 nm of the NEG Port and shall measure and document the noise "budget" of Massachusetts Bay so as to eventually assist in determining whether or not an overall increase in noise in the Bay associated with the Project might be having a potentially negative impact on marine mammals.

Northeast Gateway shall make all acoustic data, including data previously collected by the MARUs during prior construction, operations, and maintenance and repair activities, available to NOAA. Data storage will be the responsibility of NOAA.

## (e) Acoustic Whale Detection and Response Plan

*NEG Port Operations*

(1) Ten ABs that have been deployed since 2007 shall be used to continuously screen the low-frequency acoustic environment (less than 1,000 Hertz) for right whale contact calls occurring within an approximately 5-nm radius from each buoy (the AB's detection range).

(2) Once a confirmed detection is made, the Master of any EBRVs operating in the area will be alerted immediately.

*NEG Port and Pipeline Lateral Planned and Unplanned/Emergency Repair and Maintenance Activities*

(1) If the repair/maintenance work is located outside of the detectible range of the 10 project area ABs, Northeast Gateway and Algonquin shall consult with NOAA (NMFS and SBNMS) to determine if the work to be conducted warrants the temporary installation of an additional AB(s) to help detect and provide early warnings for potential occurrence of right whales in the vicinity of the repair area.

(2) The number of ABs installed around the activity site shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(3) Should acoustic monitoring be deemed necessary during a planned or unplanned/emergency repair and/or maintenance event, active monitoring for right whale calls shall begin 24 hours prior to the start of activities.

(4) Source level data from the acoustic recording units deployed in the NEG Port and/or Pipeline Lateral maintenance and repair area shall be provided to NMFS.

*Proposed Reporting Measures*

(a) Throughout NEG Port and Pipeline Lateral operations, Northeast Gateway and Algonquin shall provide a monthly Monitoring Report. The Monitoring Report shall include:

- Both copies of the raw visual EBRV lookout sighting information of marine mammals that occurred within 2 miles of the EBRV while the vessel transits within the TSS, maneuvers within the ATBA, and/or when actively engaging in the use of thrusters, and a summary of the data collected by the look-outs over each reporting period.

- Copies of the raw PSO sightings information on marine mammals gathered during pipeline repair or maintenance activities. This visual sighting data shall then be correlated to

periods of thruster activity to provide estimates of marine mammal takes (per species/species class) that took place during each reporting period.

- Conclusion of any planned or unplanned/emergency repair and/or maintenance period, a report shall be submitted to NMFS summarizing the repair/maintenance activities, marine mammal sightings (both visual and acoustic), empirical source-level measurements taken during the repair work, and any mitigation measures taken.

(b) During the maintenance and repair of NEG Port and Pipeline Lateral components, weekly status reports shall be provided to NOAA (both NMFS and SBNMS) using standardized reporting forms. The weekly reports shall include data collected for each distinct marine mammal species observed in the repair/maintenance area during the period that maintenance and repair activities were taking place. The weekly reports shall include the following information:

- Location (in longitude and latitude coordinates), time, and the nature of the maintenance and repair activities;
- Indication of whether a DP system was operated, and if so, the number of thrusters being used and the time and duration of DP operation;
- Marine mammals observed in the area (number, species, age group, and initial behavior);
- The distance of observed marine mammals from the maintenance and repair activities;
- Changes, if any, in marine mammal behaviors during the observation;
- A description of any mitigation measures (power-down, shutdown, etc.) implemented;
- Weather condition (Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover etc.);
- Condition of the observation (visibility and glare); and
- Details of passive acoustic detections and any action taken in response to those detections.

## (d) Injured/Dead Protected Species Reporting

In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by the proposed IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NEG and/or Algonquin shall immediately cease activities and immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS and the

Northeast Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The name and type of vessel involved;
- The vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- The fate of the animal(s); and
- Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NEG and/or Algonquin to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act (MMPA) compliance. NEG and/or Algonquin may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that NEG and/or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), NEG and/or Algonquin will immediately (*i.e.*, within 24 hours of the discovery) report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NEG and/or Algonquin to determine whether modifications in the activities are appropriate.

In the event that NEG or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (if the IHA is issued) (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NEG and/or Algonquin shall report the

incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast Stranding Coordinators, within 24 hours of the discovery. NEG and/or Algonquin shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. NEG and/or Algonquin can continue its operations under such a case.

#### *Marine Mammal Monitoring Report From Previous IHA*

Prior marine mammal monitoring during NEG's LNG Port and Algonquin Pipeline Lateral operation, maintenance and repair activities and monthly marine mammal observation memorandums (NEG 2010; 2015) indicate that only a small number of marine mammals were observed during these activities. Only one LNG Port operation occurred within the dates of the current IHA (December 22, 2014 through December 21, 2015) and no marine mammal was observed during the LNG Port operation period on December 31, 2014. No other NEG Port and Pipeline Lateral related activity occurred during this period.

#### **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]. Only take by Level B harassment is anticipated as a result of NEG's operation and maintenance and repair activities. Anticipated take of marine mammals is associated with operation of dynamic positioning during the docking of the LNG vessels and positioning of maintenance and dive vessels, and by operations of certain machinery during maintenance and repair activities. The regasification process itself is an activity that does not rise to the level of taking, as the

modeled source level for this activity is 108 dB. Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that are proposed that were described earlier in this document.

The full suite of potential impacts to marine mammals was described in detail in the "Potential Effects of the Specified Activity on Marine Mammals" section found earlier in this document. The potential effects of sound from the proposed NEG and Algonquin LNG Port and Pipeline Lateral operations, maintenance and repair activities might include one or more of the following: masking of natural sounds and behavioral disturbance (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on low noise source levels from the proposed activities that would preclude marine mammals from being exposed to noise levels high enough to cause hearing impairment.

For non-pulse sounds, such as those produced by operating dynamic positioning (DP) thruster during vessel docking and supporting underwater construction and repair activities and the operations of various machineries that produces non-pulse noises, NMFS uses the 120 dB (rms) re 1  $\mu$ Pa isopleth to indicate the onset of Level B harassment.

#### *NEG Port and Algonquin Pipeline Lateral Activities Acoustic Footprints*

##### I. NEG Port Operations

For the purposes of understanding the noise footprint of operations at the NEG Port, measurements taken to capture operational noise (docking, undocking, regasification, and EBRV thruster use) during the 2006 Gulf of Mexico field event were taken at the source. Measurements taken during EBRV transit were normalized to a distance of 328 feet (100 meters) to serve as a basis

for modeling sound propagation at the NEG Port site in Massachusetts Bay.

Sound propagation calculations for operational activities were then completed at two positions in Massachusetts Bay to determine site-specific distances to the 120/160/180 dB isopleths:

- Operations Position 1—Port (EBRV Operations): 70°36.261' W. and 42°23.790' N.
- Operations Position 2—Boston TSS (EBRV Transit): 70°17.621' W. and 42°17.539' N.

At each of these locations sound propagation calculations were performed to determine the noise footprint of the operation activity at each of the specified locations. Updated acoustic modeling was completed using Tetra Tech's underwater sound propagation program which utilizes a version of the publicly available Range Dependent Acoustic Model (RAM). Based on the U.S. Navy's Standard Split-Step Fourier Parabolic Equation, this modeling methodology considers range and depth along with a geo-referenced dataset to automatically retrieve the time of year information, bathymetry, and seafloor geoacoustic properties along the given propagation transects radiating from the sound source. The calculation methodology assumes that outgoing energy dominates over scattered energy, and computes the solution for the outgoing wave equation. An approximation is used to provide two-dimensional transmission loss values in range and depth, *i.e.*, computation of the transmission loss as a function of range and depth within a given radial plane is carried out independently of neighboring radials, reflecting the assumption that sound propagation is predominantly away from the source. Transects were run along compass points at angular directions ranging from 0 to 360° in 5 degree increments. The received underwater sound levels at any location within the region of interest are computed from the 1/3-octave band source levels by subtracting the numerically modelled transmission loss at each 1/3-octave band center frequency and summing across all frequencies to obtain a broadband value. The resultant underwater sound pressure levels to the 120 dB isopleth is presented in Table 2.



TABLE 2—RADII OF 120-dB SPL ISOPLETHS FROM NEG AND ALGONQUIN LNG PORT AND PIPELINE LATERAL OPERATIONS, MAINTENANCE, AND REPAIR ACTIVITIES

Activities	Radius to 120-dB zone (m)	120-dB ensonified area (km <sup>2</sup> )
One EBRV docking procedure with support vessel .....	4,250	56.8
Barge/tug (pulling & pushing)/construction vessel/barge @ mid-pipeline .....	3,500	40.7

## II. NEG Port Maintenance and Repair

Modeling analysis conducted for the construction of the NEG Port concluded that the only underwater noise of critical concern during NEG Port construction would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. To confirm these modeled results and better understand the noise footprint associated with construction activities at the NEG Port, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral Construction period.

Measurements were taken and normalized as described to establish the “loudest” potential construction measurement event. One position within Massachusetts Bay was then used to determine site-specific distances to the 120/180 dB isopleths for NEG Port maintenance and repair activities:

- Construction Position 1. Port: 70°36.261' W. and 42°23.790' N.

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The results showed that the estimated distance from the loudest source involved in construction activities fell to 120 dB re 1 µPa at a distance of 3,500 m.

## III. Algonquin Pipeline Lateral Operation and Maintenance Activities

Modeling analysis conducted during the NEG Port and Pipeline Lateral construction concluded that the only underwater noise of critical concern during such activities would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. As with construction noise at the NEG Port, to confirm modeled results and better understand the noise footprint associated with construction activities along the Algonquin Pipeline Lateral, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral construction period. Measurements were taken and normalized to establish the “loudest” potential construction measurement event. Two positions within

Massachusetts Bay were then used to determine site-specific distances to the 120/160/180 dB isopleths:

- Construction Position 2. PLEM: 70°46.755' W. and 42°28.764' N.
- Construction Position 3. Mid-Pipeline: 70°40.842' W. and 42°31.328' N.

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The results of the distances to the 120-dB are shown in Table 2.

The basis for Northeast Gateway and Algonquin’s “take” estimate is the number of marine mammals that would be exposed to sound levels in excess of 120-dB, which is the threshold used by NMFS for non-pulse sounds. For the NEG LNG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities, the take estimates are determined by multiplying the 120-dB ensonified area by local marine mammal density estimates, and then multiplying by the estimated dates such activities would occur during a year-long period. For the NEG Port operations, the 120-dB ensonified area is 56.8 km<sup>2</sup> for a single visit during docking when running DP system. Although two EBRV docking with simultaneous DP system running was modeled, this situation would not occur in reality. For NEG Port and Algonquin Pipeline Lateral maintenance and repair activities, modeling based on the empirical measurements showed that the distance of the 120-dB radius is expected to be 3.5 km, making a maximum 120-dB ZOI of approximately 40.7 km<sup>2</sup>.

Since the issuance of an IHA to NEG on December 19, 2014, there was only one LNG delivery at the NEG Port which occurred on December 31, 2014. NEG expects that when the Port is under full operation, it will receive up to 65 LNG shipments per year, and would require 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Algonquin Pipeline Lateral maintenance and repair.

### *Marine Mammal Take Estimates*

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin,

humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS uses the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS 2006), to estimate potential takes of marine mammals species in the vicinity of project area.

The NCCOS study used cetacean sightings from two sources: (1) The North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA’s NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the project area (NCCOS, 2006).

The MBO’s Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 5,210 km (8,383 mi) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS

analysis. Combined valid survey effort for the NCCOS studies included 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Owing to the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on the most recent NCCOS report published in December 2006. A summary of seasonal cetacean distribution and abundance in the project area is provided in the 2013 **Federal Register** notice for the proposed IHA (78 FR 69049; November 18, 2013). For a detailed description and calculation of the cetacean abundance data and SPUE, please refer to the NCCOS study (NCCOS, 2006). These data show that the relative abundance of

North Atlantic right, fin, humpback, minke, sei, and pilot whales, and Atlantic white-sided dolphins for all seasons, as calculated by SPUE in number of animals per kilometer, is 0.0082, 0.0097, 0.0118, 0.0059, 0.0084, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 0.5 mi (0.825 km) as the hypothetical strip width (W). This strip width is based on the distance of visibility used in the NARWC data that was part of the NCCOS (2006) study. However, those surveys used a strip transect instead of a line transect methodology. Therefore, in order to obtain a strip width, one must divide the visibility or transect value in half. A 0.825 km hypothetical strip width was chosen for density calculation, which roughly equals to 0.5 mi as half the distance of the radius for visual monitoring. The hypothetical strip width used in the analysis is less than half of that derived from the NARWC data. Therefore, the analysis provided here is more protective in calculating marine mammal densities in the area. Based on this information, the area density (D) of these species in the

project area can be obtained by the following formula:

$$D = SPUE/2W$$

where D is marine mammal density in the area, and W is the strip width. For example, the take calculation for the North Atlantic right whale is:

$$0.0082 / (2 * 0.825) * (65 * 56.8 + 14 * 40.7 + 40 * 40.7) = 29.$$

Based on this calculation method, the estimated take numbers per year for North Atlantic right, fin, humpback, sei, minke, and pilot whales, and Atlantic white-sided dolphins by the NEG Port facility operations (maximum 65 visits per year), NEG Port maintenance and repair (up to 14 days per year), and Algonquin Pipeline Lateral operation and maintenance (up to 40 days per year), are 29, 35, 42, 30, 21, 145, and 469, respectively (Table 3). Since it is very likely that individual animals could be "taken" by harassment multiple times, these percentages are the upper boundary of the animal population that could be affected. The actual number of individual animals being exposed or taken would likely be far less. There is no danger of injury, death, or hearing impairment from the exposure to these noise levels.

TABLE 3—ESTIMATED ANNUAL TAKES OF MARINE MAMMALS FROM THE NEG PORT AND ALGONQUIN PIPELINE LATERAL OPERATIONS AND MAINTENANCE AND REPAIR ACTIVITIES IN MASSACHUSETTS BAY

Species	Population/stock	Number of takes	% Population
Right whale	Western Atlantic	29	6.29
Fin whale	Western North Atlantic	35	2.14
Humpback whale	Gulf of Maine	42	5.12
Sei whale	Nova Scotia	30	8.40
Minke whale	Canadian East Coast	21	0.10
Long-finned pilot whale	Western North Atlantic	145	0.67
Atlantic white-sided dolphin	Western North Atlantic	469	0.96
Bottlenose dolphin	Western North Atlantic Southern Migratory	20	0.17
Short-beaked common dolphin	Western North Atlantic	40	0.02
Risso's dolphin	Western North Atlantic	40	0.22
Killer whale	Western North Atlantic	10	Unknown*
Harbor porpoise	Gulf of Maine/Bay of Fundy	20	0.03
Harbor seal	Western North Atlantic	60	0.08
Gray seal	Western North Atlantic	30	Unknown*

\* Killer whale and gray seal abundance information is not available.

In addition, bottlenose dolphins, common dolphins, killer whales, Risso's dolphins, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of deepwater NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair. Since these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based their sighting occurrence in the vicinity of the project area (SBNMS

2015). Therefore, NMFS estimates that up to approximately 20 bottlenose dolphins, 40 short-beaked common dolphins, 40 Risso's dolphins, 10 killer whales, 20 harbor porpoises, 60 harbor seals, and 30 gray seals could be exposed to continuous noise at or above 120 dB re 1 μPa rms incidental to operations during the one year period of the IHA, respectively. Since no population/stock estimates for killer whale and gray seal is available, the percentage of estimated takes for these

species is unknown. Nevertheless, since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur NMFS has preliminarily determined that the takes of 10 killer whales and 30 gray seals represent a small fraction of the population and stocks of these species (Table 3).

## Analysis and Preliminary Determinations

### Negligible Impact

Negligible impact is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 5, given that the anticipated effects of NE Gateway LNG Port and Algonquin Pipeline Lateral operations, maintenance, and repair activities on marine mammals (taking into account the proposed mitigation) are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described separately in the analysis below.

No injuries or mortalities are anticipated to occur as a result of NE Gateway and Algonquin’s proposed Port and Pipeline Lateral operations, maintenance, and repair activities, and none are authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.*, TTS or PTS) or non-auditory physiological effects. The takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment. While NEG expects that when the Port is under full operation, it will receive up to 65 LNG shipments per year, and would require 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Algonquin Pipeline Lateral maintenance and repair, schedules of LNG delivery

would occur throughout the year, which include seasons certain marine mammals may not be present in the area.

Effects on marine mammals are generally expected to be restricted to avoidance of a limited area around NEG’s proposed activities and short-term changes in behavior, falling within the MMPA definition of “Level B harassment.” Mitigation measures, such as controlled vessel speed, dedicated marine mammal observers, and passive acoustic monitoring, will ensure that takes are within the level being analyzed. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the 14 marine mammal species likely to occur in the proposed marine survey area, North Atlantic right, humpback, fin, and sei whales are listed as endangered under the ESA. These species are also designated as “depleted” under the MMPA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

The project area of the NEG and Algonquin’s proposed activities is a biologically important area (BIA) for feeding for the North Atlantic right whale in February to April, humpback whale in March to December, fin whale year-round, and minke whale in March to November (LaBrecque *et al.* 2015). However, prior monitoring reports show that most of the LNG deliveries occur during late fall through the winter months between late November and January. Therefore, the actual impacts to these species from the NE Gateway’s proposed operations would likely be much less than what are analyzed here. The proposed project area is not a BIA for the rest of the species.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from NEG and Algonquin’s proposed LNG Port and Pipeline Lateral operation, maintenance, and repair activities in Massachusetts Bay are not expected to have adversely affect the affected species or stocks through impacts on annual rates of recruitment or survival, and therefore will have a negligible impact on the affected marine mammal species or stocks.

### Small Numbers

The requested takes represent less than 8.4% of all populations or stocks potentially impacted (see Table 5 in this document). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and TTS (Level B harassment). The numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks. In addition, the mitigation and monitoring measures (described previously in this document) prescribed in the IHA are expected to reduce even further any potential disturbance to marine mammals.

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, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

### Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action. Therefore, NMFS 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)

Our November 18, 2013, **Federal Register** notice of the proposed IHA described the history and status of Endangered Species Act (ESA) compliance for the NE Gateway LNG facility (78 FR 69049). As explained in that notice, the biological opinions for construction and operation of the facility only analyzed impacts on ESA-listed species from activities under the initial construction period and during operations, and did not take into consideration potential impacts to marine mammals that could result from the subsequent LNG Port and Pipeline Lateral maintenance and repair activities. In addition, NEG also revealed that significantly more water usage and vessel operating air emissions are needed from what was originally evaluated for the LNG Port operation. NMFS PR1 initiated consultation with NMFS Greater Atlantic Region Fisheries Office under section 7 of the ESA on the proposed issuance of an IHA to NEG

under section 101(a)(5)(D) of the MMPA for the proposed activities that include increased NEG Port and Algonquin Pipeline Lateral maintenance and repair and water usage for the LNG Port operations this activity. A Biological Opinion was issued on November 21, 2014, and concluded that the proposed action may adversely affect but is not likely to jeopardize the continued existence of ESA-listed right, humpback, fin, and sei whales.

NMFS' Permits and Conservation Division has preliminarily determined that the activities described in here are the same as those analyzed in the November 21, 2014, Biological Opinion. Therefore, a new consultation is not required for issuance of this IHA.

### National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the Northeast Gateway's LNG Port Facility in Massachusetts Bay.

We have reviewed the NEG's application for a renewed IHA for ongoing activities for 2015–16 and the 2014–15 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined preliminarily that the preparation of a new or supplemental NEPA document is not necessary.

### Proposed Incidental Harassment Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Northeast Gateway and Algonquin for activities associated with Northeast Gateway's LNG Port and Algonquin's Pipeline Lateral operations and maintenance and repair activities in the Massachusetts Bay, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

(1) This Authorization is valid from December 22, 2015, through December 21, 2016.

(2) This Authorization is valid only for activities associated with Northeast Gateway's LNG Port and Algonquin's Pipeline Lateral operations and maintenance and repair activities in the Massachusetts Bay. The specific area of the activities is shown in Figure 2–1 of the Accelerate Energy, L.P. and Tetra Tech, Inc.'s IHA application.

(3)(a) The species authorized for incidental harassment takings, Level B harassment only, are: Right whales (*Eubalaena glacialis*); fin whales (*Balaenoptera physalus*); humpback whales (*Megaptera novaeangliae*); minke whales (*B. acutorostrata*); sei whales (*B. borealis*); long-finned pilot whales (*Globicephala melas*); Atlantic white-sided dolphins (*Lagenorhynchus acutus*); bottlenose dolphins (*Tursiops truncatus*); short-beaked common dolphins (*Delphinus delphis*); Risso's dolphin (*Grampus griseus*); killer whales (*Orcinus orca*); harbor porpoises (*Phocoena phocoena*); harbor seals (*Phoca vitulina*); and gray seals (*Halichoerus grypus*).

(3)(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- (i) NEG Port operations;
- (ii) NEG Port maintenance and repair; and
- (iii) Algonquin Pipeline Lateral operations and maintenance.

(3)(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the National Marine Fisheries Service (NMFS) Greater Atlantic Regional Administrator or his designee, NMFS Headquarter Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301–427–8401), or her designee (301–427–8418).

#### (4) Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 5. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

#### (5) Mitigation

The holder of this authorization is required to implement the following mitigation measures:

- (a) General Marine Mammal Avoidance Measures
  - (i) All vessels shall utilize the International Maritime Organization (IMO)-approved Boston Traffic

Separation Scheme (TSS) on their approach to and departure from the NEG Port and/or the repair/maintenance area at the earliest practicable point of transit in order to avoid the risk of whale strikes.

(ii) Upon entering the TSS and areas where North Atlantic right whales are known to occur, including the Great South Channel Seasonal Management Area (GSC–SMA) and the SBNMS, the EBRV shall go into “Heightened Awareness” as described below.

(A) Prior to entering and navigating the modified TSS the Master of the vessel shall:

(I) Consult Navigational Telex (NAVTEX), NOAA Weather Radio, the NOAA Right Whale Sighting Advisory System (SAS) or other means to obtain current right whale sighting information as well as the most recent Cornell acoustic monitoring buoy data for the potential presence of marine mammals;

(II) Post a look-out to visually monitor for the presence of marine mammals;

(III) Provide the US Coast Guard (USCG) the required 96-hour notification of an arriving EBRV to allow the NEG Port Manager to notify Cornell of vessel arrival.

(B) The look-out shall concentrate his/her observation efforts within the 2-mile radius zone of influence (ZOI) from the maneuvering EBRV.

(C) If marine mammal detection was reported by NAVTEX, NOAA Weather Radio, SAS and/or an acoustic monitoring buoy, the look-out shall concentrate visual monitoring efforts towards the areas of the most recent detection.

(D) If the look-out (or any other member of the crew) visually detects a marine mammal within the 2-mile radius ZOI of a maneuvering EBRV, he/she will take the following actions:

(I) The Officer-of-the-Watch shall be notified immediately; who shall then relay the sighting information to the Master of the vessel to ensure action(s) can be taken to avoid physical contact with marine mammals.

(II) The sighting shall be recorded in the sighting log by the designated look-out.

(III) In accordance with 50 CFR 224.103(c), all vessels associated with NEG Port and Pipeline Lateral activities shall not approach closer than 500 yards (460 m) to a North Atlantic right whale and 100 yards (91 m) to other whales to the extent physically feasible given navigational constraints. In addition, when approaching and departing the project area, vessels shall be operated so as to remain at least 1 km away from any visually-detected North Atlantic right whales.

(IV) In response to active right whale sightings and active acoustic detections, and taking into account exceptional circumstances, EBRVs, repair and maintenance vessels shall take appropriate actions to minimize the risk of striking whales. Specifically vessels shall:

(A) Respond to active right whale sightings and/or DMAs reported on the Mandatory Ship Reporting (MSR) or SAS by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less if the vessel is within the boundaries of a DMA (50 CFR 224.105) or within the circular area centered on an area 8 nm in radius from a sighting location;

(B) Respond to active acoustic detections by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less within an area 5 nm in radius centered on the detecting AB; and

(C) Respond to additional sightings made by the designated look-outs within a 2-mile radius of the vessel by slowing the vessel to 10 knots or less and concentrating monitoring efforts towards the area of most recent sighting.

(V) All vessels operated under NEG and Algonquin must follow the established specific speed restrictions when calling at the NEG Port. The specific speed restrictions required for all vessels (*i.e.*, EBRVs and vessels associated with maintenance and repair) consist of the following:

(A) Vessels shall reduce their maximum transit speed while in the TSS from 12 knots or less to 10 knots or less from March 1 to April 30 in all waters bounded by straight lines connecting the following points in the order stated below unless an emergency situation dictates for an alternate speed. This area shall hereafter be referred to as the Off Race Point Seasonal Management Area (ORP-SMA) and tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 70°30' W.      41°40' N. 69°57' W.  
 42°30' N. 69°45' W.      42°12' N. 70°15' W.  
 41°40' N. 69°45' W.      42°12' N. 70°30' W.  
 42°04.8' N. 70°10' W.    42°30' N. 70°30' W.

(B) Vessels shall reduce their maximum transit speed while in the TSS to 10 knots or less unless an emergency situation dictates for an alternate speed from April 1 to July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area shall hereafter be referred to as the GSC-SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30' N. 69°45' W.      41°40' N. 69°45' W.  
 42°30' N. 67°27' W.      42°30' N. 69°45' W.  
 42°09' N. 67°08.4' W.    41°00' N. 69°05' W.

(C) Vessels are not expected to transit the Cape Cod Bay or the Cape Cod Canal; however, in the event that transit through the Cape Cod Bay or the Cape Cod Canal is required, vessels shall reduce maximum transit speed to 10 knots or less from January 1 to May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12' N. latitude and the Cape Cod Canal. This area shall hereafter be referred to as the Cape Cod Bay Seasonal Management Area (CCB-SMA).

(D) All Vessels transiting to and from the project area shall report their activities to the mandatory reporting Section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

(E) All Vessels greater than or equal to 300 gross tons (GT) shall maintain a speed of 10 knots or less, unless an emergency situation requires speeds greater than 10 knots.

(F) All Vessels less than 300 GT traveling between the shore and the project area that are not generally restricted to 10 knots will contact the Mandatory Ship Reporting (MSR) system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 kilometers) of any sighting location, when traveling in any of the seasonal management areas (SMAs) or when traveling in any active dynamic management area (DMA).

(b) NEG Port-Specific Operations

(i) In addition to the general marine mammal avoidance requirements identified in (5)(a) above, vessels calling on the NEG Port must comply with the following additional requirements:

(A) EBRVs shall travel at 10 knots maximum speed when transiting to/from the TSS or to/from the NEG Port/Pipeline Lateral area. For EBRVs, at 1.86 miles (3 km) from the NEG Port, speed will be reduced to 3 knots and to less than 1 knot at 1,640 ft (500 m) from the NEG buoys, unless an emergency situation dictates the need for an alternate speed.

(B) EBRVs that are approaching or departing from the NEG Port and are within the ATBA5 surrounding the NEG Port, shall remain at least 1 km away from any visually-detected North Atlantic right whale and at least 100 yards (91 m) away from all other visually-detected whales unless an emergency situation requires that the vessel stay its course. During EBRV maneuvering, the Vessel Master shall designate at least one look-out to be exclusively and continuously monitoring for the presence of marine mammals at all times while the EBRV is approaching or departing from the NEG Port.

(C) During NEG Port operations, in the event that a whale is visually observed within 1 km of the NEG Port or a confirmed acoustic detection is reported on either of the two ABs closest to the NEG Port (western-most in the TSS array), departing EBRVs shall delay their departure from the NEG Port, unless an emergency situation requires that departure is not delayed. This departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 1 km from the NEG Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the NEG Port, or visually within 1 km from the NEG Port.

(ii) Vessel captains shall focus on reducing dynamic positioning (DP) thruster power to the maximum extent practicable, taking into account vessel and Port safety, during the operation activities. Vessel captains will shut down thrusters whenever they are not needed.

(c) Planned and Unplanned Maintenance and Repair Activities

(i) NEG Port

(A) The Northeast Gateway shall conduct empirical source level measurements on all noise emitting construction equipment and all vessels that are involved in maintenance/repair work.

(B) If dynamic positioning (DP) systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 µPa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(C) Northeast Gateway shall provide the NMFS Headquarters Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30 days notice prior to any planned repair and/or maintenance activity. For any

unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Northeast Gateway shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(ii) Pipeline Lateral

(A) Pipeline maintenance/repair vessels less than 300 GT traveling between the shore and the maintenance/repair area that are not generally restricted to 10 knots shall contact the MSR system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 km) of any sighting location, when travelling in any of the seasonal management areas (SMAs) as defined above.

(B) Maintenance/repair vessels greater than 300 GT shall not exceed 10 knots, unless an emergency situation that requires speeds greater than 10 knots.

(C) Planned maintenance and repair activities shall be restricted to the period between May 1 and November 30.

(D) Unplanned/emergency maintenance and repair activities shall be conducted utilizing anchor-moored dive vessel whenever operationally possible.

(E) Algonquin shall also provide the NMFS Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and Stellwagen Bank National Marine Sanctuary (SBNMS) with a minimum of 30-day notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Algonquin shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(F) If dynamic positioning (DP) systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1  $\mu$ Pa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(G) In the event that a whale is visually observed within 0.5 mile (0.8

kilometers) of a repair or maintenance vessel, the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew shall be put on a heightened state of alert and the marine mammal shall be monitored constantly to determine if it is moving toward the repair or maintenance area.

(H) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1  $\mu$ Pa @ 1 m or higher when a right whale is sighted within or approaching at 500 yd (457 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (500 yd [457 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(I) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1  $\mu$ Pa @ 1 m or higher when a marine mammal other than a right whale is sighted within or approaching at 100 yd (91 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (100 yd [91 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(J) Algonquin and associated contractors shall also comply with the following:

(I) Operations involving excessively noisy equipment (source level exceeding 139 dB re 1  $\mu$ Pa @ 1 m) shall "ramp-up" sound sources, allowing whales a chance to leave the area before sounds reach maximum levels. In addition, Northeast Gateway, Algonquin, and other associated contractors shall maintain equipment to manufacturers' specifications, including any sound-muffling devices or engine covers in order to minimize noise effects. Noisy construction equipment shall only be used as needed and equipment shall be turned off when not in operation.

(II) Any material that has the potential to entangle marine mammals (e.g., anchor lines, cables, rope or other construction debris) shall only be deployed as needed and measures shall be taken to minimize the chance of entanglement.

(III) For any material that has the potential to entangle marine mammals, such material shall be removed from the water immediately unless such action

jeopardizes the safety of the vessel and crew as determined by the Captain of the vessel.

(IV) In the event that a marine mammal becomes entangled, the marine mammal coordinator and/or PSO will notify NMFS (if outside the SBNMS), and SBNMS staff (if inside the SBNMS) immediately so that a rescue effort may be initiated.

(K) All maintenance/repair activities shall be scheduled to occur between May 1 and November 30; however, in the event of unplanned/emergency repair work that cannot be scheduled during the preferred May through November work window, the following additional measures shall be followed for Pipeline Lateral maintenance and repair related activities between December and April:

(I) Between December 1 and April 30, if on-board PSOs do not have at least 0.5-mile visibility, they shall call for a shutdown. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down.

(II) Prior to leaving the dock to begin transit, the barge shall contact one of the PSOs on watch to receive an update of sightings within the visual observation area. If the PSO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel shall hold for 30 minutes and again get a clearance to leave from the PSOs on board. PSOs shall assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

(III) Transit route, destination, sea conditions and any marine mammal sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 1,000 m of the vessel shall result in a high alert and slow speed of 4 knots or less and a sighting within 750 m shall result in idle speed and/or ceasing all movement.

(IV) The material barges and tugs used in repair and maintenance shall transit from the operations dock to the work sites during daylight hours when possible provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug shall be 5 knots.

(V) All repair vessels must maintain a speed of 10 knots or less during daylight hours. All vessels shall operate at 5 knots or less at all times within 5 km of the repair area.

## (d) Acoustic Monitoring Related Activities

(j) Vessels associated with maintaining the AB network operating as part of the mitigation/monitoring protocols shall adhere to the following speed restrictions and marine mammal monitoring requirements.

(A) In accordance with NOAA Regulation 50 CFR 224.103 (c), all vessels associated with NEG Port activities shall not approach closer than 500 yards (460 meters) to a North Atlantic right whale.

(B) All vessels shall obtain the latest DMA or right whale sighting information via the NAVTEX, MSR, SAS, NOAA Weather Radio, or other available means prior to operations to determine if there are right whales present in the operational area.

## (6) Monitoring

## (a) Vessel-Based Visual Monitoring

(i) Vessel-based monitoring for marine mammals shall be done by trained look-outs during NEG LNG Port and Pipeline Lateral operations and maintenance and repair activities. The observers shall monitor the occurrence of marine mammals near the vessels during LNG Port and Pipeline Lateral related activities. Lookout duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the activities; and documenting "take by harassment."

(ii) The vessel look-outs assigned to visually monitor for the presence of marine mammals shall be provided with the following:

(A) Recent NAVTEX, NOAA Weather Radio, SAS and/or acoustic monitoring buoy detection data;

(B) Binoculars to support observations;

(C) Marine mammal detection guide sheets; and

(D) Sighting log.

## (b) NEG LNG Port Operations

(i) All individuals onboard the EBRVs responsible for the navigation duties and any other personnel that could be assigned to monitor for marine mammals shall receive training on marine mammal sighting/reporting and vessel strike avoidance measures.

(ii) While an EBRV is navigating within the designated TSS, there shall be three people with look-out duties on or near the bridge of the ship including the Master, the Officer-of-the-Watch and the Helmsman-on-watch. In addition to the standard watch procedures, while the EBRV is transiting within the designated TSS, maneuvering within the Area to be Avoided (ATBA), and/or

while actively engaging in the use of thrusters, an additional look-out shall be designated to exclusively and continuously monitor for marine mammals.

(iii) All sightings of marine mammals by the designated look-out, individuals posted to navigational look-out duties and/or any other crew member while the EBRV is transiting within the TSS, maneuvering within the ATBA and/or when actively engaging in the use of thrusters, shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master. The Master or Officer-of-the-Watch shall ensure the required reporting procedures are followed and the designated marine mammal look-out records all pertinent information relevant to the sighting.

(iv) Visual sightings made by look-outs from the EBRVs shall be recorded using a standard sighting log form. Estimated locations shall be reported for each individual and/or group of individuals categorized by species when known. This data shall be entered into a database and a summary of monthly sighting activity shall be provided to NMFS. Estimates of take and copies of these log sheets shall also be included in the reports to NMFS.

## (c) Planned and Unplanned Maintenance and Repair

(i) Two (2) qualified and NMFS-approved protected species observers (PSOs) shall be assigned to each vessel that will use dynamic positioning (DP) systems during maintenance and repair related activities. PSOs shall operate individually in designated shifts to accommodate adequate rest schedules. Additional PSOs shall be assigned to additional vessels if auto-detection buoy (AB) data indicates that sound levels exceed 120 dB re 1  $\mu$ Pa, further then 100 meters (328 feet) from these vessels.

(ii) All PSOs shall receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after review of their resume. All PSOs shall have direct field experience on marine mammal vessels and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

(iii) PSOs (one primary and one secondary) shall be responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist and the secondary PSO will serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals and sea turtles. Specifically PSO's shall:

(A) Monitor at all hours of the day, scanning the ocean surface by eye for a minimum of 40 minutes every hour.

(B) Monitor the area where maintenance and repair work is conducted beginning at daybreak using 25 $\times$  power binoculars and/or hand-held binoculars. Night vision devices must be provided as standard equipment for monitoring during low-light hours and at night.

(C) Conduct general 360 $^\circ$  visual monitoring during any given watch period and target scanning by the observer shall occur when alerted of a whale presence.

(D) Alert the vessel superintendent or construction crew supervisor of visual detections within 2 miles (3.31 kilometers) immediately.

(E) Record all sightings on marine mammal field sighting logs. Specifically, all data shall be entered at the time of observation, notes of activities will be kept, and a daily report prepared and attached to the daily field sighting log form. The basic reporting requirements include the following:

- Beaufort sea state;
- Wind speed;
- Wind direction;
- Temperature;
- Precipitation;
- Glare;
- Percent cloud cover;
- Number of animals;
- Species;
- Position;
- Distance;
- Behavior;
- Direction of movement; and
- Apparent reaction to construction activity.

(iv) In the event that a whale is visually observed within the 2-mile (3.31-kilometers) zone of influence (ZOI) of a DP vessel or other construction vessel that has shown to emit noise with source level in excess of 139 dB re 1  $\mu$ Pa @ 1 m, the PSO will notify the repair/maintenance construction crew to minimize the use of thrusters until the animal has moved away, unless there are divers in the water or an ROV is deployed.

## (d) Acoustic Monitoring

(i) Northeast Gateway shall deploy 10 ABs within the Separation Zone of the TSS for the operational life of the Project.

(ii) The ABs shall be used to detect a calling North Atlantic right whale an average of 5 nm from each AB. The AB system shall be the primary detection mechanism that alerts the EBRV Master to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described in section (5) above.

(iii) Northeast Gateway shall conduct short-term passive acoustic monitoring to document sound levels during the initial operational events in the 2015–2016 winter heating season, and during both regular deliveries outside the winter heating season should such deliveries occur, and during scheduled and unscheduled maintenance and repair activities.

(iv) Northeast Gateway shall conduct long-term monitoring of the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Pipeline Lateral using marine autonomous recording units (MARUs) when there is anticipated to be more than 5 LNG shipments in a 30-day period or over 20 shipments in a six-month period.

(v) The acoustic data collected in 6(d)(ii) shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback and right whales) within approximately 10 nm of the NEG Port and shall measure and document the noise “budget” of Massachusetts Bay so as to eventually assist in determining whether or not an overall increase in noise in the Bay associated with the Project might be having a potentially negative impact on marine mammals.

(vi) Northeast Gateway shall make all acoustic data, including data previously collected by the MARUs during prior construction, operations, and maintenance and repair activities, available to NOAA. Data storage will be the responsibility of NOAA.

(e) Acoustic Whale Detection and Response Plan

(i) NEG Port Operations

(A) Ten (10) ABs that have been deployed since 2007 shall be used to continuously screen the low-frequency acoustic environment (less than 1,000 Hertz) for right whale contact calls occurring within an approximately 5-nm radius from each buoy (the AB’s detection range).

(B) Once a confirmed detection is made, the Master of any EBRVs operating in the area will be alerted immediately.

(ii) NEG Port and Pipeline Lateral Planned and Unplanned/Emergency Repair and Maintenance Activities

(A) If the repair/maintenance work is located outside of the detectible range of the 10 project area ABs, Northeast Gateway and Algonquin shall consult with NOAA (NMFS and SBNMS) to determine if the work to be conducted warrants the temporary installation of an additional AB(s) to help detect and provide early warnings for potential occurrence of right whales in the vicinity of the repair area.

(B) The number of ABs installed around the activity site shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(C) Should acoustic monitoring be deemed necessary during a planned or unplanned/emergency repair and/or maintenance event, active monitoring for right whale calls shall begin 24 hours prior to the start of activities.

(D) Revised noise level data from the acoustic recording units deployed in the NEG Port and/or Pipeline Lateral maintenance and repair area shall be provided to NMFS.

(7) Reporting

(a) Throughout NEG Port and Pipeline Lateral operations, Northeast Gateway and Algonquin shall provide a monthly Monitoring Report. The Monitoring Report shall include:

(i) Both copies of the raw visual EBRV lookout sighting information of marine mammals that occurred within 2 miles of the EBRV while the vessel transits within the TSS, maneuvers within the ATBA, and/or when actively engaging in the use of thrusters, and a summary of the data collected by the look-outs over each reporting period.

(ii) Copies of the raw PSO sightings information on marine mammals gathered during pipeline repair or maintenance activities. This visual sighting data shall then be correlated to periods of thruster activity to provide estimates of marine mammal takes (per species/species class) that took place during each reporting period.

(iii) Conclusion of any planned or unplanned/emergency repair and/or maintenance period, a report shall be submitted to NMFS summarizing the repair/maintenance activities, marine mammal sightings (both visual and acoustic), empirical source-level measurements taken during the repair work, and any mitigation measures taken.

(b) During the maintenance and repair of NEG Port components, weekly status reports shall be provided to NOAA (both NMFS and SBNMS) using standardized reporting forms. The weekly reports shall include data collected for each distinct marine mammal species observed in the repair/maintenance area during the period that maintenance and repair activities were taking place. The weekly reports shall include the following information:

(i) Location (in longitude and latitude coordinates), time, and the nature of the maintenance and repair activities;

(ii) Indication of whether a DP system was operated, and if so, the number of

thrusters being used and the time and duration of DP operation;

(iii) Marine mammals observed in the area (number, species, age group, and initial behavior);

(iv) The distance of observed marine mammals from the maintenance and repair activities;

(v) Changes, if any, in marine mammal behaviors during the observation;

(vi) A description of any mitigation measures (power-down, shutdown, etc.) implemented;

(vii) Weather condition (Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover etc.);

(viii) Condition of the observation (visibility and glare); and

(ix) Details of passive acoustic detections and any action taken in response to those detections.

(d) Injured/Dead Protected Species Reporting

(i) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by the proposed IHA, such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), NEG and/or Algonquin shall immediately cease activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at and the Greater Atlantic Regional Stranding Coordinators or by phone at 978–281–9300. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) The name and type of vessel involved;

(C) The vessel’s speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) The fate of the animal(s); and

(K) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NEG and/or Algonquin to determine what is necessary to minimize the likelihood of further prohibited take and ensure



MMPA compliance. NEG and/or Algonquin may not resume their activities until notified by NMFS via letter, email, or telephone.

(ii) In the event that NEG and/or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), NEG and/or Algonquin will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to [Jolie.Harrison@noaa.gov](mailto:Jolie.Harrison@noaa.gov) and [Shane.Guan@noaa.gov](mailto:Shane.Guan@noaa.gov) and the NMFS Greater Atlantic Stranding Coordinators by phone at 978-281-9300, within 24 hours of the discovery. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NEG and/or Algonquin to determine whether modifications in the activities are appropriate.

(iii) In the event that NEG or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (if the IHA is issued) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NEG and/or Algonquin shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to [Jolie.Harrison@noaa.gov](mailto:Jolie.Harrison@noaa.gov) and [Shane.Guan@noaa.gov](mailto:Shane.Guan@noaa.gov) and the NMFS Greater Atlantic Stranding Coordinators by phone at 978-281-9300, within 24 hours of the discovery. NEG and/or Algonquin shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. NEG and/or Algonquin can continue its operations under such a case.

(8) This Authorization may be modified, suspended, or withdrawn if the holder fails to abide by the conditions prescribed herein or if NMFS determines that the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

(9) A copy of this Authorization and the Incidental Take Statement must be in the possession of each survey vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

(10) Northeast Gateway and Algonquin are required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

#### Request for Public Comments

NMFS requests comment on our analysis, the draft authorization for an IHA, the receipt of notice for a rulemaking, and any other aspect of the Notice of Proposed IHA for Northeast Gateway and Algonquin's proposed LNG Port and Pipeline Lateral operations, maintenance, and repair activities in the Massachusetts Bay. Please include with your comments any supporting data or literature citations to help inform our final decision on Northeast Gateway and Algonquin's request for an MMPA authorization.

Dated: November 12, 2015.

#### Donna Wieting,

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2015-29642 Filed 11-19-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Southeast Region Vessel Monitoring System (VMS) and Related Requirements.

*OMB Control Number:* 0648-0544.

*Form Number(s):* None.

*Type of Request:* Regular (revision and extension of a currently approved information collection).

*Number of Respondents:* 927.

*Average Hours per Response:* Installation, 5 hours; installation and activation checklist, 20 minutes; power-down exemption requests, 5 minutes; transmission of fishing activity reports, 1 minute; and annual maintenance, 2 hours.

*Burden Hours:* 2,557.

*Needs and Uses:* This request is for revision and extension of a currently approved information collection.

The Magnuson-Stevens Fishery Conservation and Management Act

authorizes the Gulf of Mexico Fishery Management Council (Gulf Council) and South Atlantic Fishery Management Council (South Atlantic Council) to prepare and amend fishery management plans for any fishery in Federal waters under their respective jurisdictions. NMFS and the Gulf Council manage the reef fish fishery in the Gulf of Mexico (Gulf) under the Reef Fish Fishery Management Plan (FMP). NMFS and the South Atlantic Council manage the fishery for rock shrimp in the South Atlantic under the Shrimp FMP. The vessel monitoring system (VMS) regulations for the Gulf reef fish fishery and the South Atlantic rock shrimp fishery may be found at 50 CFR 622.28 and 622.205, respectively.

The FMPs contains several area-specific regulations where fishing is restricted or prohibited in order to protect habitat or spawning aggregations, or to control fishing pressure. Unlike size, bag, and trip limits, where the catch can be monitored on shore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and the limited number of patrol vessels, resulting in a need to improve enforceability of area fishing restrictions through remote sensing methods. In addition, all fishing gears are subject to some area fishing restrictions. Because of the sizes of these areas and the distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. An electronic VMS allows a more effective means to monitor vessels for intrusions into restricted areas.

The VMS provides effort data and significantly aids in enforcement of areas closed to fishing. All position reports are treated in accordance with NMFS existing guidelines for confidential data. As a condition of authorized fishing for or possession of reef fish or rock shrimp in or from the Gulf exclusive economic zone (EEZ) or South Atlantic EEZ, respectively, vessel owners or operators subject to VMS requirements must allow NMFS, the United States Coast Guard (USCG), and their authorized officers and designees, access to the vessel's position data obtained from the VMS.

NMFS would like to move the collection of information requirement for VMS applicable to vessels with limited access endorsements for South Atlantic rock shrimp under OMB Control No. 0648-0205 to this collection. The burden estimates have changed due to inclusion of the

applicable burden from OMB Control No. 0648–0205.

**Affected Public:** Business or other for-profit organizations; individuals or households.

**Frequency:** One time, annually and on occasion.

**Respondent's Obligation:** Mandatory.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

Dated: November 16, 2015.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2015–29587 Filed 11–19–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request; Practitioner Conduct and Discipline

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Agency:** United States Patent and Trademark Office, Commerce.

**Title:** Practitioner Conduct and Discipline.

**OMB Control Number:** 0651–0017.

**Form Number(s):**

- No forms associated.

**Type of Request:** Regular.

**Number of Respondents:** 11,065.

**Average Hours per Response:** The USPTO estimates that it will take the public between 1 and 20 hours, depending upon the complexity of the situation, to gather the necessary information, prepare, and submit the requirements in this collection.

**Burden Hours:** 12,225 hours annually.

**Cost Burden:** \$1,083.05.

**Needs and Uses:** This information is required by 35 U.S.C. 2, 32, and 33 and administered by the USPTO through 37 CFR 10.20–10.112 and 37 CFR 11.19–11.61. The information is used by the Director of the Office of Enrollment and Discipline (OED) to investigate and, where appropriate, prosecute practitioners for violations of the USPTO Code of Professional

Responsibility. Registered practitioners are required to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation. There are no forms associated with this collection of information.

**Affected Public:** Individuals or households; businesses or other for-profits; and not-for-profit institutions.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to Obtain or Retain Benefits.

**OMB Desk Officer:** Nicholas A. Fraser, email: [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov). Once submitted, the request will be publicly available in electronic format through [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information may be requested by:

- **Email:** [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include “0651–0017 copy request” in the subject line of the message.
- **Mail:** Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 21, 2015 to Nicholas A. Fraser, OMB Desk Officer, via email to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov), or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 13, 2015.

**Rhonda Foltz,**

*Director, Office of Information Management Services, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2015–29644 Filed 11–19–15; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and deletions from the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement

List previously furnished by such agencies.

**DATES:** *Effective Date:* 12/20/2015.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:**

### Addition

On 10/2/2015 (80 FR 59740–59741), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following service is added to the Procurement List:

#### Service

**Service Type:** Janitorial Service  
**Service is Mandatory For:** USDA Forest Service, Salmon/Cobalt Ranger District, Salmon-Challis National Forest, Salmon, ID

**Mandatory Source(s) of Supply:** Development Workshop, Inc., Idaho Falls, ID

**Contracting Activity:** Forest Service, Caribou-Targhee National Forest, Idaho Falls, ID

### Deletions

On 10/9/2015 (80 FR 61178), the Committee for Purchase From People

Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products deleted from the Procurement List.

### End of Certification

Accordingly, the following products are deleted from the Procurement List:

#### Products

*Product Name(s)*—*NSN(s)*: Skirt, Service, Coast Guard, Women's, Dress Blue

8410-01-452-3387—10 Junior Long  
 8410-01-452-3388—6 Misses Short  
 8410-01-452-3389—6 Women's Regular  
 8410-01-452-3390—10 Misses Short  
 8410-01-452-3391—6 Misses Regular  
 8410-01-452-3393—4 Misses Regular  
 8410-01-452-3394—8 Misses Regular  
 8410-01-452-3395—8 Misses Long  
 8410-01-452-3396—8 Women's Short  
 8410-01-452-3397—8 Women's Regular  
 8410-01-452-3398—10 Junior Regular  
 8410-01-452-3399—10 Women's Short  
 8410-01-452-3400—8 Misses Short  
 8410-01-452-3402—10 Misses Regular  
 8410-01-452-3404—10 Misses Long  
 8410-01-452-3653—12 Junior Long  
 8410-01-452-3654—12 Misses Short  
 8410-01-452-3655—20 Misses Regular  
 8410-01-452-3656—12 Misses Regular  
 8410-01-452-3657—12 Misses Long  
 8410-01-452-3658—10 Women's Long  
 8410-01-452-3659—12 Women's Long  
 8410-01-452-3660—10 Women's Regular  
 8410-01-452-3661—12 Junior Regular  
 8410-01-452-3662—12 Women's Short  
 8410-01-452-3663—14 Misses Short  
 8410-01-452-3664—14 Junior Short  
 8410-01-452-3665—14 Women's Short  
 8410-01-452-3666—14 Misses Long  
 8410-01-452-3667—14 Misses Regular  
 8410-01-452-3668—16 Junior Short  
 8410-01-452-3669—16 Junior Regular  
 8410-01-452-3670—16 Misses Long  
 8410-01-452-3671—14 Junior Long  
 8410-01-452-3672—14 Women's Regular

8410-01-452-3673—14 Junior Regular  
 8410-01-452-3674—18 Women's Regular  
 8410-01-452-3675—20 Women's Regular  
 8410-01-452-3676—22 Women's Regular  
 8410-01-452-3677—14 Women's Long  
 8410-01-452-3678—18 Misses Regular  
 8410-01-452-3679—16 Junior Long  
 8410-01-452-3680—18 Misses Short  
 8410-01-452-3681—16 Women's Regular  
 8410-01-452-3682—16 Misses Regular

Skirt, Dress, Coast Guard, Women's, Dress Blue

8410-01-452-6191—6 Women's Short  
 8410-01-452-6195—12 Women's Regular  
 8410-01-452-6197—16 Women's Long

Skirt, Air Force, Women's, Blue

8410-01-375-8495—4MR  
 8410-01-375-8496—6MR  
 8410-01-375-8497—6WR  
 8410-01-375-8498—8MR  
 8410-01-375-8499—8WR  
 8410-01-375-8500—10MR  
 8410-01-375-8501—10WR  
 8410-01-375-8502—12MR  
 8410-01-375-8503—12WR  
 8410-01-375-8504—14MR  
 8410-01-375-8505—14WR  
 8410-01-375-8506—16MR  
 8410-01-375-8507—16WR  
 8410-01-375-8508—18MR  
 8410-01-375-8509—18WR  
 8410-01-375-8510—20MR  
 8410-01-377-9345—6WL  
 8410-01-377-9442—16WL  
 8410-01-377-9464—4WR  
 8410-01-377-9487—6MS  
 8410-01-377-9491—6ML  
 8410-01-377-9500—14WS  
 8410-01-377-9536—12WL  
 8410-01-377-9581—10MS  
 8410-01-377-9598—10ML  
 8410-01-377-9642—10WL  
 8410-01-377-9719—16MS  
 8410-01-377-9747—12WS  
 8410-01-377-9812—14WL  
 8410-01-377-9899—12MS  
 8410-01-377-9906—12ML  
 8410-01-377-9934—8WL  
 8410-01-377-9938—8ML  
 8410-01-377-9943—18WL  
 8410-01-377-9953—6WS  
 8410-01-377-9964—2MS  
 8410-01-377-9968—2MR  
 8410-01-377-9981—4WS  
 8410-01-377-9982—8WS  
 8410-01-377-9998—10WS  
 8410-01-378-0012—4MS  
 8410-01-378-0020—14MS  
 8410-01-378-0067—6ML

Skirt, Commissioned and Enlisted, Air Force, Women's, Blue

8410-01-377-9383—16ML  
 8410-01-377-9399—8MS  
 8410-01-377-9416—16WS  
 8410-01-377-9422—8ML

*Mandatory Source of Supply*: VGS, Inc., Cleveland, OH

*Contracting Activity*: Defense Logistics Agency Troop Support, Philadelphia, PA

**Patricia Briscoe,**

*Deputy Director, Business Operations, (Pricing and Information Management).*

[FR Doc. 2015-29654 Filed 11-19-15; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to the Procurement List.

**SUMMARY:** The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Comments Must Be Received on or Before:* 12/20/2015.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Patricia Briscoe, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

#### Product

*NSN—Product Name:* 6135-01-446-8310—1.5V Alkaline Nonrechargeable Battery  
*Mandatory Source of Supply:* Eastern Carolina Vocational Center, Inc., Greenville, NC

*Contracting Activity:* Defense Logistics Agency Land and Maritime, Columbus, OH

*Mandatory Purchase for:* Total Government Requirement

*Distribution:* A-List

#### Services

*Service Type:* Custodial Service  
*Service is Mandatory for:* US Air Force, 452 Air Mobility Wing, March Air Reserve Base, CA

*Mandatory Source of Supply:* CW Resources, Inc., New Britain, CT

*Contracting Activity:* 452 Operational

Contracting Office, March ARB, CA  
*Service Type:* Custodial Service  
*Service is Mandatory for:* US Air Force, Area C, Wright Patterson Air Force Base, OH  
*Mandatory Source of Supply:* Goodwill Easter Seals Miami Valley, Dayton, OH  
*Contracting Activity:* FA8601 AFLCMC PZIO, Wright Patterson AFB, OH

**Patricia Briscoe,**

*Deputy Director, Business Operations, (Pricing and Information Management).*

[FR Doc. 2015-29653 Filed 11-19-15; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 9:00 a.m. EST, Tuesday, November 24, 2015.

**PLACE:** CFTC Headquarters Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW., Washington, DC

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hold this meeting to consider rulemaking matters, including the issuance of a proposed rulemaking. The agenda for this meeting is available to the public and posted on the Commission's Web site at <http://www.cftc.gov>. In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's Web site.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher J. Kirkpatrick, Secretary of the Commission, 202-418-5964.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

[FR Doc. 2015-29743 Filed 11-18-15; 11:15 am]

**BILLING CODE 6351-01-P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Fair Credit Reporting Act Disclosures

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice regarding charges for certain disclosures under the Fair Credit Reporting Act.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) announces that the ceiling on allowable charges under section 612(f) of the Fair Credit Reporting Act (FCRA) will remain unchanged at \$12.00, effective for 2016. The Bureau is required to increase the \$8.00 amount referred to in section 612(f)(1)(A)(i) of the FCRA on

January 1 of each year, based proportionally on changes in the Consumer Price Index for All Urban Consumers (CPI-U), with fractional changes rounded to the nearest fifty cents. The CPI-U increased 47.61 percent between September 1997, when the FCRA amendments took effect, and September 2015. This increase in the CPI-U, and the requirement that any increase be rounded to the nearest fifty cents, result in a maximum allowable charge of \$12.00.

**DATES:** Effective January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:**

James Wylie, Counsel, Office of Regulations, at (202) 435-7700.

**SUPPLEMENTARY INFORMATION:** Section 612(f)(1)(A) of the Fair Credit Reporting Act (FCRA) provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to section 609 of the FCRA. Section 612(f)(1)(A)(i) of the FCRA provides that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to section 609 of the FCRA, the charge shall not exceed \$8.00 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) of the FCRA states that the Bureau shall increase the \$8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The Bureau's calculations are based on the CPI-U, which is the most general Consumer Price Index and covers all urban consumers and all items.

Section 612(a) of the FCRA gives consumers the right to a free disclosure upon request once every 12 months. The maximum allowable charge established by this notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Bureau is using the \$8.00 amount set forth in section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under section 609 of the FCRA. Since the effective date of section 612(a) was September 30, 1997, the Bureau calculated the proportional increase in the CPI-U from September 1997 to September 2015. The Bureau then determined what modification, if any, from the original base of \$8.00

should be made effective for 2016, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2015, the CPI-U increased by 47.61 percent from an index value of 161.2 in September 1997 to a value of 237.945 in September 2015. An increase of 47.61 percent in the \$8.00 base figure would lead to a figure of \$11.81. However, because the statute directs that the resulting figure be rounded to the nearest \$0.50, the maximum allowable charge is \$12.00. The Bureau therefore determines that the maximum allowable charge for the year 2016 will remain at \$12.00, effective January 1, 2016.

Dated: November 14, 2015.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2015-29664 Filed 11-19-15; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Notice of Intent To Grant an Exclusive Patent License

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96-517, as amended; the Department of the Air Force announces its intention to grant GlobalFlyte, Inc., a corporation of the State of Ohio, having a place of business at 8849 Brown Thrasher Court, Gainesville, VA 20155.

**DATES:** The Air Force intends to grant a license for the pending application unless a written objection is received within fifteen (15) calendar days from the date of publication of this Notice.

**ADDRESSES:** Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm 101, Wright-Patterson AFB, OH 45433-7109; Facsimile: (937) 255-3733.

**FOR FURTHER INFORMATION CONTACT:** Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm 101, Wright-Patterson AFB, OH 45433-7109; Facsimile: (937) 255-3733.

**SUPPLEMENTARY INFORMATION:** An exclusive license in any right, title, and interest of the Air Force in:

U.S. Application No. 13/110401, entitled, "Multi-Modal

Communications,” by Dianne Popik et al., and filed on May 18, 2011.

**Henry Williams,**

Acting Air Force Federal Register Liaison Officer, Civ, DAF.

[FR Doc. 2015–29471 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–10–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**Industry Implementation Information Day**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice of meeting.

**SUMMARY:** DoD is hosting an “Industry Implementation Information Day” to present a briefing on the implementation of DFARS Case 2013–D018, Network Penetration Reporting and Contracting for Cloud Services.

**DATES:** The public meeting will be held on December 14, 2015, from 9:00 a.m. to 12:00 p.m., EST. Registration to attend this meeting must be received by December 7, 2015.

**ADDRESSES:** The public meeting will be held at the Mark Center Auditorium, 4800 Mark Center Drive, Alexandria, VA 22350–3603. The auditorium is located on level B–1 of the building.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Thomas, DPAP/PDI, at 703–693–7895.

**SUPPLEMENTARY INFORMATION:** DoD is holding an “Industry Implementation Information Day” to present a briefing on the implementation of DFARS Case 2013–D018, Network Penetration Reporting and Contracting for Cloud Services, and to address questions from industry with regard to its implementation.

*Background:* On August 26, 2015, DoD published an interim rule under DFARS Case 2013–D018 entitled “Network Penetration Reporting and Contracting for Cloud Services” (80 FR 51739) that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 941 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239), section 1632 of the NDAA for FY 2015, and DoD policy on the purchase of cloud computing services.

*Registration:* Individuals wishing to attend the public meeting should register by December 7, 2015, to facilitate entry to the meeting. Interested

parties may register at this Web site, [http://www.acq.osd.mil/dpap/dars/industry\\_implementation\\_information\\_day\\_12\\_2015.html](http://www.acq.osd.mil/dpap/dars/industry_implementation_information_day_12_2015.html), by providing the following information:

- (1) Company or organization name.
- (2) Names and email addresses of persons planning to attend.

One valid government-issued photo identification card will be required in order to enter the building. Attendees are encouraged to arrive at least 30 minutes early to accommodate security procedures. Public parking is not available at the Mark Center.

*Special accommodations:* The public meeting is physically accessible to people with disabilities. Requests for reasonable accommodations, sign language interpretation or other auxiliary aids should be directed to [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil), no later than December 7, 2015.

*Correspondence:* Please cite “Industry Implementation Information Day” in all correspondence related to this public meeting.

Government procurement.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–29687 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting**

**AGENCY:** Office of the Secretary of Defense, Reserve Forces Policy Board, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

**DATES:** Tuesday, December 8, 2015 from 9:00 a.m. to 3:35 p.m.

**ADDRESSES:** The address is the Pentagon, Room 3E863, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Sabol, Designated Federal Officer, (703) 681–0577 (Voice), (703) 681–0002 (Facsimile), Email—[Alexander.J.Sabol.Civ@Mail.Mil](mailto:Alexander.J.Sabol.Civ@Mail.Mil).

Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: <http://rfpb.defense.gov/>. The most up-

to-date changes to the meeting agenda can be found on the RFPB’s Web site.

**SUPPLEMENTARY INFORMATION:** This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

*Purpose of the Meeting:* The purpose of the meeting is to obtain, review and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

*Agenda:* The RFPB will hold a meeting from 9:00 a.m. until 3:35 p.m. The portion of the meeting from 9:00 a.m. to 12:30 p.m. will be closed to the public and will consist of remarks to the RFPB from invited speakers that include the Deputy Secretary of Defense; the Chief of Staff, Army; and the Institute for Defense Analyses Corporation. The Deputy Secretary of Defense will address future strategies for use of the Reserve Components, highlighting his thoughts on issues impacting reserve organizations, the right balance of Active and Reserve Component forces, and the cost to maintain a strong Reserve Component. The Chief of Staff, Army will discuss the key challenges and priorities of the Army as the Department of Defense considers ways to balance force structure, readiness and modernization while supporting operations across the globe in a fiscally constrained environment. The Institute for Defense Analyses will brief the findings of their study on the effectiveness of the Reserve Components during Operation Iraqi Freedom. The portion of the meeting from 1:00 p.m. to 3:35 p.m. will be open to the public and will consist of briefings from the Center for Strategic and International Studies and the American Enterprise Institute to present their strategic views and the key challenges and priorities facing the Department as it considers ways to balance force structure, readiness and modernization while supporting operations across the globe in a fiscally constrained environment. It will conclude with remarks to the RFPB from the two RFPB subcommittee chairs who will provide updates on the work of their respective subcommittee. The Enhancing DoD’s Role in the Homeland Subcommittee will provide an update on the Department of Defense support of civil authorities and FEMA requirements. The Ensuring a Ready, Capable, Available and Sustainable

Operational Reserve Subcommittee will present its findings on the assumptions, current authorizations and policies, and mobilization predictability being used across the Department of Defense regarding the availability of Reserve Component (RC) forces.

**Meeting Accessibility:** Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 1:00 p.m. to 3:35 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Monday, December 7, 2015, as listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 12:15 p.m. on December 8. To complete the security screening, please be prepared to present two forms of identification. One must be a picture identification card. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the portion of this meeting scheduled to occur from 9:00 a.m. to 12:30 p.m. will be closed to the public. Specifically, the Acting Under Secretary of Defense (Personnel and Readiness), in coordination with the Department of Defense FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1).

**Written Statements:** Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that

since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's Web site.

Dated: November 17, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–29661 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place. This meeting is open to the public.

**DATES:** Wednesday, December 9, 2015, from 8:00 a.m. to 3:30 p.m.; Thursday, December 10, 2015, from 8:00 a.m. to 10:15 a.m.

**ADDRESSES:** Hilton Alexandria—Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Bowling or DACOWITS Staff at 4800 Mark Center Drive, Suite 04J25–01, Alexandria, Virginia 22350–9000. *Robert.d.bowling1.civ@mail.mil.* Telephone (703) 697–2122. Fax (703) 614–6233. Any updates to the agenda or any additional information can be found at <http://dacowits.defense.gov/>.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).

The purpose of the meeting is for the Committee to receive briefings and updates relating to their current work. The Committee will start the meeting with a vote on the 2015 Annual Report. The Designated Federal Officer will then give a status update on the Committee's requests for information. There will be panels with the Services

to review their single-parent recruiting policies, dual military co-location policies, and height, weight, and body composition policies. The Sexual Assault Prevention and Response Office (SAPRO) will give an update briefing on retaliation. There will be a public comment period at the end of day one. On the second day the Committee will receive a briefing from Insight Policy Research on the comparison of generational differences of today's military personnel. The Committee will also announce their 2016 meeting dates and discuss and vote on their 2016 study topics.

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the point of contact listed at the address in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Tuesday, December 1, 2015. If a written statement is not received by Tuesday, December 1, 2015, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chair and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102–3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Five minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Wednesday, December 9, 2015 from 3:00 p.m. to 3:30 p.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

### Meeting Agenda

*Wednesday, December 9, 2015, From 8:00 a.m. to 3:30 p.m.*

- Welcome, Introductions, Announcements
- Committee Votes on and Signs 2015 Annual Report
- Request for Information Status Update
- Panel—Services’ Single Parent Recruiting Policies
- Panel—Services’ Dual Military Co-Location Policies
- Panel—Services’ Height, Weight and Body Composition Policies
- Briefing—Sexual Assault (Retaliation) Update
- Public Comment Period

*Thursday, December 10, 2015, From 8:00 a.m. to 10:15 a.m.*

- Welcome and Announcements
- Committee Announces 2016 Meeting Dates
- Briefing—Today’s Military: Generational Review and Comparison
- Committee Discusses and Votes on 2016 Study Topics

Dated: November 17, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–29649 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD–2015–OS–0129]

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Intelligence, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Intelligence announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by January 19, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Intelligence, Office of the Director for Defense Intelligence (Intelligence & Security), Security Policy and Oversight Division (SPOD), 5000 Defense Pentagon, Room 3C915, ATTN: Valerie Heil, Arlington, VA 20301–5000, or call ODDI(I&S) SPOD at 703–604–1112.

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Department of Defense Contract Security Classification Specification, DD Form 254; OMB Control Number 0704–XXXX.

*Needs and Uses:* The information collection requirement, authorized by the DoD 5220.22–R, “DoD Industrial Security Regulation,” and the Federal Acquisition Regulation, is necessary to provide security classification guidance to a U.S. contractor and any subcontractors in connection with a

contract requiring access to classified information (hereinafter referred to as a “classified contract”). The DD Form 254, with its attachments, supplements, and incorporated references, is the principal authorized means for providing security classification guidance to a U.S. contractor in connection with a classified contract.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 37,948.67.

*Number of Respondents:* 3,211.

*Responses per Respondent:* 10.13.

*Annual Responses:* 32,527.43.

*Average Burden per Response:* 70 minutes.

*Frequency:* On occasion.

Respondents will already be a cleared contractor facility in the National Industrial Security Program under the security cognizance of DSS on behalf of Department of Defense (DoD). Such NISP contractors must provide contract security classification specifications with any classified subcontracts that they award to comply with the requirements of the National Industrial Security Program Operating Manual, DoD 5220.22–M. For those contractors under DoD security cognizance, that means using the DD Form 254, if awarding any contracts that require access to classified information for contract performance. If the form is not included with the classified contract, DSS, on behalf of DoD and those non-DoD agencies with which DoD has agreements for industrial security services, is unable to conduct effective oversight to determine that classified information is being protected according to contract or subcontract requirements.

Dated: November 16, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015–29613 Filed 11–19–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Meeting of the Chief of Engineers Environmental Advisory Board

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Chief of Engineers, Environmental Advisory

Board (EAB). This meeting is open to the public. For additional information about the EAB, please visit the committee's Web site at <http://www.usace.army.mil/Missions/Environmental/EnvironmentalAdvisoryBoard.aspx>.

**DATES:** The meeting will be held from 9 a.m. to 12 p.m. on December 2, 2015. Public registration will begin at 8:30 a.m.

**ADDRESSES:** The EAB meeting will be conducted at the South Florida Water Management District; 3301 Gun Club Road, West Palm Beach, FL 33406.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mindy M. Simmons, the Designated Federal Officer (DFO) for the committee, in writing at U.S. Army Corps of Engineers, ATTN: CECW-P, 441 G St NW; Washington, DC 20314; by telephone at 202-761-4127; and by email at [Mindy.M.Simmons@usace.army.mil](mailto:Mindy.M.Simmons@usace.army.mil). Alternatively, contact Ms. Anne Cann, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR-GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315-3868; by telephone at 703-428-7166; and by email at [Anne.R.Cann@usace.army.mil](mailto:Anne.R.Cann@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150. Due to difficulties beyond the control of the DFO, the DFO was unable to approve the Chief of Engineers Environmental Advisory Board's meeting agenda for the scheduled meeting of December 2, 2015, to ensure compliance with the requirements of 41 CFR 102-3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

**Purpose of the Meeting:** The EAB will advise the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems, and opportunities in an environmentally responsible manner. The EAB is interested in written and verbal comments from the public relevant to these purposes.

**Proposed Agenda:** At this meeting the agenda will include discussions and presentations on ongoing work plan efforts including: Dam removal, project

prioritization criteria, federal interest determination, ecosystem goods and services, aging infrastructure and aquatic ecosystem integrity, and developing effective partnerships. The EAB will also discuss modifications to their work plan.

**Availability of Materials for the Meeting:** A copy of the agenda or any updates to the agenda for the December 2, 2015 meeting will be available at the meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

**Public Accessibility to the Meeting:** Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

**Special Accommodations:** The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Ms. Simmons, the committee DFO, or Ms. Cann, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

**Written Comments or Statements:** Pursuant to 41 CFR 102-3.105(j) and 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the EAB about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Ms. Simmons, the committee DFO, or Ms. Cann, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the

author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the EAB for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the EAB until its next meeting. Please note that because the EAB operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

**Verbal Comments:** Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the EAB's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2015-29615 Filed 11-19-15; 8:45 am]

**BILLING CODE 3720-58-P**

---

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

#### Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

**AGENCY:** Bonneville Power Administration (BPA), DOE.



**ACTION:** Notice of document availability.

**SUMMARY:** Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form or at the following Internet address: <http://www.bpa.gov/corporate/business/bpi>.

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following Internet address: <http://www.bpa.gov/corporate/business/bfai>.

**ADDRESSES:** Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing CGP-7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621.

**FOR FURTHER INFORMATION CONTACT:** Head of Contracting Activity, (503) 230-5498.

**SUPPLEMENTARY INFORMATION:** BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in 2 CFR 200.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information for offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on November 13, 2015.

**Nicholas M. Jenkins,**

*Manager, Purchasing/Property Governance.*

[FR Doc. 2015-29715 Filed 11-19-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

[OE Docket No. PP-371]

### Notice of Public Hearings for the Draft Northern Pass Transmission Line Project Environmental Impact Statement and the Supplement to the Draft EIS

**AGENCY:** Department of Energy.

**ACTION:** Notice of public hearings.

**SUMMARY:** The U.S. Department of Energy (DOE) announces public hearings to receive comments on the Draft EIS (DOE/EIS-0463) and the Supplement to the Draft EIS (DOE/EIS-0463 S1). The Draft EIS and the Supplement to the Draft EIS evaluate the potential environmental impacts of DOE's proposed Federal action of issuing a Presidential permit to Northern Pass LLC (the Applicant) to construct, operate, maintain, and connect a new electric transmission line across the U.S./Canada border in northern New Hampshire.

**DATES:** The public review period to receive comments on the Draft EIS and the Supplement to the Draft EIS closes on January 4, 2016. See the Public Participation section for more information about submitting comments.

DOE will conduct public hearings to receive oral and written comments on the draft EIS and the Supplement to the Draft EIS at the following locations commencing at the times identified:

*Whitefield:* Tuesday December 15, 2015, 1:00 p.m. and 6:00 p.m., Mountain View Grand Resort and Spa, Presidential Room, 101 Mountain View Road, Whitefield, NH 03598.

*Concord:* Wednesday December 16, 2015, 6:00 p.m., Grappone Conference Center, Granite Ballroom, 70 Constitution Avenue, Concord, NH 03301.

*Plymouth:* Thursday December 17, 2015, 6:00 p.m., Plymouth State University, Ice Arena Welcome Center, 129 NH Route 175A, Holderness, NH 03245.

**ADDRESSES:** Requests to pre-register to provide oral comments at a public hearing should be addressed to the Northern Pass EIS Team at this email address: [info@northernpasseis.us](mailto:info@northernpasseis.us).

Comments on the draft EIS and the Supplement to the Draft EIS can be submitted verbally during public hearings or in writing to Mr. Brian Mills at: Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; via email to

[draftEISComments@northernpasseis.us](mailto:draftEISComments@northernpasseis.us); by facsimile to (202) 586-8008; or through the project Web site at <http://www.northernpasseis.us/>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Mills at the addresses above, or at 202-586-8267.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

*Comments:* DOE invites interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS and the Supplement to the Draft EIS.

The public comment period on the Draft EIS started on July 31, 2015, with the publication in the **Federal Register** by the U.S. Environmental Protection Agency of its Notice of Availability of the Draft EIS, and the public comment period on the Supplement began on November 20, 2015 with publication in the **Federal Register** by the U.S. Environmental Protection Agency of its Notice of Availability of the Supplement to the Draft EIS.

The public review period to receive comments on the Draft EIS and the Supplement to the Draft EIS closes on January 4, 2016. Please mark envelopes and electronic mail subject lines as "NP Draft EIS Comments." Written comments should be submitted by January 4, 2016. Written and oral comments will be given equal weight and all comments received or postmarked by that date will be considered by DOE in preparing the Final EIS. Comments submitted (*e.g.*, postmarked) after that date will be considered to the extent practicable.

*Public Hearings:* When requesting to pre-register to provide oral comments at a public hearing (see the **DATES** section for times and locations), please include your full name and email address, and specify the location you request to speak at. For the Whitefield, NH meeting, please indicate which meeting time you wish to speak at. Please state in the subject line, "NP Draft EIS Public Hearing Speaker Request." Please submit your request by December 7, 2015; requests received by that date will be given priority in the speaking order. However, requests to speak may also be made at the hearing. The speaking order will be as follows: (1) Elected Officials; (2) Pre-registered speakers (order determined on a first-come, first-served basis); (3) Speakers registering at the meeting. Pre-registered speakers who have requested to speak at a specific time will be accommodated as possible.

**Availability of the Draft EIS and the Supplement to the Draft EIS**

The documents are available online at <http://www.northernpasseis.us/>. Copies of the draft EIS and the Supplement to the Draft EIS are also available at a number of public libraries and town halls (a list of locations is found here: [http://media.northernpasseis.us/media/DraftEIS\\_Hard\\_Copy\\_Locations.pdf](http://media.northernpasseis.us/media/DraftEIS_Hard_Copy_Locations.pdf).)

Printed copies of the documents may be obtained by contacting Mr. Mills at the above address.

Issued in Washington, DC, on November 13, 2015.

**Meghan Conklin,**

*Deputy Assistant Secretary, National Electricity Delivery, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2015-29688 Filed 11-19-15; 8:45 am]

**BILLING CODE 6450-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2015-0386; FRL-9936-94]

**Pesticide Registration Review; Draft Human Health and Ecological Risk Assessments for Certain Organophosphates; Extension of Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of September 25, 2015, opening a comment period on draft human health and ecological risk assessments for certain organophosphate pesticides listed in the Table in this document, along with additional chemicals. This document extends the comment period by 45 days for just those chemicals listed in the Table in this document, *i.e.*, from November 24, 2015 to January 8, 2016. This comment period is being extended in response to comments received by the Agency.

**DATES:** Comments, identified by docket identification (ID) numbers identified in

the Table in this document, must be received on or before January 8, 2016.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of September 25, 2015 (80 FR 57812) (FRL-9933-68).

**FOR FURTHER INFORMATION CONTACT:**

Persons listed with individual chemicals in the Table in this document.

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period for certain chemicals established in the **Federal Register** document of September 25, 2015 (80 FR 57812) (FRL-9933-68). In that document, a public comment period opened on EPA's draft human health and ecological risk assessments for the registration review of certain members of a group of pesticides known collectively as organophosphates (see the following Table) and a number of other chemicals, which is set to end on November 24, 2015. EPA is hereby extending by 45 days the comment period for only those chemicals listed in the following Table, *i.e.*, from November 24, 2015 to January 8, 2016.

TABLE—CHEMICALS WITH EXTENDED COMMENT PERIOD

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Chlorpyrifos-methyl, 8011 .....	EPA-HQ-OPP-2010-0119 .....	Dana L. Friedman, <i>friedman.dana@epa.gov</i> , (703) 347-8827.
Dicrotophos, 0145 .....	EPA-HQ-OPP-2008-0440 .....	Khue Nguyen, <i>Nguyen.khue@epa.gov</i> , 703-347-0248.
Dimethoate, 0088 .....	EPA-HQ-OPP-2009-0059 .....	Kelly Ballard, <i>ballard.kelly@epa.gov</i> , (703) 305-8126.
Ethoprop, 0106 .....	EPA-HQ-OPP-2008-0560 .....	Tracy Perry, <i>perry.tracy@epa.gov</i> , (703) 308-0128.
Profenofos, 2540 .....	EPA-HQ-OPP-2008-0345 .....	Christina Scheltema, <i>scheltema.christina@epa.gov</i> , (703) 308-2201.
Terbufos, 0109 .....	EPA-HQ-OPP-2008-0119 .....	Matthew Manupella, <i>manupella.matthew@epa.gov</i> , (703) 347-0411.
Tribufos, 2145 .....	EPA-HQ-OPP-2008-0883 .....	Marianne Mannix, <i>mannix.marianne@epa.gov</i> , (703) 347-0275.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of September 25, 2015. If you have questions on individual chemicals, consult the person listed in the Table.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 12, 2015.

**Michael Goodis,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2015-29690 Filed 11-19-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2015-0386; FRL-9937-03]

**Pesticide Registration Review; Draft Human Health and Ecological Risk Assessments for Sulfonylureas; Notice of Availability and Request for Comment; Extension of Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of September 25, 2015, concerning the publication of draft human health and ecological risk assessments for the registration review of 22 sulfonylurea chemicals and certain other non-sulfonylurea chemicals. This document extends the comment period for 30 days for only the chemicals listed in the Table in this document, from November 24, 2015 to December 24, 2015. The comment period is being extended in response to comments received by the Agency requesting additional time to review the

sulfonylurea risk assessment documents.

**DATES:** Comments, identified by docket identification (ID) numbers in the Table must be received on or before December 24, 2015.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of September 25, 2015 (80 FR 57812) (FRL-9933-68).

**FOR FURTHER INFORMATION CONTACT:**

Persons listed with individual chemicals in the Table.

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** document of September 25, 2015 (80 FR 57812) (FRL-9933-68). In that document, a public comment period opened on EPA's draft human health and ecological risk assessments for the registration review of certain members of a group of pesticides known

collectively as sulfonylureas, as well as various non-sulfonylurea chemicals. This extension on the comment period is being requested for the sulfonylurea chemicals listed in the Table, rather than all the chemicals that were included in the document that published in the **Federal Register** of September 25, 2015. EPA is extending the comment period, which was set to end on November 24, 2015, to December 24, 2015.

TABLE—CHEMICALS WITH EXTENDED COMMENT PERIODS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Bensulfuron-methyl, 7216 .....	EPA-HQ-OPP-2011-0663 .....	Moana Appleyard, <a href="mailto:appleyard.moana@epa.gov">appleyard.moana@epa.gov</a> , (703) 308-8175.
Chlorimuron-ethyl, 7403 .....	EPA-HQ-OPP-2010-0478 .....	Wilhelmena Livingston, <a href="mailto:livingston.wilhelmena@epa.gov">livingston.wilhelmena@epa.gov</a> , (703) 308-8025.
Chlorsulfuron, 0631 .....	EPA-HQ-OPP-2012-0878 .....	Miguel Zavala, <a href="mailto:zavala.miguel@epa.gov">zavala.miguel@epa.gov</a> , (703) 347-0504.
Flazasulfuron, 7271 .....	EPA-HQ-OPP-2011-0994 .....	Ricardo Jones, <a href="mailto:jones.ricardo@epa.gov">jones.ricardo@epa.gov</a> , (703) 347-0493.
Foramsulfuron, 7252 .....	EPA-HQ-OPP-2012-0387 .....	Jose Gayoso, <a href="mailto:gayoso.jose@epa.gov">gayoso.jose@epa.gov</a> , (703) 347-8652.
Halosulfuron-methyl, 7233 .....	EPA-HQ-OPP-2011-0745 .....	Brittany Pruitt, <a href="mailto:pruitt.brittany@epa.gov">pruitt.brittany@epa.gov</a> , (703) 347-0289.
Imazosulfuron, 7281 .....	EPA-HQ-OPP-2015-0625 .....	Caitlin Newcamp, <a href="mailto:newcamp.caitlin@epa.gov">newcamp.caitlin@epa.gov</a> , (703) 347-0325.
Iodosulfuron-methyl-sodium, 7253 .....	EPA-HQ-OPP-2012-0717 .....	Katherine St. Clair, <a href="mailto:stclair.katherine@epa.gov">stclair.katherine@epa.gov</a> , (703) 347-8778.
Mesosulfuron-methyl, 7277 .....	EPA-HQ-OPP-2012-0833 .....	Jolene Trujillo, <a href="mailto:trujillo.jolene@epa.gov">trujillo.jolene@epa.gov</a> , (303) 312-6579.
Metsulfuron-methyl, 7205 .....	EPA-HQ-OPP-2011-0375 .....	Katherine St. Clair, <a href="mailto:stclair.katherine@epa.gov">stclair.katherine@epa.gov</a> , (703) 347-8778.
Nicosulfuron, 7227 .....	EPA-HQ-OPP-2012-0372 .....	Miguel Zavala, <a href="mailto:zavala.miguel@epa.gov">zavala.miguel@epa.gov</a> , (703) 347-0504.
Orthosulfamuron, 7270 .....	EPA-HQ-OPP-2011-0438 .....	Khue Nguyen, <a href="mailto:nguyen.khue@epa.gov">nguyen.khue@epa.gov</a> , (703) 347-0248.
Primisulfuron-methyl, 7220 .....	EPA-HQ-OPP-2011-0844 .....	Christina Scheltema, <a href="mailto:scheltema.christina@epa.gov">scheltema.christina@epa.gov</a> , (703) 308-2201.
Prosulfuron, 7235 .....	EPA-HQ-OPP-2011-1010 .....	Wilhelmena Livingston, <a href="mailto:livingston.wilhelmena@epa.gov">livingston.wilhelmena@epa.gov</a> , (703) 308-8025.
Rimsulfuron, 7218 .....	EPA-HQ-OPP-2012-0178 .....	Jose Gayoso, <a href="mailto:gayoso.jose@epa.gov">gayoso.jose@epa.gov</a> , (703) 347-8652.
Sulfometuron-methyl, 3136 .....	EPA-HQ-OPP-2012-0433 .....	Caitlin Newcamp, <a href="mailto:newcamp.caitlin@epa.gov">newcamp.caitlin@epa.gov</a> , (703) 347-0325.
Sulfosulfuron, 7247 .....	EPA-HQ-OPP-2011-0434 .....	Kelly Ballard, <a href="mailto:ballard.kelly@epa.gov">ballard.kelly@epa.gov</a> , (703) 305-8126.
Thifensulfuron-methyl, 7206 .....	EPA-HQ-OPP-2011-0171 .....	Brittany Pruitt, <a href="mailto:pruitt.brittany@epa.gov">pruitt.brittany@epa.gov</a> , (703) 347-0289.
Triasulfuron, 7221 .....	EPA-HQ-OPP-2012-0115 .....	Margaret Hathaway, <a href="mailto:hathaway.margaret@epa.gov">hathaway.margaret@epa.gov</a> , (703) 305-5076.
Tribenuron-methyl, 7217 .....	EPA-HQ-OPP-2010-0626 .....	Brittany Pruitt, <a href="mailto:pruitt.brittany@epa.gov">pruitt.brittany@epa.gov</a> , (703) 347-0289.
Trifloxysulfuron-Sodium, 7208 .....	EPA-HQ-OPP-2013-0409 .....	Kelly Ballard, <a href="mailto:ballard.kelly@epa.gov">ballard.kelly@epa.gov</a> , (703) 305-8126.
Triflusulfuron-methyl, 7236 .....	EPA-HQ-OPP-2012-0605 .....	Matthew Manupella, <a href="mailto:manupella.matthew@epa.gov">manupella.matthew@epa.gov</a> , (703) 347-0411.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of September 25, 2015. If you have questions on individual chemicals, consult the person listed in the Table.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 13, 2015.

**Michael Goodis,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2015-29689 Filed 11-19-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9024-1]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7146 or <http://www2.epa.gov/compliance/nepa>.

Weekly receipt of Environmental Impact Statements (EISs)  
Filed 11/09/2015 Through 11/13/2015  
Pursuant to 40 CFR 1506.9.

### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search>.

*EIS No. 20150320, Draft, AFS, ID,*

Targhee National Forest Lynx Analysis Units, Comment Period Ends: 01/04/2016, Contact: Robert Herzog 208-557-5763.

*EIS No. 20150321, Final, AFS, NM,*

North Fork Wells of Eagle Creek, Review Period Ends: 12/24/2015, Contact: Christina Thompson 575-257-4095.

*EIS No. 20150322, Draft Supplement,*

USFS, CO, Rulemaking for Colorado Roadless Areas, Comment Period Ends: 01/04/2016, Contact: Ken Tu 303-275-5156.

*EIS No. 20150323, Draft, FHWA, NC,*

Complete 540 Triangle Expressway Southeast Extension, Comment Period Ends: 01/04/2016, Contact: Clarence Coleman 919-747-7014.

*EIS No. 20150324, Final, FRA, CA,*

Coast Corridor Improvements, Contact: Melissa Hatcher 202-493-6075 Under MAP-21 Section 1319, FRA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

*EIS No. 20150325, Final, FERC, LA,*  
Magnolia LNG and Lake Charles Expansion Projects, Review Period Ends: 12/21/2015, Contact: Janine Cefalu 202-502-8271.

*EIS No. 20150326, Draft, BLM, CO,*  
Previously Issued Oil and Gas Leases in the White River National Forest, Comment Period Ends: 01/08/2016, Contact: Gregory Larson 970-876-9048.

*EIS No. 20150327, Draft Supplement, DOE, NH,* Northern Pass Transmission Line Project, Comment Period Ends: 01/04/2016, Contact: Brian Mills 202-586-8267.

*EIS No. 20150328, Draft, USDA, AK,*  
Tongass Land and Resource Management Plan Amendment, Comment Period Ends: 02/22/2016, Contact: Susan Howle 907-228-6340.

*EIS No. 20150329, Final, NRC, NJ,* Early Site Permit at PSEG Site, Review Period Ends: 12/21/2015, Contact: Allen Fetter 301-415-8556.

*EIS No. 20150330, Draft Supplement, BLM, CO,* Roan Plateau Planning Area Draft Resource Management Plan Amendment, Comment Period Ends: 02/18/2016, Contact: Gregory Larson 970-876-9048.

### Amended Notices

*EIS No. 20150319, Final, BLM, OR,*  
ADOPTION—Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Contact: Miriam Liberatore 540-618-2400.

The U.S. Department of the Interior's Bureau of Land Management is adopting the U.S. Federal Energy Regulatory Commission's FEIS #20150285, filed 09/30/2015 with EPA. BLM was a cooperating agency for the above project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

*EIS No. 20150331, Final, USFS, OR,*  
ADOPTION—Jordan Cove Energy and Pacific Connector Gas Pipeline Project, Contact: Wes Yamamoto 541-825-3150.

The U.S. Department of Agriculture's Forest Service is adopting the U.S. Federal Energy Regulatory Commission's FEIS #20150285, filed 09/30/2015 with EPA. USFS was a cooperating agency for the above project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

Dated: November 17, 2015.

**Karin Leff,**

*Acting Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2015-29685 Filed 11-19-15; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Communications Security, Reliability, and Interoperability Council; Notice of Public Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) V will hold its third meeting.

**DATES:** December 3, 2015.

**ADDRESSES:** Federal Communications Commission, Room TW-C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Jeffery Goldthorp, Designated Federal Officer, (202) 418-1096 (voice) or [jeffery.goldthorp@fcc.gov](mailto:jeffery.goldthorp@fcc.gov) (email); or Suzon Cameron, Deputy Designated Federal Officer, (202) 418-1916 (voice) or [suzon.cameron@fcc.gov](mailto:suzon.cameron@fcc.gov) (email).

**SUPPLEMENTARY INFORMATION:** The **Federal Register** Notice of the December 3, 2015, meeting of the Federal Communications Commission's Communications Security, Reliability, and Interoperability Council (CSRIC) was published less than 15 days prior to that meeting. While the publication did not meet the 15-day requirement for advance publication, exceptional circumstances warrant proceeding with the December 3, 2015, meeting. Specifically, a significant number of CSRIC members have made business and travel plans to attend the CSRIC meeting on December 3; there is no other date within one month of December 3, 2015, that will accommodate CSRIC members' schedules; and delaying the meeting will also cause undue financial burdens on many of the CSRIC members who have made travel arrangements.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to help ensure the security, reliability, and interoperability of

communications systems. On March 19, 2015, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2017. The meeting on December 3, 2015, will be the third meeting of the CSRIC under the current charter. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at <http://www.fcc.gov/live>. The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to [jeffery.goldthorp@fcc.gov](mailto:jeffery.goldthorp@fcc.gov) or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7-A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2015-29607 Filed 11-19-15; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1103]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction

Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before January 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-1103.

*Title:* Section 76.41 Franchise Application Process.

*Type of Review:* Extension of a currently approved collection.

*Form Number:* N/A.

*Respondents:* State, local or tribal government, Business or other for profit entities.

*Number of Respondents and Responses:* 22 respondents and 40 responses.

*Estimated Hours per Response:* 0.5 to 4 hours.

*Frequency of Response:* On occasion reporting requirements; Third party disclosure requirement.

*Total Annual Burden:* 90 hours.

*Total Annual Cost:* No cost.

*Privacy Impact Assessment:* No impact(s).

*Nature of Response:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 157nt, 201, 531, 541 and 542.

*Confidentiality:* There is no need for confidentiality required with this collection of information.

*Needs and Uses:* The information collection requirements are as follows:

47 CFR 76.41(b) requires a competitive franchise applicant to include the following information in writing in its franchise application, in addition to any information required by applicable state and local laws:

- (1) The applicant's name;
- (2) The names of the applicant's officers and directors;
- (3) The business address of the applicant;
- (4) The name and contact information of a designated contact for the applicant;
- (5) A description of the geographic area that the applicant proposes to serve;
- (6) The PEG channel capacity and capital support proposed by the applicant;
- (7) The term of the agreement proposed by the applicant;
- (8) Whether the applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area;
- (9) The amount of the franchise fee the applicant offers to pay; and
- (10) Any additional information required by applicable state or local laws.

47 CFR 76.41(d) states when a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must perform grant or deny the application within 180 days of the date the application is received by the franchising authority. A franchising authority and a competitive franchise applicant may agree in writing to extend the 90-day or 180-day deadline, whichever is applicable.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2015-29606 Filed 11-19-15; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1031]

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before January 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060-1031.

*Title:* Commission's Initiative to Implement Enhanced 911 (E911) Emergency Services.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

*Number of Respondents:* 794 respondents; 482 responses.

*Estimated Time per Response:* 2-20 hours.

*Frequency of Response:* On occasion, third party disclosure requirement, and recordkeeping requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 154, 160, 201, 251-254, 303, and 332 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 1,554 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Respondents are not required to submit proprietary trade secrets or other confidential information. However, carriers that believe the only way to satisfy the requirements for information is to submit what it considers to be proprietary trade secrets or other confidential information, carriers are free to request that materials or information submitted to the Commission be withheld from public inspection and from the E911 Web site (see section 0.459 of the Commission's rules).

*Needs and Uses:* The Commission is seeking an extension of this information collection from Office of Management and Budget (OMB) in order to obtain the full three-year approval. The information collection requirements contained in this collection guarantee continued cooperation between wireless carriers and Public Safety Answering Points (PSAPs) in complying with the Commission's E911 requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015-29605 Filed 11-19-15; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14-252; GN Docket No. 12-268; WT Docket No. 12-269; DA 15-1296]

### Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction; Announces Revised Filing Window Dates

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces revisions to the baseline data, opening bid prices and revises FCC Form 177 and 175 filing windows requirements for Auction 1001 and Auction 1002 respectively.

**DATES:** Reverse Auction FCC Form 177 filing window opens 12 noon Eastern Time (ET) on December 8, 2015, and closes 6:00 p.m. ET on January 12, 2016; Forward Auction FCC Form 175 application filing window will open at 12 noon ET on January 26, 2016, and close at 6:00 p.m. ET on February 9, 2016.

#### FOR FURTHER INFORMATION CONTACT:

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general reverse auction questions: Erin Griffith or Kathryn Hinton at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Revised Baseline Data and Opening Prices for Auction 1001 Public Notice (Auction 1001 Baseline Data PN)*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, and DA 15-1296, released on November 12, 2015. The complete text of the *Auction 1001 Baseline Data PN*, including all attachments and associated appendices, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at <http://wireless.fcc.gov>, or by using the search function on the ECFs Web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

1. The Incentive Auction Task Force (Task Force) revised the coverage area and population served of each television station to be protected in the repacking process, which was initially provided in

Appendix I of the *Auction 1000 Application Procedures Public Notice*, 80 FR 66429, October 29, 2015. The revision corrected information for a small number of stations, and adjusts population data for stations that are affected by these corrections. The Task Force also updated the constraint files ([http://data.fcc.gov/download/incentive-auctions/Constraint\\_Files/](http://data.fcc.gov/download/incentive-auctions/Constraint_Files/)) that will be used in the repacking process to reflect these corrections and adjustments. The revised data will be used to determine feasible channel assignments for each station. These revisions serve the Commission's statutory mandate to "make all reasonable efforts" to preserve each station's coverage area and population served. The revised Appendix I listing is an attachment to the *Auction 1001 Baseline Data PN* and may be found on the Auction 1001 Web page: <http://wireless.fcc.gov/auctions/incentive-auctions/auction-1001.html>.

2. The Task Force also announced revised reverse auction opening bid prices in the Attachment to the *Auction 1001 Baseline Data PN*; these opening bid prices may be found on the Auction 1001 Web page: <http://wireless.fcc.gov/auctions/incentive-auctions/auction-1001.html>. The opening bid prices were recalculated to reflect the corrected baseline and constraint files. The opening bid prices were recalculated using the formula adopted by the Commission in the *Auction 1000 Bidding Procedures PN*, 80 FR 61918, October 14, 2015.

3. In order to provide broadcasters with at least 60 days after the release of the recalculated prices to evaluate whether to apply to voluntarily participate in the reverse auction in light of such prices, the Task Force revised the filing window for FCC Form 177, the reverse auction application form. Specifically, the FCC Form 177 filing window will open at 12:00 noon Eastern Time on December 8, 2015, and close at 6:00 p.m. Eastern Time on January 12, 2016. Applications must be filed prior to the closing of the filing window.

4. Given the revised reverse auction filing window, the Task Force revised the filing window for FCC Form 175, the forward auction application form. Specifically, the FCC Form 175 filing window will open at 12:00 noon Eastern Time on January 26, 2016, and close at 6:00 p.m. Eastern Time on February 9, 2016. Applications must be filed prior to the closing of the filing window.

Federal Communications Commission.

**William Huber**,

*Associate Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 2015-29792 Filed 11-19-15; 8:45 am]

**BILLING CODE 6712-01-P**

---

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (80 FR 71801, FR Doc. 2015-29298) of the issue for Tuesday, November 17, 2015.

Under the Federal Reserve Bank of Atlanta heading, the entry for Donald Joseph Leeper, Adairsville, Georgia, is revised to read as follows:

1. *Donald Joseph Leeper*, Cartersville, Georgia; to acquire voting shares of NorthSide Bancshares, Inc., and thereby indirectly acquire voting shares of NorthSide Bank, both in Adairsville, Georgia.

Comments on this application must be received by December 2, 2015.

Board of Governors of the Federal Reserve System, November 17, 2015.

**Michael J. Lewandowski**,

*Associate Secretary of the Board.*

[FR Doc. 2015-29678 Filed 11-19-15; 8:45 am]

**BILLING CODE 6210-01-P**

---

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Harbour FM, L.P.*, New York, New York and its general partner, the *Linda S. Lucas 2015 Revocable Trust*, New York, New York (Co-trustees *Linda S. Lucas*, Fort Myers, Florida; *David H. Lucas*, Fort Myers, Florida; and *Edward G. Beimfohr*, Bonita Springs, Florida); to join the Lucas family control group, which was previously approved on January 13, 2015; *David H. Lucas*, and *The Amended and Restated Edward G. Beimfohr Revocable Trust* (Trustee *Edward G. Beimfohr*); *The Thomas A. Lucas Trust*, dated January 27, 2015 (Trustee *Thomas Lucas*, Laguna Niguel, California); *Michael Lucas*, Las Vegas, Nevada; *The Connelly Living Trust*, dated March 12, 1998 (Trustee *Gene Connelly*, Irvine, California); and *Rebecca Sanders*, Fort Myers, Florida; to acquire voting shares of *FineMark Holdings, Inc.*, and thereby indirectly acquire voting shares of *FineMark National Bank & Trust*, both in Fort Myers, Florida.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Jennifer Whitham-Jensik*, and *Jessica P. Frampton*, both of *Fredonia, Kansas*, as trustees of the *Tyler F. Whitham Irrevocable Trust* and the *Jessica P. Frampton Irrevocable Trust*, both of *Garden City, Kansas*, individually, to acquire additional voting shares of *Whitcorp Financial Company*, Leoti, Kansas, and thereby indirectly acquire additional voting shares of *Western State Bank*, *Garden City, Kansas*, and *Frontier Bank*, *Lamar, Colorado*.

Board of Governors of the Federal Reserve System, November 17, 2015.

**Michael J. Lewandowski**,

*Associate Secretary of the Board.*

[FR Doc. 2015-29679 Filed 11-19-15; 8:45 am]

**BILLING CODE 6210-01-P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3327-NC]

### Medicare Program; Request for Information To Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences With Care Received in Long-Term Care Hospitals

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Request for information.

**SUMMARY:** This request for information will aid in the design and development of a survey regarding patient and family member experiences with the care received in long-term care hospitals (LTCHs).

**Comment Date:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 19, 2016.

**ADDRESSES:** In commenting, refer to file code CMS-3327-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3327-NC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3327-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-8016.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-8016.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members. Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Judith Harvilchuck, 410-786-3527.

**SUPPLEMENTARY INFORMATION:**

**Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

**I. Background**

In accordance with section 3011 of the Affordable Care Act, the Department of Health and Human Services (HHS) developed the National Quality Strategy (NQS), which is led by the Agency for Healthcare Research and Quality (AHRQ), to create national aims and priorities to guide local, state, and national efforts to improve the quality of health care (<http://www.ahrq.gov/workingforquality/>). The NQS established three aims supported by six priorities.

The three aims are as follows:

- *Better Care:* Improve the overall quality, by making health care more patient-centered, reliable, accessible, and safe.
- *Healthy People/Healthy Communities:* Improve the health of the U.S. population by supporting proven interventions to address behavioral, social, and environmental determinants of health in addition to delivering higher-quality care.
- *Affordable Care:* Reduce the cost of quality health care for individuals, families, employers, and government.

The six priorities are: "(1) Making care safer by reducing harm caused by the delivery of care; (2) ensuring that each person and family are engaged as partners in their care; (3) promoting effective communication and coordination of care; (4) promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease; (5) working with communities to promote wide use of best practices to enable healthy living; and (6) making quality care more affordable for individuals, families, employers, and governments by developing and spreading new health care delivery models."

To support the collection of data that can be used to pursue these aims and progress on these priorities in the long-term care hospital (LTCH) setting, we are developing a survey hereinafter referred to as the "LTCH Patient and Family Member Experience of Care (PEC) Survey," which supports the NQS goal of Better Care and the priorities of:

- Ensuring that each person and family are engaged as partners in their care (priority #2); and
- Promoting effective communication and coordination of care (priority #3).

We plan to collect this information in support of the NQS and, under sections 1886(m)(5) and 1890A(e) of the Social Security Act (the Act) and develop the LTCH PEC Survey into a quality measure that we may consider proposing for adoption in the LTCH Quality Reporting Program (QRP) (for details on CMS' measure development process, please see the Blueprint at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/MeasuresManagementSystemBlueprint.html>). We will develop the CMS LTCH PEC in accordance with Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Survey Design Principles and are developing this survey and plans to submit the resulting instrument to AHRQ for recognition as a CAHPS® survey. CAHPS® Survey Design Principles and implementation instructions can be found at (<https://www.cahps.ahrq.gov/about-cahps/principles/index.html>).

We have previously implemented a number of nationwide patient experience CAHPS® surveys in both in-patient and out-patient settings and for different services. Specifically, we implemented CAHPS® surveys for Medicare health and drug plans, inpatient hospitals, home health agencies, in-center dialysis facilities, hospices, and Accountable Care Organizations, and recently developed a



CAHPS® survey for outpatient and ambulatory surgery centers; and we have also begun development of an Inpatient Rehabilitation Facility Patient Experience of Care Survey. The planned CMS LTCH PEC Survey differs from the other CMS PEC surveys, because the target population for the LTCH PEC Survey consists of patients who have complex and severe conditions and are in need of critical care-related services for an extended period of time.

Certified as acute-care hospitals, LTCHs furnish care to beneficiaries who need hospital-level care for relatively extended periods. To qualify as an LTCH for Medicare payment, a facility must meet Medicare's conditions of participation for acute care hospitals, and its Medicare patients generally must have an average length of stay greater than 25 days.<sup>1</sup> LTCHs provide extended medical and rehabilitative hospital-level care to patients that are clinically complex, or may suffer from multiple acute or chronic conditions.<sup>2,3</sup> Services provided typically include: medical and nursing care, critical care, comprehensive rehabilitation, wound care, respiratory therapy (for example, ventilator support), head trauma treatment, pain management, case management, and social services.

We believe that the following aspects of LTCH care would have to be taken into account in the development of the LTCH PEC survey, but we invite comment on these considerations as well as any potential omissions from this list:

- Complexity and severity of illness is marked for this population, resulting in an average inpatient length of stay greater than 25 days.
- Patient-centered goals/preferences with a possible need to include family as proxies for patients, since LTCH patients are very ill and may not be the best source of information for the trajectory of their episode of LTCH care.
- Services are often critical care based, due to the critical nature of the illness or injury that requires such hospitalization.
- Comprehensive array of services and levels of care.
- Interdisciplinary team approach to the delivery of care.
- A higher mortality rate exists among this population compared with other settings.

- Consideration of post-LTCH care and transitions to other possible care settings.

Given the unique environment and patient population of LTCH facilities, we are exploring the level of adequacy of existing patient experience of care instruments for capturing LTCH care experiences. Therefore, we are in the process of reviewing potential topic areas (as discussed in section II of this RFI), as well as publicly available instruments and measures, for the purpose of developing a LTCH Survey that will enable objective comparisons of LTCH experiences across the country. A rigorous, well-designed LTCH Survey will allow us to understand patient experiences throughout their LTCH care, as reported by the patients themselves, if possible, or by family members. Should we ultimately adopt the LTCH PEC Survey as a quality measure in the LTCH QRP, public reporting of data from the measure could help consumers make more informed decisions about LTCH settings, as well as drive improvements in the quality of LTCH care.

## II. Solicitation of Information

We are soliciting the submission of suggested topic areas such as communication with providers, mechanical ventilation, therapy services, wound care, pain management/control or non-pain symptom management (including offering of alternative non-opioid pain management, discussion of safe storage and proper disposal of opioids, screening for overdose risk, and review the history of substance use), rehabilitation services, medical and nursing care, interdisciplinary team goal setting and care planning, family training, and discharge planning. We are also soliciting information on publicly available instruments and measures that can be used to capture patients' or family members' experiences with LTCH care in a variety of formats (for example, standardized, computer readable format) that can be collected by providers or CAHPS® survey vendors. We are interested in suggested topic areas and the identification of publicly available instruments that can measure the quality of care from the patients' or family member's perspective in LTCH settings; instruments that can be used to track changes over time; and items that are developed for or can be modified to address low case volume. Existing instruments are preferred if they have been tested, have been found to have a high degree of reliability and validity, or are in wide use already in the industry/hospital settings, including those in

rural and frontier communities. Instruments capable of risk adjustment, and/or instruments that minimize duplication of efforts and/or that utilize common quality measures, where available, are preferred. Whenever possible, preference will be given to quality measures identified by the Secretary under section 1139A or 1139B of the Act, or endorsed under section 1890 of the Act.

The following information would be especially helpful in any comments responding to this request for information:

- A brief cover letter summarizing the information requested for submitted instruments and topic areas, respectively, and how the submitted materials could be used to fulfill the intent of the survey.
- (Optional) Information about the person submitting the materials for the purpose of allowing for follow-up questions about the submission, including the following:
  - ++ Name.
  - ++ Title.
  - ++ Organization.
  - ++ Mailing address.
  - ++ Telephone number.
  - ++ Email address.
- When submitting topic areas, we encourage including, to the extent available, the following information:
  - ++ Detailed descriptions of the suggested topic area(s) and specific purpose(s).
  - ++ Relevant peer-reviewed journal articles or full citations.
- When submitting publicly available instruments or survey questions, we encourage including to the extent available the following information:
  - ++ Name of the instrument.
  - ++ Indication that the instrument is publicly available.
  - ++ Copies of the full instrument in all available languages.
  - ++ Topic areas included in the instrument.
  - ++ Measures that can be derived from data collected using the instrument.
  - ++ Information regarding instrument reliability (internal consistency, test-retest, etc.) and validity (content, construct, criterion related).
  - ++ Results of cognitive testing (one-on-one testing with a small number of respondents to ensure that they understand the questionnaire.)
  - ++ Results of field testing.
  - ++ Current use of the instrument (who is using it, for what it is being used, with what population it is being used, how instrument findings are reported, and by whom the findings are used).
  - ++ Relevant peer-reviewed journal articles or full citations.

<sup>1</sup> [http://www.medpac.gov/documents/reports/chapter-11-long-term-care-hospital-services-\(march-2013-report\).pdf?sfvrsn=2](http://www.medpac.gov/documents/reports/chapter-11-long-term-care-hospital-services-(march-2013-report).pdf?sfvrsn=2).

<sup>2</sup> [http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/post\\_acute\\_care\\_reform\\_plan.html](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/post_acute_care_reform_plan.html).

<sup>3</sup> <http://www.medicare.gov/Pubs/pdf/11347.pdf>.

- ++ CAHPS® trademark status.
- ++ NQF endorsement status.
- ++ Survey administration instructions.
- ++ Data analysis instructions.
- ++ Guidelines for reporting survey data.

If you wish to provide comment on this information collection, please submit your comments as specified in the **ADDRESSES** section of this request for information.

Comments must be received on/by January 19, 2016.

### III. Collection of Information Requirements

This RFI does not impose any information collection requirements. We believe it is a solicitation of comments from the general public. As stated in the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) at 5 CFR 1320.3(h)(4), it is exempt from the requirements of the PRA (44 U.S.C. 3501 *et seq.*).

The data collected via this RFI will be used to develop the LTCH PEC Survey. While surveys are generally subject to the requirements of the PRA, we believe the LTCH PEC Survey is exempt. Section I of this RFI explains that we plan to collect this information in support of the NQS and, under sections 1886(m)(5) and 1890A(e) of the the Act and develop the LTCH PEC Survey into a quality measure that we may consider proposing for adoption in the LTCH Quality Reporting Program (QRP). In accordance with section 102 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–110), the PRA shall not apply to the collection of information for the development of quality measures.

Also, as stated earlier in section I. of this RFI, we will develop the CMS LTCH PEC Survey in accordance with CAHPS® Survey Design Principles and are developing this survey and plans to submit the resulting instrument to AHRQ for recognition as a CAHPS® survey. Upon receiving recognition as a CAHPS® survey and prior to implementation, CMS will submit the CAHPS recognized LTCH PEC Survey through the OMB approval process. At that time, the public will have the opportunity to review, comment, or review and comment on the proposed information collection request prior to its submission to OMB for review and approval.

### IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not

able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: November 6, 2015.

**Andrew M. Slavitt**,

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2015–29622 Filed 11–19–15; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–3328–NC]

#### Medicare Program; Request for Information To Aid in the Design and Development of a Survey Regarding Patient and Family Member Experiences With Care Received in Inpatient Rehabilitation Facilities

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Request for information.

**SUMMARY:** This request for information will aid in the design and development of a survey regarding patient and family member experiences with the care received in inpatient rehabilitation facilities (IRFs).

*Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 19, 2016.

**ADDRESSES:** In commenting, refer to file code CMS–3328–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3328–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the

following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3328–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Judith Harvilchuck, Ph.D., 410–786–3527.

#### SUPPLEMENTARY INFORMATION:

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday

through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

## I. Background

In accordance with section 399HH of the Public Health Service Act (PHSA), as added by section 3011 of the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on Mar. 23, 2010), the Department of Health and Human Services (HHS) developed the National Quality Strategy (NQS), which is led by the Agency for Healthcare Research and Quality (AHRQ), to create national aims and priorities to guide local, state, and national efforts to improve the quality of health care (<http://www.ahrq.gov/workingforquality/>). The NQS established three aims supported by six priorities.

The three aims are as follows:

- *Better Care*: Improve the overall quality, by making health care more patient-centered, reliable, accessible, and safe.
- *Healthy People/Healthy Communities*: Improve the health of the U.S. population by supporting proven interventions to address behavioral, social, and environmental determinants of health in addition to delivering higher-quality care.
- *Affordable Care*: Reduce the cost of quality health care for individuals, families, employers, and government.

The six priorities are: (1) Making care safer by reducing harm caused by the delivery of care; (2) ensuring that each person and family are engaged as partners in their care; (3) promoting effective communication and coordination of care; (4) promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease; (5) working with communities to promote wide use of best practices to enable healthy living; and (6) making quality care more affordable for individuals, families, employers, and governments by developing new health care delivery models.

To support the collection of data that can be used to pursue these aims and progress on these priorities in the IRF setting, we are developing a survey hereinafter referred to as the "IRF Patient and Family Member Experience of Care (PEC) Survey," which supports the NQS goal of Better Care and the priorities of:

- Ensuring that each person and family are engaged as partners in their care (priority #2); and
- Promoting effective communication and coordination of care (priority #3).

Under authority of sections 1886(j)(7) and 1890A(e) of the Social Security Act (the Act), we plan to collect this information in support of the NQS aims. When this survey is fully developed, we will consider proposing it for adoption as a quality measure under the IRF Quality Reporting Program (QRP) (for details on CMS' measure development process, please see the Blueprint at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/Measures/ManagementSystemBlueprint.html>). We intend to develop the IRF PEC Survey in accordance with Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Survey Design Principles and submit the resulting instrument to AHRQ for recognition as a CAHPS® survey. CAHPS® Survey Design Principles and implementation instructions can be found at <https://www.cahps.ahrq.gov/about-cahps/principles/index.html>.

We have previously implemented a number of nationwide patient experience CAHPS® surveys in both inpatient and outpatient settings and for different services. Specifically, we implemented CAHPS® surveys for Medicare health and drug plans, inpatient hospitals, home health agencies, in-center dialysis facilities, hospices, and Accountable Care Organizations, and recently developed a CAHPS® survey for outpatient and ambulatory surgery centers; and we have begun development of a Long Term Care Hospital Patient Experience of Care Survey. The planned IRF PEC Survey differs from other CMS PEC surveys because the target population for the IRF PEC Survey consists of patients who have significant rehabilitation needs, some of which are complex. Although the vast majority of IRFs exist as part of acute care hospitals, IRF patients are specifically excluded from the survey population of the Hospital CAHPS® surveys for purposes of CMS' Hospital Inpatient Quality Reporting Program.

IRFs are hospitals or units of acute care (or critical access) hospitals that provide intensive rehabilitation services to patients typically following an injury, illness, or surgery.<sup>1</sup> Patient who are admitted require intensive rehabilitation therapy services, as documented by physician assessment, which are uniquely provided in IRFs. Although the intensity of these services can be reflected in various ways, the generally-accepted standard by which it is typically demonstrated in IRFs is by the

<sup>1</sup> [http://www.medpac.gov/documents/reports/mar14\\_ch10.pdf?sfvrsn=0](http://www.medpac.gov/documents/reports/mar14_ch10.pdf?sfvrsn=0).

provision of intensive therapies at least 3 hours a day for 5 days a week.<sup>2</sup> This resource-intensive inpatient hospital environment is for patients who, due to the complexity of their nursing, medical management, and rehabilitation needs, require an inpatient stay and an interdisciplinary team approach to the delivery of rehabilitation care.

We believe that the following aspects of IRF care that would have to be taken into consideration in developing the survey, but we invite comment on these considerations as well as any potential omissions from this list:

- Complexity of rehabilitation needs and long-term options.
- Interdisciplinary team approach to care delivery.
- Coordination and collaboration on patient and medical goals of care when many patients have goals of returning to their home- or community-based setting.
- Patient and family education on the types and limitations of rehabilitative services and long-term levels of care and supports following IRF discharge.
- Addressing psycho-social needs related to the oftentimes unexpected setback that resulted in the IRF stay.

Given the unique environment and patient population of the IRF setting, we are exploring the level of adequacy of existing patient experience of care instruments designed for other settings for capturing IRF care experiences. Therefore, we are in the process of reviewing potential topic areas (as discussed in section II. of this RFI), as well as publicly available instruments and measures, for the purpose of developing an IRF PEC Survey that will enable objective comparisons of IRF experiences across the country. A rigorous, well-designed IRF PEC Survey will allow us to understand patient experiences throughout their IRF care, as reported by the patients themselves, if possible, or by family members. Should we ultimately adopt the IRF PEC Survey as a quality measure in the IRF QRP, the public reporting of data from the measure could help consumers make more informed decisions about different IRF providers, as well as drive improvements in the quality of IRF care.

## II. Solicitation of Information

We are soliciting the submission of suggested topic areas such as communication with providers, rehabilitation, functional status, pain management/control or non-pain symptom management (including

<sup>2</sup> [https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Inpatient\\_Rehab\\_Fact\\_Sheet\\_ICN905643.pdf](https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Inpatient_Rehab_Fact_Sheet_ICN905643.pdf).

offering of alternative non-opioid pain management, discussion of safe storage and proper disposal of opioids, screening for overdose risk, and review the history of substance use), discharge planning, family training, rehabilitation services, medical and nursing care, interdisciplinary team goal setting and care planning. We are also soliciting information on publicly available instruments for capturing patients' and family members' experiences with IRF care in a variety of formats (for example, standardized, computer readable format) that can be collected by providers or CAHPS® survey vendors. We are interested in suggested topic areas and publicly available instruments that can measure the quality of care from the patients' and/or family members' perspective in IRFs within acute-care hospitals, critical access hospitals, and free-standing facilities; instruments that can be used to track changes over time; and items that are developed for and/or can be modified to address low case volume. Existing instruments are preferred if they have been tested, have been found to have a high degree of reliability and validity, and for which there is evidence of wide use in one or more patient care settings, including those in rural and frontier communities. Instruments capable of risk adjustment, and/or instruments that minimize duplication of efforts and/or that utilize common quality measures, where available, are preferred. Whenever possible, preference will be given to quality measures identified by the Secretary under section 1139A or 1139B of the Act, or endorsed under section 1890 of the Act.

The following information would be especially helpful in any comments responding to this request for information:

- A brief cover letter summarizing the information requested for submitted instruments and topic areas, respectively, and how the submitted materials could be used to help fulfil the intent of the survey.

- (Optional) Information about the person submitting the materials for the purpose of follow-up questions about the submission, which includes the following:

- ++ Name.
- ++ Title.
- ++ Organization.
- ++ Mailing address.
- ++ Telephone number.
- ++ Email address.

- When submitting topic areas, we encourage including, to the extent available, the following information:

- ++ Detailed descriptions of the suggested topic area(s) and specific purpose(s).

- ++ Relevant peer-reviewed journal articles or full citations.

- When submitting publicly available instruments or survey questions, we encourage including to the extent available the following information:

- ++ Name of the instrument.
- ++ Indication that the instrument is publicly available.
- ++ Copies of the full instrument in all available languages.
- ++ Topic areas included in the instrument.
- ++ Measures that can be derived from data collected using the instrument.
- ++ Instrument reliability (internal consistency, test-retest, etc.) and validity (content, construct, criterion related).
- ++ Results of cognitive testing (one-on-one testing with a small number of respondents to ensure that they understand the questionnaire.)
- ++ Results of field testing.
- ++ Current use of the instrument (who is using it, what it is being used for, what population it is being used with, how instrument findings are reported, and by whom the findings are used).
- ++ Relevant peer-reviewed journal articles or full citations.
- ++ CAHPS® trademark status.
- ++ NQF endorsement status.
- ++ Survey administration instructions.
- ++ Data analysis instructions.
- ++ Guidelines for reporting survey data.

If you wish to provide comments on this information collection, please submit your comments as specified in the **ADDRESSES** section of this request for information.

Comments must be received on/by January 19, 2016.

### III. Collection of Information Requirements

This RFI does not impose any information collection requirements. We believe it is a solicitation of comments from the general public. As stated in the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) at 5 CFR 1320.3(h)(4), it is exempt from the requirements of the PRA (44 U.S.C. 3501 *et seq.*).

The data collected via this RFI will be used to develop the IRF PEC Survey. While surveys are generally subject to the requirements of the PRA, we believe the IRF PEC Survey is exempt. Section I. of this RFI explains that we plan to collect this information in support of the NQS and, under sections 1886(j)(7)

and 1890A(e) of the Act and develop the IRF PEC Survey into a quality measure that we may consider proposing for adoption in the IRF Quality Reporting Program (QRP). In accordance with section 102 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–110), the PRA shall not apply to the collection of information for the development of quality measures.

Also, as stated earlier in section I. of this RFI, we will develop the CMS IRF PEC Survey in accordance with CAHPS® Survey Design Principles and are developing this survey and plans to submit the resulting instrument to AHRQ for recognition as a CAHPS® survey. Upon receiving recognition as a CAHPS® survey and prior to implementation, CMS will submit the CAHPS recognized IRF PEC Survey through the OMB approval process. At that time, the public will have the opportunity to review, comment, or review and comment on the proposed information collection request prior to its submission to OMB for review and approval.

### IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: November 6, 2015.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2015–29623 Filed 11–19–15; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2012–N–0145]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Improving Food Safety and Defense Capacity of the State and Local Level: Review of State and Local Capacities

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by December 21, 2015.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0726. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver

Spring, MD 20993-0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Improving Food Safety and Defense Capacity at the State and Local Level: Review of State and Local Capacities OMB Control Number 0910-0726—Extension**

The Food Safety Modernization Act (FSMA) (Pub. L. 111-353) states that a review must be conducted to assess the State and local capacities to show needs for enhancement in the areas of staffing levels, laboratory capacities, and information technology systems. This mandate referenced in FSMA section 110 stating that a review of current food safety and food defense capabilities must be presented to Congress no later than 2 years after the date of enactment (enactment date January 4, 2011). This review was completed in 2013 through this information collection request.

This collection provided a baseline measurement of the nation's current food safety and food defense capabilities; FDA wants to renew this information collection to gather more data. By renewing this collection, FDA will be able to analyze the gaps and trends at the State and local levels, allowing FDA and its partners to develop ways to create a national integrated food safety system.

FDA will conduct the survey electronically, allowing FDA to conduct streamlined analysis while creating a low-burden, user-friendly environment for respondents to complete the survey. Once the results have been tabulated, FDA and its partners can assess the current progress towards an integrated food safety system.

In the **Federal Register** of August 31, 2015 (80 FR 46025), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Current State and Local Government Employees .....	1,400	1	1,400	1	1,400

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 17, 2015.

**Leslie Kux,**  
Associate Commissioner for Policy.  
[FR Doc. 2015-29663 Filed 11-19-15; 8:45 am]  
BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-P-3404]

**Determination That LIPTRUZET (Ezetimibe and Atorvastatin) Tablets, 10 Milligrams/10 Milligrams, 10 Milligrams/20 Milligrams, 10 Milligrams/40 Milligrams, and 10 Milligrams/80 Milligrams, Were 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 LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 milligrams

(mg)/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ezetimibe and atorvastatin tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Kate Greenwood, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6217, Silver Spring, MD 20993-0002, 240-402-1748.

**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.

LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, are the subject of NDA 20-0153, held by Merck Sharp & Dohme Corp., and initially approved on May 3, 2013. LIPTRUZET is indicated for the reduction of elevated total cholesterol (total-C), low-density lipoprotein cholesterol (LDL-C), apolipoprotein B (Apo B), triglycerides (TG), and non-high-density lipoprotein cholesterol (non-HDL-C), and to increase high-density lipoprotein cholesterol (HDL-C) in patients with primary (heterozygous familial and non-familial) hyperlipidemia or mixed hyperlipidemia. LIPTRUZET is also indicated for the reduction of elevated total-C and LDL-C in patients with homozygous familial hypercholesterolemia, as an adjunct to other lipid-lowering treatments (e.g., LDL apheresis) or if such treatments are unavailable.

In a letter dated June 1, 2015, Merck Sharpe & Dohme Corp. notified FDA that LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, were being discontinued, and FDA moved the drug products to the "Discontinued Drug Product List" section of the Orange Book.

Lupin Pharmaceuticals, Inc. submitted a citizen petition dated September 21, 2015 (Docket No. FDA-2015-P-3404), under 21 CFR 10.30, requesting that the Agency determine whether LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, were 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 LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, from sale.

We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, 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 LIPTRUZET (ezetimibe and atorvastatin) tablets, 10 mg/10 mg, 10 mg/20 mg, 10 mg/40 mg, and 10 mg/80 mg, 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 these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 16, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-29639 Filed 11-19-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Prospective Grant of Exclusive License: Development of In Vitro Diagnostics for the Detection of Diseases or Pathogenic Agents

**AGENCY:** National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), at the National Institutes of Health, Department of Health and Human Services, is contemplating the grant to Omega Diagnostics Group PLC ("Omega"), a company incorporated under the laws of the United Kingdom, having an office in Alva, Scotland, an exclusive patent license to practice the following inventions embodied in the following patent applications: US Provisional Patent Application No.60/

846,354, entitled, "(S,S)-trans-1,2-cyclopentane Diamine-modified and Gamma-lysine-modified Peptide Nucleic Acids as Probes for Nucleic Acid Detection: Synthesis and Applications," filed 22 Sep 2006 [HHS Ref No. E-308-2006/0-US-01]; US Provisional Patent Application No. 60/896,667, entitled, "Synthesis of Trans-tert-butyl-2-aminocyclopentylcarbamate," filed 23 Mar 2007 [HHS Ref No. E-308-2006/1-US-01]; International Application PCT/US2007/020466, entitled, "Synthesis of Trans-tert-butyl-2-aminocyclopentylcarbamate," filed 21 Sep 2007 [HHS Ref No. E-308-2006/2-PCT-01]; US Patent Application No. 12/441,925, filed 21 Sep 2007, [HHS Ref No. E-308-2006/2-US-02]; US Patent Application No. 12/409,159, entitled, "Cross-Coupled Peptide Nucleic Acids for Detection of Nucleic Acids of Pathogens," filed 23 Mar 2009 [HHS Ref No. E-308-2006/3-US-01]; US Patent No. 9,156,778, entitled, "Cross-Coupled Peptide Nucleic Acids for Detection of Nucleic Acids of Pathogens," issued 13 Oct 2015 [HHS Ref No. E-308-2006/3-US-02]; US Provisional Patent Application No. 61/684,354, entitled, "Cyclopentane-peptide Nucleic Acids for Qualitative and Quantitative Detection of Nucleic Acids," filed 17 Aug 2012 [HHS Ref No. E-260-2012/0-US-01]; International Application PCT/US2013/055252, filed 16 Aug 2013 [HHS Ref No. E-260-2012/0-PCT-02]; European Patent Application No. 13753962.3, filed 11 Feb 2015, [HHS Ref No E-260-2012/0-EP-03]; Korea Patent Application No. 10-2015-7006286, filed 11 Mar 2015, [HHS Ref No E-260-2012/0-KR-04]; and US Patent Application No. 14/421,732, filed 13 Feb 2015, [HHS Ref No E-260-2012/0-US-05].

The patent rights in these inventions have been assigned to the United States of America. Omega is seeking a worldwide territory for this license. The field of use may be limited to use of the Patent Rights for the development and sale of trans-cyclopentane-modified peptide nucleic acids (PNA) in a diagnostic system incorporating an enzyme-linked immunosorbent assay or Omega's proprietary VISITECT® technology for the detection of diseases or pathogenic agents including viruses and microorganisms.

**DATES:** Only written comments or applications for a license (or both) which are received by the Technology Advancement Office, NIDDK, on or before December 7, 2015 will be considered.

**ADDRESSES:** Requests for copies of the patent application, patents, inquiries,

comments, and other materials relating to the contemplated exclusive license should be directed to: The Patrick McCue, Ph.D., Senior Licensing and Patenting Manager, Technology Advancement Office, The National Institutes of Diabetes and Digestive and Kidney Diseases, 12A South Drive, Bethesda, MD 20892, Telephone: (301) 451-5560; Email: [patrick.mccue@nih.gov](mailto:patrick.mccue@nih.gov). A signed confidentiality non-disclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

**SUPPLEMENTARY INFORMATION:** These technologies, and the corresponding patent applications, are directed to cyclopentane-peptide nucleic acids (PNA) and their use in qualitative and quantitative detection of nucleic acids. The technologies overcome a stability problem and sensitivity to outside contamination that is inherent to PCR-based detection systems, wherein the PNA probes bind to DNA with greater stability and selectivity compared to a complementary DNA sequence.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the Technology Advancement Office, NIDDK, receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Properly filed competing applications for a license in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 17, 2015.

**Anna Z. Amar,**

*Acting Deputy Director, Technology Advancement Office, NIDDK.*

[FR Doc. 2015-29650 Filed 11-19-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### United States Immigration and Customs Enforcement

#### Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

**ACTION:** 30-Day notice of Information Collection for review; Form No. I-515A; Notice to Student or Exchange Visitor; OMB Control No. 1653-0037.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on August 19, 2015, Vol. 80 No. 20396 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I-515A); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. When an academic student (F-1), vocational student (M-1), exchange visitor (J-1), or dependent (F-2, M-2 or J-2) is admitted to the United States as a nonimmigrant alien under section 101(a)(15) of the Immigration and Nationality Act (Act), he or she is required to have certain documentation. If the student or exchange visitor or dependent is missing documentation, he or she is provided with the Form I-515A, Notice to Student or Exchange Visitor. The Form I-515A provides a list of the documentation the student or exchange visitor or dependent will need to provide to the Department of Homeland Security (DHS), Student and Exchange Visitor Program (SEVP) office within 30 days of admission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,701 responses at 10 minutes (0.1667 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,776. annual burden hours.

Dated: November 16, 2015.

**Scott Elmore,**

*Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.*

[FR Doc. 2015-29582 Filed 11-19-15; 8:45 am]

**BILLING CODE 9111-28-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5828-N-47]

**Federal Property Suitable as Facilities To Assist the Homeless**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:**

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B-17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720-8873; GSA: Mr. Flavio

Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501-0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685-9426. (These are not toll-free numbers.)

Dated: November 12, 2015.

**Brian P. Fitzmaurice**

*Director, Division of Community Assistance, Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/20/2015****Suitable/Available Properties***Building**Mississippi*

Quonset Hut Storage  
(72-0005-TAL); Intersection of Rd. 2441/  
2081  
Abbeville MS 38601  
Landholding Agency: Agriculture  
Property Number: 15201540001  
Status: Excess  
Directions: (34 degrees 30'06.0" N 89 degrees  
26'18.0" W)  
Comments: off-site removal only; 1,677 sq.  
ft.; storage; removal difficult due to type/  
size; needs new roof/siding; asbestos;  
contact Agriculture for more information

*Oklahoma*

Carl F. Albert FB/CH  
McAlester  
301 E. Carl Albert Parkway  
McAlester OK 74501  
Landholding Agency: GSA  
Property Number: 54201540014  
Status: Excess  
GSA Number: 7-G-OK-0583-AA  
Comments: 101+ yrs. old, 13,822 sq. ft.; office  
& courtroom; remediation of asbestos  
needed; roof in need of significant repairs;  
includes 0.49 acres; contact GSA for more  
information.

*Wisconsin*

Social Security Office Bldg.  
606 N. 9th Street  
Sheboygan WI  
Landholding Agency: GSA  
Property Number: 54201540012  
Status: Excess  
GSA Number: 1-W-623-AA  
Directions: WI0098ZZ  
Comments: 37+ yrs. old; 4,566 sq. ft.; office  
building; contact GSA for more  
information.

**Suitable/Available Properties***Land**Nevada*

USGS Elko Parcel  
1701 North 5th Street  
Elko NV 89801  
Landholding Agency: GSA  
Property Number: 54201540013  
Status: Surplus



GSA Number: 9-I-NV-0465-AE  
 Directions: Previous "H Facility"  
 Comments: 0.90 acres; contact GSA for more information.

South Carolina

Formerly the FAA's D7 Remote  
 Communications Link Receiver Fac.  
 Latitude N. 33.418194 & Longitude W.  
 80.13738

Eadytown SC

Landholding Agency: GSA  
 Property Number: 54201540011  
 Status: Surplus

GSA Number: 4-U-SC-0633-AA

Directions: Landholding Agency:

Transportation; Disposal Agency: GSA  
 Comments: 5.5 acres; Remote  
 Communications Link Receiver Facility;  
 contact GSA for more information.

#### Unsuitable Properties

##### Land

California

Stuart Mesa Site

Marine Corps Base, Camp Pendleton  
 Oceanside CA 92058

Landholding Agency: Navy

Property Number: 77201540005

Status: Unutilized

Comments: Public access denied and no  
 alternative method to gain access without  
 compromising national security.

Reasons: Secured Area

California

Parcel 4A27, 4A28, 4A29, 4A31, 4A34

Security Post 1 Alpha Reeves Gate

Lemoore Naval Air Station CA 93246

Landholding Agency: Navy

Property Number: 77201540006

Status: Underutilized

Directions: Item 1 RESM DTD JUL2012

Comments: Located within an airport  
 runway; located within floodway; Public  
 access denied and no alternative method to  
 gain access w/o compromising national  
 security.

Reasons: Floodway; Within airport runway  
 clear zone; Secured Area

[FR Doc. 2015-29341 Filed 11-19-15; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCON04000 L16100000.DP0000]

#### Notice of Availability of the Draft Resource Management Plan Amendment and Supplemental Environmental Impact Statement for the Roan Plateau Planning Area, Colorado

**AGENCY:** Bureau of Land Management,  
 Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the  
 National Environmental Policy Act of  
 1969, as amended (NEPA), and the

Federal Land Policy and Management  
 Act of 1976, as amended, the Bureau of  
 Land Management (BLM) has prepared  
 a Draft Resource Management Plan  
 (RMP) Amendment and Draft  
 Supplemental Environmental Impact  
 Statement (EIS) for the Roan Plateau  
 planning area and by this notice is  
 announcing the opening of a 90-day  
 comment period.

**DATES:** To ensure that comments will be  
 considered, the BLM must receive  
 written comments on the Draft RMP  
 Amendment/Draft Supplemental EIS  
 within 90 days following the date the  
 U.S. Environmental Protection Agency  
 (EPA) publishes its notice of the Draft  
 RMP Amendment/Draft Supplemental  
 EIS in the **Federal Register**. The BLM  
 will announce future meetings or  
 hearings and any other public  
 participation activities at least 15 days  
 in advance through public notices,  
 media releases, and/or mailings.

**ADDRESSES:** You may submit comments  
 related to the Roan Plateau Draft RMP  
 Amendment/Draft Supplemental EIS by  
 any of the following methods:

- *Web site:* [www.blm.gov/co/st/en/BLM\\_Programs/land\\_use\\_planning/rmp/roan\\_plateau.html](http://www.blm.gov/co/st/en/BLM_Programs/land_use_planning/rmp/roan_plateau.html).

- *Email:* [roanplateau@blm.gov](mailto:roanplateau@blm.gov).

- *Fax:* 970-876-9090.

- *Mail:* BLM Colorado River Valley  
 Field Office, Attn: Roan Plateau SEIS,  
 2300 River Frontage Road, Silt, CO  
 81652.

Copies of the Roan Plateau Draft RMP  
 Amendment/Draft Supplemental EIS are  
 available in the Colorado River Valley  
 Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Greg  
 Larson, Project Manager, telephone  
 (970) 876-9048, see address above;  
 email [glarson@blm.gov](mailto:glarson@blm.gov). Persons who  
 use a telecommunications device for the  
 deaf (TDD) may call the Federal  
 Information Relay Service (FIRS) at 1-  
 800-877-8339 to contact the above  
 individual during normal business  
 hours. The FIRS is available 24 hours a  
 day, seven days a week, to leave a  
 message or question with the above  
 individual. You will receive a reply  
 during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM  
 prepared the Roan Plateau Draft RMP  
 Amendment/Supplemental EIS to  
 evaluate a range of management  
 decisions for resources, resource uses  
 and special designations and to respond  
 to a June 22, 2012, ruling by the United  
 States District Court for the District of  
 Colorado remanding the 2007 and 2008  
 Roan Plateau Records of Decision. The  
 Court set aside the 2007 Roan Plateau  
 Plan amendment and remanded the  
 matter to the BLM for further action in

accordance with the Court's decision. In  
 particular, the Court found that the  
 Final EIS was deficient insofar as it  
 failed to sufficiently address: (i) The  
 "Community Alternative" that various  
 local governments, environmental  
 organizations, and individual members  
 of the public recommended; (ii) The  
 cumulative air quality impacts of the  
 Plan amendment decision in  
 conjunction with anticipated oil and gas  
 development on private lands outside  
 the Roan Plateau Planning Area; and  
 (iii) The issue of potential ozone  
 impacts from proposed oil and gas  
 development. In view of the Court's  
 ruling and new information available  
 since the BLM developed the Final EIS,  
 the BLM determined that a new  
 proposed Plan Amendment and a  
 supplemental analysis under NEPA  
 were warranted. Additionally, a  
 settlement agreement was reached  
 among the parties involved in the  
 litigation in November 2014. The  
 Supplemental EIS includes an  
 alternative that was part of the  
 November 2014 settlement.

The Planning Area, which is in west-  
 central Colorado, includes  
 approximately 73,602 acres of Federal  
 land (Federal surface, Federal mineral  
 estate, or both), and is located primarily  
 in Garfield County with a small portion  
 in southern Rio Blanco County. The  
 Roan Plateau RMP Amendment  
 proposes to amend the Glenwood  
 Springs and White River RMPs for the  
 resource management decisions within  
 the Planning Area. The BLM began  
 developing the Roan Plateau RMP  
 Amendment with scoping in 2000. The  
 Draft EIS was published in November  
 2004. The Final EIS was published in  
 August 2006. The BLM then issued two  
 Records of Decision, one in June 2007  
 and a second, pertaining to Areas of  
 Critical Environmental Concern, in  
 March 2008. Following the District  
 Court ruling in 2012, the Notice of  
 Intent to develop the Draft RMP  
 Amendment/Supplemental EIS was  
 published in January 2013, initiating a  
 second scoping period. The BLM held  
 two public scoping meetings in  
 February 2013 and received  
 approximately 25,000 comment  
 submissions during the scoping period.  
 The Colorado River Valley Field Office  
 held eight Cooperating Agency meetings  
 for the Supplemental EIS. Cooperating  
 agencies included the EPA, the U.S.  
 Fish and Wildlife Service, the Colorado  
 Department of Natural Resources and  
 Colorado Parks and Wildlife, the City of  
 Rifle, the towns of Silt and Parachute,  
 and Rio Blanco, Garfield, and Mesa  
 Counties. No other Federal agencies

manage surface within the planning area. The closest non-BLM surface management unit to the Roan Plateau planning area is the White River National Forest to the northwest.

Major issues considered in the Draft RMP Amendment/Supplemental EIS include fluid minerals management, social and economic impacts, riparian habitat management; and air, water, and ecological resources. Due to the limited size of the Planning Area and the supplemental nature of this analysis, regional mitigation and landscape level analysis are not specifically considered in this document; however, the BLM Colorado River Valley and White River field offices have considered them in their broader planning areas. The RMP also addresses decisions regarding Wild and Scenic Rivers, Areas of Critical Environmental Concern (ACECs), and lands with wilderness characteristics. Greater Sage-Grouse decisions proposed in the Amendment are consistent with the Northwest Colorado Greater Sage-Grouse Amendment Record of Decision.

The Draft RMP Amendment/Supplemental EIS focuses on evaluating new information and new issues raised since the BLM developed the 2006 Roan Plateau Final EIS. This includes an evaluation of four alternatives including the No Action Alternative (Alternative I), Alternative II is based on the Proposed Plan from the 2006 Roan RMP Amendment/Final EIS and includes updated decisions and analysis based on new information, including refined mapping, and issues raised during scoping. Alternative III is based on the "Community Alternative" raised during the original EIS process by Rock the Earth, and augmented with input from Supplemental EIS scoping comments. This alternative allows oil and gas leasing throughout the planning area, but limits surface disturbance on BLM lands above the rim (i.e., on top of the plateau). Wilderness characteristics would be managed for protection in this alternative, and all eligible rivers in the planning area would be determined to be suitable for designation as Wild and Scenic Rivers. Target shooting would be prohibited within ¼ mile (610 acres) of a popular road that runs through an area designated as open to cross country off-highway vehicle travel in Alternative III. Alternative IV is the BLM's Preferred Alternative and is based on the terms of the Settlement Agreement. This alternative would allow for leasing at the base of the plateau (11,170 acres) and within several retained lease areas on the top of the plateau (1,830 acres), subject to development restrictions described in the Settlement Agreement. Specific management prescriptions

intended to protect lands with wilderness characteristics and Wild and Scenic Rivers are not proposed in this alternative as they were not addressed as part of the Settlement Agreement; however, they are analyzed within the range of alternatives for consideration. Other resource management decisions in this alternative would be similar to Alternative II.

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period on the proposed ACECs, as the previous ACEC decisions are also being revisited consistent with the Court's remand. The BLM analyzed potential ACECs meeting the relevance and importance criteria within the range of alternatives. All three action alternatives analyze the designation of four ACECs to protect key fisheries, botanical/ecological resources, and visual resources. The ACECs overlay areas with management prescriptions that include No Surface Occupancy stipulations and other restrictions specific to these resources. The proposed ACECs include:

- East Fork Parachute Creek: 6,990 acres (Alternatives II, III), 7,110 acres (Alternative IV)
- Trapper/Northwater Creek: 6,290 acres (Alternatives II, III, and IV)
- Magpie Gulch: 4,710 acres (Alternatives II, III, and IV); and
- Anvil Points: 6,900 acres (Alternatives II, III, and IV).

Please note that public comments and all information submitted with such comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

**Ruth Welch,**

*BLM Colorado State Director.*

[FR Doc. 2015–29716 Filed 11–19–15; 8:45 am]

**BILLING CODE 4310–JB–P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLCON04000 L16100000.DP000]

**Notice of Availability of the Draft Environmental Impact Statement for Previously Issued Oil and Gas Leases in the White River National Forest, CO**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) Colorado River Valley Field Office (CRVFO), Silt, Colorado, prepared a Draft Environmental Impact Statement (EIS) reconsidering previous decisions to issue 65 leases on lands within the White River National Forest (WRNF).

**DATES:** To ensure comments will be considered, the BLM must receive written comments on the Previously Issued Oil and Gas Leases in the WRNF Draft EIS within 49 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM will host four public meetings on the Draft EIS from 4 to 7 p.m., at the following locations:

- December 14, Glenwood Springs Community Center, 100 Wulfson Rd., Glenwood Springs, CO 81601.
- December 15, DeBeque Elementary School, 730 Minter Ave., De Beque, CO 81630.
- December 16, Roaring Fork High School, 2270 Hwy. 133, Carbondale, CO 81623.

**ADDRESSES:** You may submit comments related to the Previously Issued Oil and Gas Leases in the WRNF Draft EIS by any of the following methods:

- **Web site:** <http://www.blm.gov/co/st/en/fo/crvfo.html>.
- **Email:** [WRNFleases@blm.gov](mailto:WRNFleases@blm.gov).
- **Fax:** 970–876–9090.
- **Mail:** BLM Colorado River Valley Field Office, Attn: WRNF Leases, 2300 River Frontage Road, Silt, CO 81652.

Documents pertinent to this proposal may be examined at the CRVFO at the above address.

**FOR FURTHER INFORMATION CONTACT:** Greg Larson, Project Manager, at the address above, by telephone at 970–876–9000, or by email at [glarson@blm.gov](mailto:glarson@blm.gov). You may contact Mr. Larson to request to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM developed this Draft EIS to address a NEPA defect identified by the IBLA related to the issuance of the oil and gas leases on WRNF lands from 1995 to 2004. In 2007, the Interior Board of Land Appeals (IBLA) ruled that before including WRNF parcels in an oil and gas lease sale, the BLM must either formally adopt NEPA analysis completed by the U.S. Forest Service (USFS) or conduct a NEPA analysis of its own (Board of Commissioners of Pitkin County, 173 IBLA 173 (2007)). The BLM has identified 65 existing leases with effective dates ranging from 1995 to 2012 that were leased by the BLM without adopting USFS NEPA or without the BLM preparing its own NEPA analysis. The most recent USFS decision to make these lands available for oil and gas leasing was analyzed in the 1993 WRNF Oil and Gas Leasing EIS, a decision that was reaffirmed in the 2002 WRNF Plan. Before offering and subsequently issuing the leases at issue in an oil and gas lease sale, the BLM obtained concurrence from the USFS; however, as noted above, it did not adopt the USFS's NEPA analysis or prepare its own. As a result, the BLM has determined additional actions need to be taken to correct this defect. Because the BLM has determined that the WRNF NEPA analysis conducted is no longer adequate, the BLM is conducting its own NEPA analysis through this EIS regarding previous decisions to lease WRNF lands for oil and gas development.

The BLM will determine whether these 65 leases should be cancelled, reaffirmed, or modified with additional or different terms. Under a separate effort, the WRNF updated its 1993 Oil and Gas Leasing EIS to address future oil and gas leasing availability. The USFS released the Final EIS and Draft Record of Decision in December 2014. The BLM incorporated as much of the new USFS NEPA analysis of future oil and gas leasing on WRNF lands as possible into its analysis of existing leases.

Five alternatives are considered in the BLM's Draft EIS. The No Action alternative reaffirms the lease stipulations in the 65 leases as they were issued; the BLM would take no action by continuing to administer the leases with their current stipulations.

Alternative 2 would address inconsistencies by adding stipulations identified in the 1993 WRNF EIS that were not attached to eight leases. Alternative 3 would modify the 65 leases to match the stipulations identified for future leasing in the 2014 USFS Final EIS Proposed Action. Alternative 4 is the BLM's Proposed Action. It would modify or cancel the 65 leases to match the stipulations and availability decision for future leasing identified in the 2014 USFS Draft Record of Decision. In areas the USFS identified as open to future leasing, lease stipulations would be modified; all or part of 25 existing leases in areas identified as closed to future leasing would be cancelled. Alternative 5 would cancel all 65 leases.

The BLM developed this range of alternatives to respond to public comments received during public scoping and input from cooperating agencies. The BLM held a public scoping period from April 1 to May 16, 2014, and received more than 32,000 public comments. The BLM held four public meetings during the scoping period. Since the end of the public scoping period, the BLM worked with cooperating agencies (including the EPA; USFS; the Colorado Department of Natural Resources including Colorado Parks and Wildlife; Garfield, Mesa, Pitkin, and Rio Blanco counties; the Town of Carbondale; the City of Glenwood Springs; the Town of New Castle; the Town of Parachute; the City of Rifle; and the town of Silt) to prepare the Draft EIS.

Please note that public comments and information submitted including names, street addresses and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10.

**Ruth Welch,**

*BLM Colorado State Director.*

[FR Doc. 2015-29717 Filed 11-19-15; 8:45 am]

**BILLING CODE 4310-JB-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[16X LLAk980600.L1820000.XX0000.LXSIA RAC0000]

#### Notice of Public Meeting, BLM Alaska Resource Advisory Council

**AGENCY:** Bureau of Land Management, Alaska State Office, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 as amended (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held December 1 and 2, 2015, at the Office of Aviation Services located at 4405 Lear Court, Anchorage, Alaska 99502-1032. The meeting starts at 8:30 a.m. each day in training Room #109. The council will accept comments from the public on Tuesday, December 1, from 3:00-4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Thom Jennings, RAC Coordinator, BLM Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; [tjennings@blm.gov](mailto:tjennings@blm.gov); 907-271-3335. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion will include: Regional Mitigation Strategy for the Northeast National Petroleum Reserve in Alaska (NPR-A), placer mining reclamation at Jack Wade Creek, update on land transfer program, update on permitted oil production in the NPR-A, and other topics of interest to the RAC. A full agenda will be posted to the BLM Alaska RAC Web site ([www.blm.gov/ak/rac](http://www.blm.gov/ak/rac)) by November 20, 2015.

All meetings are open to the public. During the public comment period, depending upon the number of people wishing to comment, time for individual oral comments may be limited. Please

be prepared to submit written comments if necessary. 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: November 9, 2015.

**Bud C. Cribley,**

*State Director.*

[FR Doc. 2015-29699 Filed 11-19-15; 8:45 am]

BILLING CODE 4310-JA-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-548 and 731-TA-1298 (Preliminary)]

### Welded Stainless Steel Pressure Pipe From India

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded stainless steel pressure pipe from India, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”), and are allegedly subsidized by the government of India.

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission’s rules, upon notice from the Department of Commerce

(“Commerce”) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### Background

On September 30, 2015, Bristol Metals, LLC, Bristol, Tennessee; Felker Brothers Corp., Marshfield, Wisconsin; Marcegaglia USA, Munhall, Pennsylvania; and Outokumpu Stainless USA LLC, Inc., Wildwood, Florida filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of welded stainless steel pressure pipe from India. Accordingly, effective September 30, 2015, the Commission, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701-TA-548 and antidumping duty investigation No. 731-TA-1298 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 7, 2015 (80 FR 60715). The conference was held in Washington, DC, on October 21, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 16, 2015. The views of the Commission are contained in USITC Publication 4582 (November 2015),

entitled *Welded Stainless Steel Pressure Pipe from India: Investigation Nos. 701-TA-548 and 731-TA-1298 (Preliminary)*.

By order of the Commission.

Issued: November 16, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-29608 Filed 11-19-15; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-972]

### Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 19, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Diebold, Incorporated of North Canton, Ohio and Diebold Self-Service Systems of North Canton, Ohio. A supplement to the complaint was filed November 6, 2015. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated teller machines, ATM modules, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,082,616 (“the ‘616 Patent’”); U.S. Patent No. 7,121,461 (“the ‘461 Patent’”); U.S. Patent No. 7,229,010 (“the ‘010 Patent’”); U.S. Patent No. 7,249,761 (“the ‘761 Patent’”); U.S. Patent No. 7,314,163 (“the ‘163 Patent’”); and U.S. Patent No. 7,832,631 (“the ‘631 Patent’”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

(202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on November 16, 2015, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automated teller machines, ATM modules, components thereof, and products containing the same by reason of infringement of one or more of claims 1, 2, 5–8, 10, 16–18, 20, 22, 23, 26, and 27 of the '616 patent; claims 1–8, 12–18, and 21–27 of the '461 patent; claims 1–15, 18–20, 22–26, and 28–30 of the '010 patent; claims 1–4, 6, 14, 15, and 19 of the '761 patent; claims 1–5 and 13–24 of the '163 patent; and claims 1–8 and 12–20 of the '631 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:  
Diebold, Incorporated, 5995 Mayfair Road, North Canton, OH 44720.  
Diebold Self-Service Systems, 5995 Mayfair Road, North Canton, OH 44720.

(b) The respondents are the following entities alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served:

Nautilus Hyosung Inc., 281

Gwangpyeong-ro, Gangnam-gu Gu, Seoul, Republic of Korea.

Nautilus Hyosung America Inc., 6641 N. Beltline Road, Suite 100, Irving, TX 75061.

HS Global, Inc., 381 Thor Pl., Brea, CA 92821.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 17, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015–29669 Filed 11–19–15; 8:45 am]

**BILLING CODE 7020–02–P**

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. TPA–105–001]

**Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**SUMMARY:** Following receipt on November 5, 2015 of a request from the U.S. Trade Representative (USTR), the Commission has instituted investigation No. TPA–105–001, *Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, under section 105(c) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4204(c)), for the purpose of assessing the likely impact of the Agreement on the U.S. economy as a whole and on specific industry sectors and the interests of U.S. consumers. In addition to the United States, the Agreement includes Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

**DATES:**

December 22, 2015: Deadline for filing requests to appear at the public hearing.

December 29, 2015: Deadline for filing pre-hearing briefs and statements.

January 13, 2016: Public hearing.

January 22, 2016: Deadline for filing post-hearing briefs and statements.

February 15, 2016: Deadline for filing all other written submissions.

May 18, 2016: Anticipated date for transmitting Commission report to the President and Congress.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Project Leader Jose Signoret (202–205–3125 or [jose.signoret@usitc.gov](mailto:jose.signoret@usitc.gov)) or Deputy Project Leader Laura Bloodgood (202–708–4726 or [laura.bloodgood@usitc.gov](mailto:laura.bloodgood@usitc.gov)) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the

Commission's Office of the General Counsel (202-205-3091 or [william.gearhart@usitc.gov](mailto:william.gearhart@usitc.gov)). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

### Background

On November 5, 2015, the Commission received a letter from the USTR stating that the President notified Congress, also on November 5, 2015, of his intent to enter into the Trans-Pacific Partnership Agreement with the countries of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. As requested by the USTR and as required by section 105(c) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (2015 Act), the Commission will submit to the President and Congress a report assessing the likely impact of the Trans-Pacific Partnership (TPP) Agreement on the U.S. economy as a whole and on specific industry sectors and the interests of U.S. consumers. In assessing the likely impact, the Commission will include the impact the agreement will have on the U.S. gross domestic product; exports and imports; aggregate employment and employment opportunities; and the production, employment, and competitive position of industries likely to be significantly affected by the agreement. In preparing its assessment, the Commission will also review available economic assessments regarding the Agreement, including literature concerning any substantially equivalent proposed agreement. The Commission will provide a description of the analytical methods used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the Commission's analyses and conclusions and other economic assessments reviewed.

Section 105(c)(2) of the 2015 Act requires that the Commission submit its report to the President and the Congress not later than 105 days after the President enters into the agreement. The USTR requested that the Commission provide the report as soon as possible.

Section 105(c)(4) of the 2015 Act requires the President to make the Commission's assessment under section 105(c)(2) available to the public.

### Public Hearing

The Commission will hold a public hearing in connection with this investigation at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 13, 2016, and continuing on additional days, if necessary. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., December 22, 2015. All pre-hearing briefs and statements must be filed not later than 5:15 p.m., December 29, 2015; and all post-hearing briefs and statements, which should focus on matters raised at the hearing, must be filed not later than 5:15 p.m., January 22, 2016. In order to appear at the hearing, all interested parties and other persons appearing must file a pre-hearing brief or statement that sets forth the information and arguments they intend to present at the hearing. An extension of time for filing requests to appear, pre-hearing and post-hearing statements, and all other written submissions will not be granted unless the Chairman determines that the condition for granting an extension of time in section 201.14(b)(2) of the *Commission Rules of Practice and Procedure* (19 CFR 201.14(b)(2)) is met. All requests to appear and all pre-hearing and post-hearing briefs and statements should otherwise be filed in accordance with the requirements in the "Written Submissions" section below. In the event that, as of the close of business on December 22, 2015, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202-205-2000 after December 22, 2015, for information concerning whether the hearing will be held.

### Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary. Except in the case of requests to appear at the hearing and pre-hearing and post-hearing briefs and statements, all written submissions should be received not later than 5:15 p.m., February 15, 2016. All written submissions must conform with the provisions of section

201.8 of the *Commission Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures requires that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

### Summaries of Written Submissions

The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with either their pre-hearing or post-hearing brief or another written submission, or as a separate written submission, and the summary must be clearly marked on its front page as being their "summary of position for inclusion in the appendix to the Commission's report." The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will identify the name of the organization

furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: November 17, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-29659 Filed 11-19-15; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-971]

### Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 16, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Select Comfort Corporation of Minneapolis, Minnesota and Select Comfort SC Corporation of Greenville, South Carolina. Supplements were filed on October 28, 2015 and November 5, 2015. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain air mattress systems, components thereof, and methods of using the same by reason of infringement of certain claims of U.S. Patent No. 5,904,172 ("the '172 patent") and U.S. Patent No. 7,389,554 ("the '554 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on November 16, 2015, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain air mattress systems, components thereof, and methods of using the same by reason of infringement of one or more of claims 2, 6, 9, 12, 16, 20 and 22-24 of the '172 patent and claims 1, 5, 6, 16, 22, and 26 of the '554 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Select Comfort Corporation, 9800 59th Avenue North, Minneapolis, MN 55442; Select Comfort SC Corporation, 103 Shaw Street, Greenville, SC 29609.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Sizewise Rentals LLC, 1600 Genessee, Suite 950, Kansas City, MO 64102; American National Manufacturing Inc., 252 Mariah Circle, Corona, CA 92879; Dires LLC and Dires LLC d/b/a Personal Comfort Beds, 3411 Lake Breeze Drive, Bldg. 601, Ste. E/F, Orlando, FL 32808.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 17, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-29670 Filed 11-19-15; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

**AGENCY:** Foreign Claims Settlement Commission of the United States, DOJ.

**ACTION:** Notice.

**SUMMARY:** This notice announces the completion date of the claims adjudication program referred to the Foreign Claims Settlement Commission (“Commission”) by the Department of State by letter dated November 14, 2012 (the “Iraq I program”), involving claims of United States nationals against the Government of Iraq, as defined below, which were settled under the “Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq,” dated September 2, 2010. By prior notice, the Commission announced the commencement of the Iraq I program on March 26, 2013, with a completion date of March 26, 2014 (78 FR 18365). The completion date specified in this Notice supersedes the previously announced completion date.

**DATES:** The completion date of the Iraq I program is February 2, 2016. A petition to reopen a claim filed in the Iraq I program must be filed not later than December 4, 2015 (60 days before the completion date). 45 CFR 509.5(l).

**FOR FURTHER INFORMATION CONTACT:** Brian M. Simkin, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street NW., Room 6002, Washington, DC 20579, Tel. (202) 616-6975, FAX (202) 616-6993.

### Notice of Completion of Claims Adjudication Program

Pursuant to the authority conferred upon the Secretary of State and the Commission under subsection 4(a)(1)(C) of Title I of the International Claims Settlement Act of 1949 (Pub. L. 455, 81st Cong., approved March 10, 1950, as amended by Public Law 105-277, approved October 21, 1998 (22 U.S.C. 1623(a)(1)(C))), the Foreign Claims Settlement Commission hereby gives notice that on February 2, 2016, the Commission will complete the claims adjudication programs referred to the Commission by the Department of State by letter dated November 14, 2012, involving claims of United States nationals against the Government of Iraq, as defined below, which were settled under the “Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq,” dated September 2, 2010.

**Brian M. Simkin,**  
Chief Counsel.

[FR Doc. 2015-29662 Filed 11-19-15; 8:45 am]

**BILLING CODE 4410-01-P**

**DEPARTMENT OF JUSTICE**

### Notice of Lodging of Proposed First Modification to Consent Decree Under the Clean Air Act

In 2012, the United States District Court for the Western District of Pennsylvania entered a Consent Decree in the case of *United States, et al. v. Essroc Cement Corp.*, Civil No. 2:11-cv-01650-DSC (“2012 Consent Decree”), which resolved claims arising under the Clean Air Act against the defendant. The 2012 Consent Decree covers all of Essroc’s U.S. cement plants. On November 10, 2015, the United States lodged a proposed “First Modification to Consent Decree” in the same case. The proposed First Modification only affects the defendant’s cement plants in Indiana and Puerto Rico.

The proposed First Modification to Consent Decree resolves a dispute that arose under the 2012 Consent Decree. In December 2013, the U.S. Environmental Protection Agency (EPA) rejected Essroc’s Selective Catalytic Reduction (SCR) Pilot Study Report for the Logansport, Indiana cement plant. Essroc disputed EPA’s action and initiated the dispute resolution procedure provided by the 2012 Consent Decree. Under the proposed First Modification to Consent Decree, Essroc will perform a new SCR Pilot Study and will accept more stringent NO<sub>x</sub> emission standards than originally provided by the 2012 Consent Decree on certain facilities, but will not have to permanently install SCR on one of its Indiana cement kilns even if the Pilot Study demonstrates the viability of SCR, as a NO<sub>x</sub> control system on that kiln.

The State of Indiana and the Commonwealth of Puerto Rico are co-plaintiff settlers on the original Consent Decree. Indiana agrees to give up the permanent installation of SCR on an Indiana cement kiln and stipulated penalties for violations of the Consent Decree at Essroc’s Indiana facilities in exchange for: Performance of an SCR demonstration project in Indiana; more stringent NO<sub>x</sub> emission limits on two cement kilns located in Speed, Indiana; ammonia continuous emission monitoring systems on two Logansport kilns; and an enhanced mitigation project at the Logansport facility. Puerto Rico agrees to give up stipulated penalties for violations of the Consent Decree at Essroc’s San Juan cement plant in exchange for more stringent NO<sub>x</sub> emission limits on that facility.

The publication of this notice opens a period for public comment on the proposed First Modification to Consent Decree. Comments should be addressed

to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al., v. Essroc Cement Corp.*, Civil No. 2:11-cv-01650, D.J. Ref. No. 90-5-2-1-09608. All comments must be submitted no later than twenty (20) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the First Modification to Consent Decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the First Modification to Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Settlement Agreement Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$4.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the signature pages, the cost is \$2.25.

**Bob Brook,**

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015-29577 Filed 11-19-15; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF JUSTICE**

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 12, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of New York in the lawsuit entitled *United States v. Alcoa Inc., et al.*, Civil No.: 15-cv-973-A.

In this action the United States sought, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9601, *et seq.*, injunctive relief and recovery of response costs regarding the Olean Well



Field Superfund Site in Olean, New York ("Site"). The settlement requires two parties, Alcoa Inc. and Cutco Corporation, to perform remedial actions at two areas of the Site known as the "Alcas facility" and "Parcel B," to reimburse the United States for \$612,000 of response costs incurred at the Site, and to reimburse the United States for its future response costs regarding the Alcas facility and Parcel B. The settlement resolves the United States' claims against these defendants regarding the Site.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Alcoa Inc., et al.*, Civ. No. 15-cv-973, D.J. Ref. No. 90-11-3-181/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$55.50 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert E. Maher Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2015-29578 Filed 11-19-15; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1121-0249]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection: Extension of Currently Approved Collection Survey: Death in Custody Reporting Program—Prisons

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 53572 on September 4, 2015, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for 30 days until December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Margaret Noonan, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: [Margaret.Noonan@usdoj.gov](mailto:Margaret.Noonan@usdoj.gov); telephone: 202-353-2060). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *The Title of the Form/Collection:* Deaths in Custody Reporting Program—State Prisons. The collection includes the Deaths in Custody Reporting Program (DCRP)—State Prisons.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* This collection includes the following forms:

- NPS-4: *Annual Summary of Inmate Deaths in State Prisons.* This is sent to the 50 state departments of correction.

- NPS-4A: *State Prison Inmate Death Report.* This is sent to the 50 state departments of correction. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond include 50 state department of corrections authorities.

Originally authorized by the *Death in Custody Reporting Act (DICRA) of 2000*, the Death in Custody Reporting Program (DCRP) is the only national database that can inform the issue of mortality in local jails and prisons in depth. BJS uses this data to track and report on total and cause-specific deaths and mortality rates in correctional facilities. The local jail portion of the collection is now part of the BJS Annual Jail Collection, and is not addressed in this notice. The arrest-related death collection, which was historically part of the DCRP, has been temporarily suspended and is also not part of this clearance.

The DCRP-prisons collection has two components: a summary count of the number of deaths occurring in state departments of correction and individual-level death forms that collect information on inmates dying while in the custody of state prisons. Specifically, the following items are collected:

(a) Number of persons who died while in the custody of state correctional facilities.

(b) The first, last name and middle initial, date of death, date of birth, sex, and race/ethnic origin for each inmate who died during the reporting year.

(c) The name and location of the correctional facility involved.

(d) The admission date and current offense(s) for each inmate who died during the reporting year.

(e) Whether the inmate ever stayed overnight in a mental health observation unit or outside mental health facility.

(f) The location and cause of death of each inmate death that took place during the reporting year.

(g) The time of day that the incident causing the inmate's death occurred and where the incident occurred (limited to accidents, suicides, and homicides only).

(h) Whether the cause of death was a preexisting medical condition or a condition that developed after admission to the facility and whether the inmate received treatment for the medical condition after admission and if so, the kind of treatment received

(deaths due to accidental injury, intoxication, suicide, or homicide do not apply).

(i) Whether an autopsy/postmortem exam/review of medical records to determine the cause of death of the inmate was performed and the availability of those results.

(j) The survey ends with a box in which respondents can enter notes.

(k) Confirmation or correction of the agency and agency head's name, phone number, email address, and mailing address.

(l) Confirmation or correction of the agency's primary point of contact for data collection, title, phone number, email address, and mailing address;

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.*

Prior to 2015, DCRP clearance included deaths in the process of arrest, local jails and state prisons. The arrest-related death collection has been temporarily suspended due to data quality and coverage issues. The arrest-related death collection will seek a separate OMB clearance when work on

the project begins again. In an effort to reduce burden on respondents and minimize costs associated with the ASJ and the DCRP, the ASJ will be fielded along with the DCRP beginning in early 2016. The major change to the DCRP collection is the downgrade in burden hours to account for the ARD and DCRP-jail collections no longer being a part of the clearance package. Otherwise, there are no proposed substantive changes to the DCRP-prisons collection.

*DCRP-prisons (NPS-4, NPS-4A)*— There will be 50 respondents to DCRP-prisons for collection year 2015. It takes current DCRP respondents an average of 30 minutes to complete the death form and 5 minutes to complete the annual summary form, or 1,723 burden hours.

(a) *BJS collection agent makes verification calls and data quality follow-up calls to prison respondents to ensure data quality.* With 50 respondents and 9 minute per call, data verification induces a burden of 8 hours. With an average annual 46 respondents needing some level of follow-up, data quality follow-up induces a burden of 12 hours.

TABLE 1—SUMMARY OF TOTAL RESPONDENT BURDEN FOR DCRP DATA COLLECTION

Reporting method	Type of data supplier	Number of data suppliers	Number of responses	Average reporting time	Total burden hours †
Mail and Online Data Entry.	State Prison—Death Records <sup>1</sup> .	50	3,400	30 minutes per death .....	1,700 hours.
Mail and Online Data Entry.	State Prison—Annual Summary <sup>2</sup> .	50	50	5 minutes .....	4 hours.
Data quality follow-up .....	State Prison respondents	50	46	15 minutes .....	12 hours.
Telephone .....	State Prisons—Verification Call.	50	50	8 minutes .....	7 hours.
Total .....	.....	50	3,646	73 minutes .....	1,723 hrs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours associated with this collection for report year 2016 is 1,723.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 16, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-29591 Filed 11-19-15; 8:45 am]

**BILLING CODE 4410-18-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1121-0094]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection Survey: Death in Custody Reporting Program; Annual Survey of Jails; Survey of Jails in Indian Country**

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

This proposed information collection was previously published in the **Federal Register** at 80 FR 53569 on September 4, 2015, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for 30 days until December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Margaret Noonan, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: [Margaret.Noonan@usdoj.gov](mailto:Margaret.Noonan@usdoj.gov); telephone: 202-353-2060). Written comments and/or suggestions can also be directed to

the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA\_submissions@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *The Title of the Form/Collection:* Annual Jail Collection. The collection includes the Deaths in Custody Reporting Program (DCRP)—Local Jails, Annual Survey of Jails (ASJ), and the Survey of Jails in Indian Country (SJIC).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* This collection includes the following forms:

- CJ-9A/5: *Annual Survey of Jails*. This form goes to jail jurisdictions in the ASJ sample that are operated by the county or city.

- CJ-10A/5: *Annual Survey of Jails, Multi-Jurisdiction or Private Facility*. This form goes to confinement facilities in the ASJ sample that are administered by two or more governments (regional jails) and privately owned or operated confinement facilities.

- CJ-9A: *Deaths in Custody, Annual Summary on Inmates under Jail Jurisdiction*. This form goes to jail jurisdictions that are not included in the ASJ sample.

- CJ-10A: *Deaths in Custody, Annual Summary on Inmates in Private and Multi-Jurisdiction Jails*. This form goes to confinement facilities administered by two or more local governments (regional jails) and to privately owned or operated confinement facilities that are not included in the ASJ sample.

- CJ-9: *Deaths in Custody, Death Report on Inmates under Jail Jurisdiction*. This form goes to all jail jurisdictions that are operated by the county or city. Jails administrators are requested to fill out this form if their facilities had one or more deaths in that calendar year.

- CJ-10: *Deaths in Custody, Death Report on Inmates in Private and Multi-Jurisdiction Jail*. This form goes to all confinement facilities administered by two or more local governments (regional jails) and privately owned or operated confinement facilities. Jails administrators are requested to fill out this form if their facilities had one or more deaths in that calendar year.

- CJ-5B: *Survey of Jails in Indian Country*. All jail administrators in Indian Country Indian country jails receive the CJ-5B form. Indian Country jails are owned or operated by tribal authorities or the Bureau of Indian Affairs (BIA).

The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond include approximately 3,080 county, city, and tribal jail authorities.

The Annual Survey of Jails (ASJ) and Survey of Jails in Indian Country (SJIC) provide the nationally-representative data on local jail populations and jails in Indian country. BJS, other federal agencies, and state, local, and tribal corrections authorities and administrators, as well as legislators, researchers, and jail planners use these data to track annual changes in the demographic characteristics of the jail population as well as changes in the jail population, jail capacity and crowding, the flow of inmates moving into and out of jails, and use of jail space by other correctional institutions. Providers of the data are administrators in approximately 941 county and city jails and 80 tribal jails.

The ASJ collects the following data at from local jails operated at the city or county level. Reporting units within the jail report data for their jail jurisdiction:

(a) The number of male and female inmate deaths during the previous calendar year (new to the 2015 surveys).

(b) The number of inmates confined in jail facilities at midyear (last weekday in the month of June).

(c) The number of inmates confined in jail facilities and the number of inmates under jail supervision but not confined (e.g., electronic monitoring, day reporting, etc.) at yearend (December 31).

(d) The numbers of following types of confined inmates—males—adult; females—adult; males—17 and under, females—17 and under; 17 and under held as adults; non-U.S. citizen; convicted; unconvicted; held for a felony; held for a misdemeanor; white, black, Hispanic, American Indian, Asian American, Native Hawaiian, and multiracial; and held for Federal authorities, State prison authorities, tribal government, and other local jail jurisdictions—at yearend.

(e) Whether the jail facilities have a weekend incarceration program and the number of inmates participating.

(f) The date and count for the greatest number of confined inmates during December.

(g) The number of new admissions into and final discharges from jail facilities in collection year by sex.

(h) The average daily population of jail facilities from January 1 to December 31 of collection year by sex.

(i) Jail rated capacity.

(j) The numbers of unconfined persons participating in various programs such as electronic monitoring, home detention, community service, day reporting, etc. at yearend.

(k) The numbers of correctional and other staff employed by sex at yearend.

The SJIC collects the following data for jails in Indian country at the jail level:

(a) The total number of confined inmates in jail facilities at midyear (last weekday in the month of June).

(b) The numbers of following types of confined inmates in jails—males—adult; females—adult; males—17 and under; females—17 and under, 17 and under held as adults, convicted, unconvicted, held for felony, held for misdemeanor, and held for specific offenses such as domestic violence, assault, burglary, larceny, drug violation, etc.—at midyear.

(c) The average daily population during the 30-day period in June.

(d) The date and count for the greatest number of confined inmates during the 30-day period in June.

(e) The number of new admissions into and final discharges during the month of June.

(f) The number of inmate deaths while confined; the number of deaths attributed to suicide; and the number of

confined inmates that attempted suicide from July 1 of the previous year to June 30 of the current collection year.

(g) The total rated capacity of jail facilities at midyear.

(h) The number of correctional staff employed by the facility and their occupation (e.g., administration, jail operations, educational staff, etc.) at midyear.

Originally authorized by the *Death in Custody Reporting Act (DICRA) of 2000*, the Death in Custody Reporting Program (DCRP)-Local Jails is the only national database that can inform the issue of mortality in jails in depth. BJS uses this data to track and report on total and cause-specific deaths and mortality rates in jails. The DCRP-Local Jails has two components: Jail-level collection of retrospective yearend inmate counts and individual-level collection of information on deceased inmates during the current calendar year. Specifically, the following items are collected:

(a) The number of inmates confined in jail facilities on December 31 of the previous year by sex.

(b) The number of inmates admitted to jail facilities in the previous year by sex.

(c) The number of inmates confined in local jails on behalf of U.S. Immigration and Customs Enforcement, the U.S. Marshals Service or any other hold for another jurisdiction.

(d) The average daily population of all jail confinement facilities operated by the jurisdiction in the previous year by sex.

(e) The number of persons who died while under the supervision of the jurisdiction in the previous year by sex.

(f) The first, last name and middle initial, date of death, date of birth, sex, and race/ethnic origin for each inmate who died during the reporting year.

(g) Whether the deceased inmate was being held in the local jail or under the authority of the state department of correction; on the behalf of U.S. Immigration and Customs Enforcement; the U.S. Marshals Service, or other counties, jurisdictions or correctional authorities.

(h) The admission date and current offense(s) for each inmate who died during the reporting year.

(i) The legal status for each inmate who died during the reporting year.

(j) Whether the inmate ever stayed overnight in a mental health observation unit or outside mental health facility.

(k) The location and cause of death of each inmate death that took place during the reporting year.

(l) The time of day that the incident causing the inmate's death occurred and where the incident occurred (limited to accidents, suicides, and homicides only).

(m) Whether the cause of death was a preexisting medical condition or a condition that developed after admission to the facility and whether the inmate received treatment for the medical condition after admission and if so, the kind of treatment received (deaths due to accidental injury, intoxication, suicide, or homicide do not apply).

(n) Whether an autopsy/postmortem exam/review of medical records to determine the cause of death of the inmate was performed and the availability of those results.

(o) The survey ends with a box in which respondents can enter notes.

(p) Confirmation or correction of the agency and agency head's name, phone number, email address, and mailing address.

(q) Confirmation or correction of the agency's primary point of contact for data collection, title, phone number, email address, and mailing address;

(r) Confirmation or correction of the names of facilities within the jurisdiction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*

The ASJ and DCRP-Local Jails previously had separate survey burden operations. In an effort to reduce burden on respondents and minimize costs associated with the ASJ and the DCRP, the ASJ will be fielded along with the DCRP beginning in reference year 2015. Another major change in the 2015 DCRP-ASJ is the simplification of questionnaire forms. The current ASJ sample includes approximately 335 jail jurisdictions (370 reporting units, or about one-third of ASJ respondents), which are selected with certainty (probability of 1). From 2010 to 2014, these "certainty jails" received a different questionnaire with additional questions on staffing, physical assaults on staff, and the numbers of rule

violations by inmates in various categories, while the non-certainty jails received a shorter questionnaire without those items. The previously estimated time to complete the longer form was 2 hours, while the estimated time to complete the shorter form remains 1.25 hours. The total burden hours previously associated with the ASJ was 1,454 hours. Starting in reference year 2015, all ASJ respondents will receive the shorter questionnaire form, regardless of certainty status. This change will result in a total burden hour estimate of 1,176 hours, or a reduction of about 278 burden hours on respondents. The estimated burden hour for each form in the annual jail collection is listed below:

(a) *ASJ (CJ-9A/5 and CJ-10A/5)*—There will be 941 respondents to ASJ for collection year 2015. It takes current ASJ respondents an average of 75 minutes to supply the information, so the burden hours are 1,176.

(b) *DCRP-Local Jails annual summary forms (CJ-9A and CJ-10A)*—BJS estimates that 2,059 jail respondents will complete these forms, with an average response time of 15 minutes. The burden hours for these forms are 515.

(c) *SJIC (CJ-5B)*—Eighty respondents will be asked to respond to SJIC for collection year 2016. BJS estimates that it takes an average of 75 minutes to supply the information for a total burden of 100 hours.

(d) *Local jails/death reports (forms CJ-9 and CJ-10)*—Analysis of data from data years 2000 through 2013 shows that annually approximately 80% of jails nationwide have no death in a given calendar year and do not need to complete a death report form. Approximately 600 jails will complete reports for 950 inmate deaths. Each report takes about 30 minutes, for a total of 450 hours. Unlike the CJ-9A/5, CJ-10A/5, CJ9A, and CJ10A forms, the CJ-9 and CJ-10 forms are not retrospective. As a result, the reference year is the same as the calendar year.

(e) *BJS collection agent makes verification and data quality follow-up contacts to jail respondents to ensure data quality.* With estimated 872 respondents and 5 minute per call, data verification induces a burden of 73 hours.

Reporting mode	Purpose of contact	Number of data providers	Number of responses	Average reporting time (min)	Total burden hours
Online and mail .....	ASJ-DCRP .....	938	938	75	1,173
Fax and mail .....	SJIC .....	80	80	75	100
Online and mail .....	DCRP annual summary .....	2062	2062	15	516

Reporting mode	Purpose of contact	Number of data providers	Number of responses	Average reporting time (min)	Total burden hours
Online and mail .....	DCRP death records .....	600	900	30	450
Telephone .....	ASJ-DCRP verification call .....	3,000	3,000	8	400
Online and telephone .....	Data quality follow-up .....	3,000	872	5	73
Total .....	.....	.....	.....	.....	2,711

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours associated with this collection for reference years is 2,711.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 16, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-29590 Filed 11-19-15; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Price Index Housing Survey

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Consumer Price Index Housing Survey," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 21, 2015.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201507-1220-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201507-1220-001) (this link will only become active on the day following publication of this notice)

or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### FOR FURTHER INFORMATION CONTACT:

Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Consumer Price Index (CPI) Housing Survey information collection. The CPI is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. Each month, BLS data collectors visit or call thousands of retail stores, service establishments, rental units, and doctors' offices all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The collection of price data from rental units is essential for the timely and accurate calculation of the shelter component of the CPI. The CPI is then widely used as a measure of inflation, indicator of the effectiveness of government economic policy, deflator for other economic series and as a means of adjusting dollar values. The BLS is authorized to collect this information under 29 U.S.C. 1 and 2.

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220-0163.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 14, 2015 (80 FR 41093).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220-0163. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–BLS.

*Title of Collection:* Consumer Price Index Housing Survey.

*OMB Control Number:* 1220–0163.

*Affected Public:* Individuals and Households.

*Total Estimated Number of Respondents:* 168,600.

*Total Estimated Number of Responses:* 168,600.

*Total Estimated Annual Time Burden:* 14,397 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

Dated: November 16, 2015.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2015–29643 Filed 11–19–15; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–108)]

### Privacy Act of 1974; System of Records—Office of Inspector General Advanced Data Analytics System

**AGENCY:** Office of the Inspector General, National Aeronautics and Space Administration.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the National Aeronautics and Space Administration (NASA) publishes this notice of a new system of records entitled “The Office of Inspector General Advanced Data Analytics System (ADAS)” (System Number NASA 10IGDA). This system will store individually identifying information from a variety of individuals who have applied for or received grants, contracts, loans, or payments from NASA, including current and former employees of NASA, contractors, and subcontractors, and others whose actions have affected NASA.

**DATES:** NASA seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments about the new system of records on or before December 21, 2015. NASA filed a report

describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House of Representatives Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 12, 2015. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on December 22, 2015, unless OMB waives 10 days of the 40-day review period for compelling reasons shown by NASA, or (2) December 21, 2015, unless the system of records needs to be changed as a result of public comment or OMB review.

**ADDRESSES:** Address all comments about the new system of records to the Assistant Inspector General for Audits, NASA Office of Inspector General, 300 E Street SW., Suite 8W37, Washington, DC 20546–0001. If you prefer to send comments by electronic means, use the following email address: *HQ-OIG-Counsel@mail.nasa.gov*. You must include the term “ADAS” in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Frank LaRocca, Counsel to the Inspector General, (202) 358–2575, *HQ-OIG-Counsel@mail.nasa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires NASA to publish in the **Federal Register** a notice of new system of records maintained by NASA. NASA’s regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 14 CFR part 1212.

The Privacy Act applies to information about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a “record,” and the system, whether manual or computer-driven, is called a “system of records.” The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the House of Representatives Committee on Oversight and Government Reform, and the Chair of the Senate Committee on Homeland Security and Governmental Affairs,

whenever the agency publishes a new or altered system of records.

#### Background of System of Records

ADAS is a system of records that will store individually identifying information from a variety of individuals who have applied for or received grants, contracts, cooperative or other agreements, loans, or payments from NASA. These individuals include: Current and former employees of NASA; consultants; contractors; grantees; advisory committee members or others who have received funds from NASA for performing services or have otherwise transacted business with or affected NASA.

Information in this system will be obtained from the following systems of records maintained by NASA: Biographical Records for Public Affairs (System Number 10BRPA), NASA Foreign National Management System (System Number 10FNMS), Integrated Enterprise Management Program (IEMP)—Core Financial System (System Number 10IEM1), NASA Education Program Evaluation System (System Number 10EDUA), Government Motor Vehicle Operators Permit Records (System Number 10GMVP), NASA Guest Operations System (System Number 10GOS), Inspector General Investigations Case Files (System Number 10IGIC), NASA Personnel and Payroll Systems (System Number 10NPPS), Parking and Transit System (System Number 10PATS), Security Records System (System Number 10SECR), Special Personnel Records (System Number 10SPER), Exchange Records on Individuals (System Number 10XROI), Johnson Space Center Exchange Activities Records (System Number 72XOPR).

Information for the ADAS may also be obtained from systems of records maintained by other government agencies. All applicable provisions of the Privacy Act, including relevant portions of the Computer Matching Act, will be observed when obtaining and maintaining such records in the ADAS.

This new system of records notice is being established because it will involve the new use of records covered by existing NASA systems of records. This new system of records will be used to identify internal control weaknesses and to identify system issues to improve methods of data modeling and annual audit planning. This system will provide the NASA Office of Inspector General (OIG) with access to a single repository of data that currently resides in many, different NASA systems of records. The NASA OIG will conduct data modeling on this data, using

statistical and mathematical techniques, in order to predict anomalies indicating suspicious or fraudulent activity.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix, Inspectors General, including the NASA Inspector General, are responsible for conducting, supervising, and coordinating audits and investigations, relating to programs and operations of the Federal agency for which their office is established. This system of records facilitates OIG's performance of this statutory duty.

#### Electronic Access to This Document

You can view this document, as well as all other NASA documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <https://www.federalregister.gov/agencies/national-aeronautics-and-space-administration>.

#### Paul K. Martin,

NASA Inspector General.

For the reasons discussed in the preamble, the NASA Inspector General publishes a notice of a new system of records to read as follows:

#### NASA 10IGDA

##### SYSTEM NAME:

The Office of Inspector General Advanced Data Analytics System (ADAS).

##### SECURITY CLASSIFICATION:

None.

##### SYSTEM LOCATION:

The NASA Office of Inspector General, Advanced Data Analytics Program (ADAP), 300 E Street SW., Suite 8W37, Washington, DC 20546.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will include records on individuals that are obtained from the following other systems of records maintained by NASA:

*Biographical Records for Public Affairs (System Number 10BRPA)*

This system maintains information on principal and prominent management and staff officials, program and project managers, scientists, engineers, speakers, other selected employees involved in newsworthy activities, and other participants in Agency programs.

*NASA Foreign National Management System (System Number 10FNMS)*

This system maintains information on all non-U.S. citizens, to include Lawful Permanent Residents seeking access to NASA facilities, resources, laboratories,

contractor sites, Federally Funded Research and Development Centers or NASA sponsored events for unclassified purposes to include employees of NASA or NASA contractors; prospective NASA or NASA contractor employees; employees of other U.S. Government agencies or their contractors of universities, of companies (professional or service staff), or of other institutions; foreign students at U.S. institutions; officials or other persons employed by foreign governments or other foreign institutions who may or may not be involved in cooperation with NASA under international agreements; permanent resident aliens; foreign media representatives; and representatives or agents of foreign national governments seeking access to NASA facilities, to include high-level protocol visits; or international relations.

*Integrated Enterprise Management Program (IEMP)-Core Financial System (System Number 10IEM1)*

Individuals covered by the NASA Core Financial (CF) System include former and current NASA employees and non-NASA individuals requiring any type of payment.

*NASA Education Program Evaluation System (System Number 10EDUA)*

This system maintains information on NASA civil servants and contractors serving as Education Program/Project Managers and Session Presenters, as well as on Program Participants and members of the public including students (K-12 and Higher Education), teachers, faculty, school administrators, and participants' parents/guardians/family members. Records are also maintained on the performance outcomes by Principal Investigators and their institutions and organizations that have been awarded grants under the Minority University Research and Education Program.

*Government Motor Vehicle Operators Permit Records (System Number 10GMVP)*

This system maintains information on NASA employees and contractor employees.

*NASA Guest Operations System (System Number 10GOS)*

This system maintains information on individuals who have been invited to attend NASA events. These individuals can be members of the NASA community such as principal and prominent management and staff officials, program and project managers, scientists, engineers, speakers, other selected employees involved in newsworthy activities, and other

participants in Agency programs, as well members of the general public who are invited to attend NASA events.

*Inspector General Investigations Case Files (System Number 10IGIC)*

This system maintains information on current and former employees of NASA, contractors, and subcontractors, and others whose actions have affected NASA and who have been audited or investigated by NASA OIG pursuant to the Inspector General Act of 1978, as amended.

*NASA Personnel and Payroll Systems (System Number 10NPPS)*

This system maintains information on present and former NASA employees.

*Parking and Transit System (System Number 10PATS)*

This system maintains information on NASA civil servants and contractors who are holders of parking permits; applicants or members of carpools, vanpools and other ridesharing programs; applicants and recipients of fare subsidies issued by NASA; and applicants for other NASA transit benefit programs.

*Security Records System (System Number 10SECR)*

This system maintains information on Civil Servant Employees, applicants, NASA committee members, NASA consultants, NASA experts, NASA Resident Research Associates, guest workers, contractor employees, detailees, visitors, correspondents (written and telephonic), Faculty Fellows, Intergovernmental Personnel Mobility Act (IPMA) Employees, Grantees, Cooperative Employees, and Remote Users of NASA Non-Public Information Technology Resources. This system also maintains information on all non-U.S. citizens, to include Lawful Permanent Residents seeking access to NASA facilities, resources, laboratories, contractor sites, Federally Funded Research and Development Centers or NASA sponsored events for unclassified purposes to include employees of NASA or NASA contractors; prospective NASA or NASA contractor employees; employees of other U.S. Government agencies or their contractors; foreign students at U.S. institutions; officials or other persons employed by foreign governments or other foreign institutions who may or may not be involved in cooperation with NASA under international agreements; foreign media representatives; and representatives or agents of foreign national governments seeking access to NASA facilities, to include high-level protocol visits; or international relations.

*Special Personnel Records (System Number 10SPER)*

This system maintains information on candidates for and recipients of awards or NASA training; civilian and active duty military detailees to NASA; participants in enrollee programs; Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; NASA contract and grant awardees and their associates having access to NASA premises and records; individuals with interest in NASA matters including Advisory Committee Members; NASA employees and family members, prospective employees and former employees; former and current participants in existing and future educational programs, including the Summer High School Apprenticeship Research Program (SHARP).

*Exchange Records on Individuals (System Number 10XROI)*

This system maintains information on present and former employees of, and applicants for employment with, NASA Exchanges, recreational associations, and employees' clubs at NASA Centers, and civil servant and contractor members of or participants in NASA Exchange programs, activities, clubs and/or recreational associations. Finally, the system maintains information on children, and their parents or guardians, who participate in Exchange-operated child care and educational development programs.

*Johnson Space Center Exchange Activities Records (System Number 72XOPR)*

This system maintains information on employees and past employees of Johnson Space Center (JSC) Exchange Operations, applicants under the JSC Exchange Scholarship Program, and JSC employees or JSC contractor employees participating in sports or special activities sponsored by the Exchange.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system will include records that are obtained from the following other systems of records maintained by NASA:

*Biographical Records for Public Affairs (System Number 10BRPA)*

Current biographical information about the individuals with a recent photograph when available. Data items are those generally required by NASA or the news media in preparing news or feature stories about the individual and/or the individual's activity with NASA.

*NASA Foreign National Management System (System Number 10FNMS)*

Records in this system include information about the individuals seeking access to NASA resources. Information about individual may include, but is not limited to: Name, home address, place of birth and citizenship, U.S. visitor/travel document numbers, employment information, Tax Identification Numbers (Social Security Number), and reason and length of proposed NASA access.

*Integrated Enterprise Management Program (IEMP)—Core Financial System (System Number 10IEM1)*

Records in this system may include information about the individuals including Social Security Number (Tax Identification Number), home address, telephone number, email address, and bank account information.

*NASA Education Program Evaluation System (System Number 10EDUA)*

Records in the system include identifying information about students enrolled in and/or graduated from NASA programs and whether students are promoted to the next grade level in math and/or science. Personal data is also maintained on Program managers, Program points of contact, and Session Presenters including information that includes, but is not limited to name, work address and telephone. Information about Program participants includes, but is not limited to, name, permanent and school addresses, ethnicity, gender, school grade or college level, highest attained degree and degree field, institution type, and ratings about program/experience.

*Government Motor Vehicle Operators Permit Records (System Number 10GMVP)*

Name, home address, Social Security Number, physical description of individual, physical condition of individual, traffic record.

*NASA Guest Operations System (System Number 10GOS)*

Records in this system may include personal information about the individuals invited or attending events, such as their names, home addresses, nationality and passport information.

*Inspector General Investigations Case Files (System Number 10IGIC)*

Case files pertaining to matters including, but not limited to, the following classifications of cases: (1) Fraud against the Government, (2) theft of Government property, (3) bribery, (4) lost or stolen lunar samples, (5) misuse of Government property, (6) conflict of interest, (7) waiver of claim for overpayment of pay, (8) leaks of Source Evaluation Board information; (9) improper personal conduct, (10)

irregularities in awarding contracts; (11) computer crimes; (12) research misconduct; and (13) whistleblower protection under the Federal Acquisition Streamlining Act and the NASA Federal Acquisition Regulation Supplement.

*NASA Personnel and Payroll Systems (System Number 10NPPS)*

The data contained in this system of records includes payroll, employee leave, insurance, labor and human resource distribution and overtime information.

*Parking and Transit System (System Number 10PATs)*

Records in this system may include information about individuals, including name, home address, badge number, monthly commuting cost, email address, years of government service, grade, personal vehicle make and model, and person vehicle license number. These records may be captured as parking, rideshare, or other transit program applications, status or participation reports of individuals' participation in the programs.

*Security Records System (System Number 10SECR)*

Personnel Security Records, Personal Identity Records including NASA visitor files, Emergency Data Records, Criminal Matters, Traffic Management Records, and Access Management Records. Specific records fields include, but are not limited to: Name, former names, date of birth, place of birth, social security number, home address, phone numbers, citizenship, traffic infraction, security violation, security incident, security violation discipline status and action taken.

*Special Personnel Records (System Number 10SPER)*

Special Program Files including: (1) Alien Scientist files; (2) Award files; (3) Counseling files, Life and Health Insurance, Retirement, Upward Mobility, and Work Injury Counseling files; (4) Military and Civilian Detailee files; (5) Personnel Development files such as nominations for and records of training or education, Upward Mobility Program files, Intern Program files, Apprentice files, and Enrollee Program files; (6) Special Employment files such as Federal Junior Fellowship Program files, Stay-in-School Program files, Summer Employment files, Worker-Trainee Opportunity Program files, NASA Executive Position files, Expert and Consultant files, and Cooperative Education Program files; (7) Welfare to Work files; and (8) Supervisory Appraisals under Competitive Placement Plan.



Correspondence and related information including: (1) Claims correspondence and records about insurance such as life, health, and travel; (2) Congressional and other Special Interest correspondence, including employment inquiries; (3) Correspondence and records concerning travel related to permanent change of address; (4) Debt complaint correspondence; (5) Employment interview records; (6) Information related to outside employment and activities of NASA employees; (7) Placement follow-ups; (8) Pre-employment inquiries and reference checks; (9) Preliminary records related to possible adverse actions; (10) Records related to reductions in force; (11) Records under administrative as well as negotiated grievance procedures; (12) Separation information including exit interview records, death certificates and other information concerning death, retirement records, and other information pertaining to separated employees; (13) Special planning analysis and administrative information; (14) Performance appraisal records; (15) Working papers for prospective or pending retirements.

Special Records and Rosters including: (1) Locator files, (2) Ranking lists of employees; (3) Re-promotion candidate lists; (4) Retired military employee records; (5) Retiree records; (6) Follow-up records for educational programs, such as the SHARP and other existing or future programs.

Agency-wide and Center automated personnel information: Rosters, applications, recommendations, assignment information and evaluations of Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; also, information about NASA contract and grant awardees and their associates having access to NASA premises and records.

Information about members of advisory committees and similar organizations: All NASA-maintained information of the same types as, but not limited to, that information required in systems of records for which the Office of Personnel Management and other Federal personnel-related agencies publish Government wide Privacy Act Notices in the **Federal Register**.

*Exchange Records on Individuals (System Number 10XROI)*

For present and former employees of NASA Exchange entities including child care and educational development center programs, records in the system relate to personnel actions and

determinations during their application to and employment by the NASA Exchange. Records contain information about individuals and their employment such as name, birth date, Social Security Number, home contact information, marital status, references, veteran preference, tenure, disabilities, position description, unemployment claims; salary, leave and payroll deduction information; and job performance and personnel actions.

For civil servants, contractors, and others who apply for and participate in Exchange-sponsored programs, activities, clubs and/or recreational associations, records include employee or contractor identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

For current or former participants in Exchange-operated child care and development centers, records in the system include identification and other information facilitating enrollment in the entity and proper care of the children. Records include information such as home and work addresses, email addresses, and telephone numbers; financial payment information; emergency contact names, addresses and telephone numbers; children's names and pictures as well as their health care and insurance providers; medical histories; physical, emotional, or other special care requirements; and child care and educational development center correspondence with parents/guardians such as authorizations to release the child to another person or field trip permission slips.

*Johnson Space Center Exchange Activities Records (System Number 72XOPR)*

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; Social Security Number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction in force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and

retirement benefits; designation of beneficiary; training; performance ratings; physical examinations; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For successful applicants under the JSC Exchange Scholarship Program, the system contains financial transactions or holdings, employment history, medical data and other related information supplied by the individual Center employees who applied for the Exchange Scholarship.

For participants in social or sports activities sponsored by the Exchange, information includes employees' or contractors' employee identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Inspector General Act of 1978, as amended, 5 U.S.C. Appendix.

**PURPOSE(S):**

This system of records is maintained for the general purpose of enabling OIG to fulfill the requirements of section (4)(a)(1) and (3) of the Inspector General Act of 1978, as amended, which requires OIG to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of NASA and to conduct, supervise and coordinate activities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the programs and operations of NASA. This system is maintained for the purpose of improving the efficiency, quality, and accuracy of existing data collected by NASA. Records in this system will be used to conduct data modeling for indications of fraud, abuse and internal control weaknesses concerning NASA programs and operations. The result of that data modeling may be used in the conduct of audits, investigations, inspections or other activities as necessary to prevent and detect waste, fraud and abuse and to promote economy and efficiency in NASA programs and operations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:**

The NASA OIG may disclose information contained in a record in this system of records without the consent of the individual if the

disclosure is compatible with the purpose for which the record was collected, under the following routine uses. The NASA OIG may make these disclosures on a case-by-case basis or, if it has met the applicable requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement.

(1) Responding to the White House, the Office of Management and Budget, and other organizations in the Executive Office of the President regarding matters inquired of; (2) disclosure to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual; (3) providing data to Federal intelligence elements; (4) providing data to any source from which information is requested in the course of an investigation, and to identify the type of information requested; (5) providing personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigations; (6) disclosing, as necessary, to a contractor, subcontractor, or grantee firm or institution, to the extent that the disclosure is in NASA's interest and is relevant and necessary in order that the contractor, subcontractor, or grantee is able to take administrative or corrective action; (7) disclosing to any official (including members of the Council of Inspectors General on Integrity and Efficiency (CIGIE) and staff and authorized officials of the Department of Justice and Federal Bureau of Investigation) charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in Office of Inspector General (OIG) operations; (8) disclosing to members of the CIGIE for the preparation of reports to the President and Congress on the activities of the Inspectors General; (9) disclosing to the public when: The matter under investigation has become public knowledge, or when the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the OIG investigative process, or to demonstrate the accountability of NASA officers, or employees, or other individuals covered by this system, unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (10) disclosing to the news media and public when there exists a legitimate public interest (*e.g.*, to

provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property; (11) disclosing to any individual or entity when necessary to elicit information that will assist an OIG investigation or audit; (12) disclosing to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim; (13) disclosing to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, who have a need to know such information in order to accomplish an agency function; (14) NASA standard routine uses as set forth in Appendix B.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are maintained as hard-copy documents and on electronic media.

**RETRIEVABILITY:**

Records in this system of records are retrieved by name or other identifying information of an individual or institution.

**SAFEGUARDS:**

Records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Approved security plans are in place for systems containing the records in accordance with OMB Circular A-130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor

hardware token authentication. Non-electronic records are secured in locked rooms or files.

**RETENTION AND DISPOSAL:**

Records are maintained in Agency files and destroyed in accordance with NASA Procedural Requirements (NPR) 1441.1, NASA Records Retention Schedules, Schedule 9. Files containing information of an investigative nature but not related to a specific investigation are destroyed in accordance with NPR 1441.1.

**SYSTEM MANAGER AND ADDRESS:**

James L. Morrison, Assistant Inspector General for Audits, NASA Office of Inspector General, 300 E Street SW., Suite 8W37, Washington, DC 20546-0001.

**NOTIFICATION PROCEDURE:**

Individuals interested in inquiring about their records should notify the System Manager at the address given above.

**RECORD ACCESS PROCEDURE:**

The NASA regulations governing access to records and the procedures for contesting the contents and appealing initial determinations are set forth in 14 CFR part 1212.

**CONTESTING RECORD PROCEDURE:**

The NASA regulations governing access to records and the procedures for contesting the contents and appealing initial determinations are set forth in 14 CFR part 1212.

**RECORD SOURCE CATEGORIES:**

This system contains records taken from the following NASA systems: Biographical Records for Public Affairs (System Number 10BRPA), NASA Foreign National Management System (System Number 10FNMS), Integrated Enterprise Management Program (IEMP)-Core Financial System (System Number 10IEM1), NASA Education Program Evaluation System (System Number 10EDUA, Government Motor Vehicle Operators Permit Records (System Number 10GMVP), NASA Guest Operations System (System Number 10GOS), Inspector General Investigations Case Files (System Number 10IGIC), NASA Personnel and Payroll Systems (System Number 10NPPS), Parking and Transit System (System Number 10PATS), Security Records System (System Number 10SECR), Special Personnel Records (System Number 10SPER), Exchange Records on Individuals (System Number 10XROI), Johnson Space Center Exchange Activities Records (System Number 72XOPR), as well as records

from other agencies pursuant to an applicable computer matching agreement.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

As described above, the ADAS will consist primarily of records compiled from existing systems of records maintained by NASA and other Federal agencies. The OIG will continue to apply to individual records within the ADAS any Privacy Act exemptions which apply to the system(s) from which the relevant record(s) originated. The Privacy Act Systems of Records Notices which describe in detail the exemptions claimed for each NASA system from which ADAS records will be derived can be found online at the following Web address: [http://www.nasa.gov/privacy/nasa\\_sorn\\_index.html](http://www.nasa.gov/privacy/nasa_sorn_index.html).

[FR Doc. 2015-29630 Filed 11-19-15; 8:45 am]

BILLING CODE 7510-13-P

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

*Date/Time:*  
December 14, 2015; 9:00 a.m. to 5:00 p.m.  
December 15, 2015; 9:00 a.m. to 12:30 p.m.  
*Place:* National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235, Arlington, VA 22230.

*Type of Meeting:* OPEN  
*Contact Person:* Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703-292-8700.

*Summary of Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

#### Agenda

Monday, December 14, 2015

- SBE Directorate Update
- Division of Behavioral and Cognitive Sciences Committee of Visitors Report
- SBE Office of Multidisciplinary Activities Committee of Visitors Report
- Robust and Reliable Science
- Office of Science and Technology Policy Behavioral Insights Team Activities

- NSF activities and Strategies Related to Graduate Education

Tuesday, December 15, 2015

- Communications
- Next Steps in Transformational SBE Science
- Meeting with NSF Leadership
- Agenda and Dates for Future Meetings, Assignments and Concluding Remarks

Dated: November 17, 2015.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2015-29647 Filed 11-19-15; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: <http://www.nsf.gov/events/>. This information may also be requested by telephoning, 703/292-8687.

Dated: November 17, 2015.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2015-29648 Filed 11-19-15; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of an addition to the agenda of a session of the board meeting on November 19, 2015, as shown below. The original notice appeared in the **Federal Register** on November 13, 2015 at 80 FR 70259.

#### Original Agenda

##### Plenary Board Meeting

- Open Session: 1:55-2:10 p.m.
- NSB Chair's opening remarks
  - NSF Director's remarks
  - Approval of plenary open session minutes for August 2015 meeting
  - Approval of the 2014 Annual Portfolio Review
  - Confirm *ad hoc* Honorary Awards Committee as a standing committee
  - Approval of the 2016 SEI Overview and Digest
  - Approval of the OIG Semiannual Report to Congress
  - Open committee reports
  - NSB Chair's closing remarks

#### Updated Agenda

##### Plenary Board Meeting

- Open Session: 1:55-2:10 p.m.
- NSB Chair's opening remarks
  - NSF Director's remarks
  - Approval of plenary open session minutes for August 2015 meeting
  - Approval of the 2014 Annual Portfolio Review
  - Confirm *ad hoc* Honorary Awards Committee as a standing committee
  - Approval of the 2016 SEI Overview and Digest
  - Approval of the OIG Semiannual Report to Congress
  - Approval of Proposed Policy Statement and Resolution for Recompensation
  - Open committee reports
  - NSB Chair's closing remarks

Updates: Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be

found at <http://www.nsf.gov/nsb/meetings/notices.jsp>.

**Kyscha Slater-Williams,**

*Program Specialist, National Science Board.*

[FR Doc. 2015-29806 Filed 11-18-15; 4:15 pm]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-043; NRC-2014-0149]

### Early Site Permit for the PSEG Site

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final environmental impact statement; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), Philadelphia District, have completed the final environmental impact statement (EIS), NUREG-2168, “Environmental Impact Statement for an Early Site Permit (ESP) at the PSEG Site: Final Report” for the PSEG Site ESP application in accordance with the National Environmental Policy Act of 1969, as amended. The USACE is cooperating agency with the NRC in the preparation of information in the final EIS for use in both agencies’ decision-making processes. The site is located in Salem County, New Jersey.

**DATES:** The final EIS is available as of November 13, 2015.

**ADDRESSES:** Please refer to Docket ID NRC-2014-0149, when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0149. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The final EIS and an accompanying reader’s guide are available in ADAMS under Accession No. ML15176A444.

- *NRC’s Public Document Room:* 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:

Allen Fetter, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-8556, email: [Allen.Fetter@nrc.gov](mailto:Allen.Fetter@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with § 51.118 of title 10 of the *Code of Federal Regulations*, the NRC is issuing the NUREG-2168, “Environmental Impact Statement for an Early Site Permit at the PSEG Site: Final Report.” A notice of availability of the draft EIS was published by the NRC in the **Federal Register** on August 22, 2014 (79 FR 49820) and also noticed by the U.S. Environmental Protection Agency on August 29, 2014 (79 FR 49774). The public comment period was extended on the draft EIS until December 6, 2014, and the comments received are addressed in the final EIS. The final EIS is available for public inspection as indicated in the **ADDRESSES** section of this document, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey, 08079. The final EIS also can be accessed online at the PSEG ESP specific Web page at <http://www.nrc.gov/reactors/new-reactors/esp/pseg.html>.

The final EIS also supports the USACE’s review of the Department of the Army permit application for certain construction activities on the PSEG site. The USACE’s Department of the Army permit application number for the PSEG site project is CENAP-OP-R-2009-0157-45. The USACE’s Public Interest Review will be part of its Record of Decision and is not addressed in the final EIS.

##### II. Discussion

As discussed in the final EIS, the NRC staff’s recommendation related to the environmental aspects of the proposed action is that the ESP should be issued. This recommendation is based on: (1) The environmental report (ER) submitted by PSEG Power, LLC, and PSEG Nuclear, LLC (PSEG), as revised; (2) consultation with Federal, State, Tribal and local agencies; (3) the NRC staff’s independent review; (4) the NRC

staff’s consideration of comments received during the environmental review; and (5) the assessments summarized in the final EIS, including the potential mitigation measures identified in the ER and in the final EIS. In addition, in making its preliminary recommendation, the NRC staff has concluded that there are no environmentally preferable or obviously superior sites in the region of interest.

Dated at Rockville, Maryland, this 13th day of November, 2015.

For the Nuclear Regulatory Commission.

**Frank Akstulewicz,**

*Director, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2015-29698 Filed 11-19-15; 8:45 am]

**BILLING CODE 7590-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Thursday, December 10, 2015, 2 p.m. (OPEN Portion) 2:15 p.m. (CLOSED Portion)

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Meeting OPEN to the Public from 2 p.m. to 2:15 p.m. Closed portion will commence at 2:15 p.m. (approx.).

#### Matters To Be Considered

1. President’s Report
2. Tribute—Naomi Walker
3. Minutes of the Open Session of the September 17, 2015 Board of Directors Meeting

#### Further Matters To Be Considered (Closed to the Public 2:15 p.m.)

1. Finance Project—Africa, South Asia
2. Finance Project—Colombia, Mexico, Peru
3. Finance Project—Asia, Africa
4. Finance Project—Asia, Africa
5. Finance Project—South and Southeast Asia
6. Finance Project—Sub-Saharan Africa
7. Finance Project—Global
8. Finance Project—Sub-Saharan Africa
9. Finance Project—Turkey
10. Minutes of the Closed Session of the September 17, 2015 Board of Directors Meeting
11. Reports
12. Pending Projects

#### FOR MORE INFORMATION CONTACT:

Information on the meeting may be obtained from Catherine F. I. Andrade at (202) 336-8768, or via email at [Catherine.Andrade@opic.gov](mailto:Catherine.Andrade@opic.gov).

Dated: November 18, 2015.

**Catherine F.I. Andrade,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 2015-29766 Filed 11-18-15; 11:15 am]

**BILLING CODE 3210-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Health Benefits Election Form, OPM 2809, 3206-0141

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Healthcare & Insurance/Federal Employee Insurance Operations (FEIO), Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206-0141, Health Benefits Election Form. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July 8, 2015 at Volume 80 FR 339165 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until December 21, 2015. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

OPM 2809, Health Benefits Election form, is used by annuitants and former spouses to elect, cancel, suspend, or change health benefits enrollment during periods other than open season.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Health Benefits Election Form.

*OMB Number:* 3206-0141.

*Frequency:* On Occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 30,000.

*Estimated Time per Respondent:* 30 minutes.

*Total Burden Hours:* 11,667.

U.S. Office of Personnel Management.

**Beth F. Cobert,**

*Acting Director.*

[FR Doc. 2015-29584 Filed 11-19-15; 8:45 am]

**BILLING CODE 6325-38-P**

## OFFICE OF PERSONNEL MANAGEMENT

### President's Commission on White House Fellowships Advisory Committee: Closed Meeting

**AGENCY:** President's Commission on White House Fellowships, U.S. Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Commission on White House Fellowships (PCWHF) was established by an Executive Order in 1964. The PCWHF is an advisory

committee composed of Special Government Employees appointed by the President. The Advisory Committee meet in June to interview potential candidates for recommendation to become a White House Fellow.

The meeting is closed.

*Name of Committee:* President's Commission on White House Fellowships Selection Weekend.

*Date:* January 25, 2016.

*Time:* 8:00 a.m.–5:30 p.m.

*Place:* Eisenhower Executive Office Building, Washington, DC.

*Agenda:* The Commission will talk to current Fellows on how their placements are going and discussion on Selection Weekend and Recruitment.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Y. Kaplan, 712 Jackson Place NW., Washington, DC 20503, Phone: 202-395-4522.

President's Commission on White House Fellowships.

**Jennifer Paolino,**

*Deputy Director.*

[FR Doc. 2015-29585 Filed 11-19-15; 8:45 am]

**BILLING CODE 6325-44-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Senior Executive Service Performance Review Board

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the OPM Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Sara Saphos, Employee Services—OPM Human Resources, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606-0832.

**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. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

**Beth F. Cobert,**

*Acting Director.*

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Kiran Ahuja, Chief of Staff  
 Angela Bailey, Chief Operating Officer  
 Michael Grant, White House Liaison  
 Dennis Coleman, Chief Financial Officer  
 Jonathan Foley, Director—Office of  
 Planning and Policy Analysis  
 Kenneth Zawodny, Associate Director  
 for Retirement Services  
 Joseph Kennedy, Associate Director for  
 Human Resources Solutions  
 Mark Reinhold, Associate Director for  
 Employee Services and Chief Human  
 Capital Officer  
 Andrea Bright, Deputy Associate  
 Director for Human Resources—  
 Executive Secretariat

[FR Doc. 2015-29588 Filed 11-19-15; 8:45 am]

BILLING CODE 6325-45-P

## POSTAL REGULATORY COMMISSION

[Docket No. R2016-1; Order No. 2819]

### International Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning a Type 2 rate adjustment and the filing of a related negotiated service agreement with Korea Post. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* November 23, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Contents of Filing
- III. Commission Action
- IV. Ordering Paragraphs

#### I. Introduction

On November 13, 2015, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing a Type 2 rate adjustment to improve default rates established under the Universal Postal Union (UPU) Acts.<sup>1</sup> The Notice

concerns the inbound portion of a Multi-Product Bilateral Agreement with Korea Post (Agreement) that the Postal Service contends is functionally equivalent to the baseline agreement with China Post (China Post 2010 Agreement) that the Commission included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product in the market dominant product list of the Mail Classification Schedule.<sup>2</sup> Notice at 1–2.

#### II. Contents of Filing

The Postal Service's filing consists of the Notice, two attachments, and redacted and unredacted versions of an Excel file with supporting financial workpapers. Notice at 2. Attachment 1 is an application for non-public treatment of material filed under seal with the Commission. Attachment 2 is a redacted copy of the Agreement. *Id.*

The Postal Service states the intended effective date of the Agreement is January 1, 2016; asserts it is providing at least the 45 days advance notice required under 39 CFR 3010.41; and identifies the parties to the Agreement as the United States Postal Service and Korea Post, the postal operator for the Republic of Korea. *Id.* at 2–3.

The Postal Service states that the Agreement includes: Revised rates and terms for small packets with delivery scanning; improvement to labels; use of Postal Service barcodes to facilitate sortation; and sortation recommendations. *Id.* at 4.

**Reporting requirements.** 39 CFR 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection plan for the Agreement, the Postal Service proposes to report information on the Agreement through the Annual Compliance Report. *Id.* at 6. The Postal Service also invokes, with respect to service performance measurement reporting under 39 CFR 3055.3(a)(3), the standing exception the Commission allowed in Order No. 996 for all agreements filed in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.<sup>3</sup>

Functionally Equivalent Agreement, November 13, 2015, at 1 (Notice).

<sup>2</sup> See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

<sup>3</sup> *Id.*, citing Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

**Consistency with applicable statutory criteria.** The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria under 39 U.S.C. 3622(c)(10), as identified in 39 CFR 3010.40, *i.e.*, whether the agreement: (1) Improves the Postal Service's net financial position or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 7. The Postal Service asserts that it addresses the first two criteria in its Notice and that the third is inapplicable, as there are no entities similarly situated to Korea Post in terms of its ability to tender broad-based small packet flows from Korea. *Id.*

**Functional equivalence.** The Postal Service addresses reasons why it considers the Agreement functionally equivalent to the China Post 2010 Agreement filed in Docket No. R2010-6.<sup>4</sup> The Postal Service identifies differences between the Agreement and the baseline agreement, but asserts that these differences do not detract from the conclusion that the Agreement is functionally equivalent to the baseline agreement. *Id.*

#### III. Commission Action

The Commission, in conformance with rule 3010.44, establishes Docket No. R2016-1 to consider issues raised in the Notice. The Commission invites comments from interested persons on whether the Agreement is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than November 23, 2015. The public portions of this filing can be accessed via the Commission's Web site (<http://www.prc.gov>). Information on how to obtain access to non-public material appears in 39 CFR part 3007.

The Commission appoints James F. Callow to represent the interests of the general public (Public Representative) in this docket.

#### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. R2016-1 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

<sup>4</sup> *Id.* at 8–9; see Order No. 549.

<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing

3. Comments by interested persons in this proceeding are due no later than November 23, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**  
Secretary.

[FR Doc. 2015-29621 Filed 11-19-15; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

### Sunshine Act Meetings; Amended Notice

This is an amendment to the Sunshine Act meeting notice of the Postal Regulatory Commission published in the **Federal Register** of May 15, 2015 (80 FR 28015). The amendment is being made to update the agenda and contact person for the December 3, 2015, meeting.

**TIMES AND DATES:** December 3, 2015, at 11 a.m.

#### Portions Open to the Public

1. Report from the Office of Public Affairs and Government Relations.

2. Report from the Office of the General Counsel.

3. Report from the Office of Accountability and Compliance.

4. Commissioners Vote to designate new Vice-Chairman of the Commission pursuant to 39 U.S.C. 502(e).

#### CONTACT PERSON FOR MORE INFORMATION:

David A. Trissell, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001, at 202-789-6820 (for agenda-related inquiries) and Stacy L. Ruble, Secretary of the Commission, at 202-789-6800 or [stacy.ruble@prc.gov](mailto:stacy.ruble@prc.gov) (for inquiries related to meeting location, changes in date or time of the meeting, access for handicapped or disabled persons, the audiocast, or similar matters). The Commission's Web site may also provide information on changes in the date or time of the meeting.

By direction of the Commission.

**Stacy L. Ruble,**  
Secretary.

[FR Doc. 2015-29777 Filed 11-18-15; 4:15 pm]

**BILLING CODE 7710-FW-P**

## RAILROAD RETIREMENT BOARD

### 2016 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2015, is \$120,082,848.11;

2. The September 30, 2015, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is \$4,226,071,387.68 as of June 30, 2015;

4. The cumulative system unallocated charge balance is (\$393,458,771.03) as of June 30, 2015;

5. The pooled credit ratio for calendar year 2016 is zero;

6. The pooled charged ratio for calendar year 2016 is zero;

7. The surcharge rate for calendar year 2016 is 1.5 percent;

8. The monthly compensation base under section 1(i) of the Act is \$1,455 for months in calendar year 2016;

9. The amount described in sections 1(k) and 3 of the Act as "2.5 times the monthly compensation base" is \$3,637.50 for base year (calendar year) 2016;

10. The amount described in section 4(a-2)(i)(A) of the Act as "2.5 times the monthly compensation base" is \$3,637.50 with respect to disqualifications ending in calendar year 2016;

11. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to \$775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to \$600" is \$1,879 for months in calendar year 2016;

12. The maximum daily benefit rate under section 2(a)(3) of the Act is \$72 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2016.

**DATES:** The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2015. The balance in notice (2) is based on data as of September 30, 2015. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2016. The determinations made in notices (8) through (11) are effective January 1, 2016. The determination made in notice (12) is effective for registration periods beginning after June 30, 2016.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611-2092.

#### FOR FURTHER INFORMATION CONTACT:

Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611-2092, telephone (312) 751-4779.

**SUPPLEMENTARY INFORMATION:** The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100-647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2015, the computation of the calendar year 2016 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a-2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2016, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2016.

#### Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of \$100 million or the amount that bears the same ratio to \$100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than \$100 million (as indexed), but at least \$50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than \$50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The ratio of the June 30, 2015 system compensation base of \$4,226,071,387.68 to the June 30, 1991 system compensation base of \$2,763,287,237.04 is 1.52936377. Multiplying 1.52936377 by \$100 million yields \$152,936,377.00. Multiplying \$50 million by 1.52936377 produces \$76,468,188.50. The Account balance on June 30, 2015, was \$120,082,848.11. Accordingly, the surcharge rate for calendar year 2016 is 1.5 percent.

### Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2016 shall be equal to the greater of (a) \$600 or (b)  $\$600 [1 + \{(A - 37,800)/56,700\}]$ , where A equals the amount of the applicable base with respect to tier 1 taxes for 2016 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5.

Using the calendar year 2016 tier 1 tax base of \$118,500 for A above produces the amount of \$1,453.97, which must then be rounded to \$1,455. Accordingly, the monthly compensation base is determined to be \$1,455 for months in calendar year 2016.

### Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a-2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a-2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2016 monthly compensation base of \$1,455 produces \$3,637.50. Accordingly, the amount determined under sections 1(k), 3 and 4(a-2)(i)(A) is \$3,637.50 for calendar year 2016.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an

employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to \$775 as the monthly compensation base for that year bears to \$600 shall be taken into account.

The calendar year 2016 monthly compensation base is \$1,455. The ratio of \$1,455 to \$600 is 2.42500000. Multiplying 2.42500000 by \$775 produces \$1,879. Accordingly, the amount determined under section 2(c) is \$1,879 for months in calendar year 2016.

### Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2016, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of \$1, it shall be rounded down to the nearest multiple of \$1.

The calendar year 2015 monthly compensation base is \$1,455. Multiplying \$1,455 by 0.05 yields \$72.75. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2016, is determined to be \$72.

Dated: November 17, 2015.

By Authority of the Board.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2015-29656 Filed 11-19-15; 8:45 am]

**BILLING CODE 7905-01-P**

### OFFICE OF SCIENCE AND TECHNOLOGY POLICY

#### Notice of Public Meeting of the U.S.-EU Communities of Research on Environmental, Health, and Safety Issues Related to Nanomaterials

**ACTION:** Notice of public meetings.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf

of the Nanoscale Science, Engineering, and Technology Subcommittee of the Committee on Technology, National Science and Technology Council and in collaboration with the European Commission, will host meetings for the U.S.-EU Communities of Research (CORs) on the topic of environmental, health, and safety issues related to nanomaterials (nanoEHS) between the publication date of this Notice and September 30, 2016. The CORs are a platform for scientists to develop a shared repertoire of protocols and methods to overcome research gaps and barriers. The co-chairs for each COR will convene meetings and set meeting agendas with administrative support from the European Commission and the NNCO.

**DATES:** The CORs will hold multiple webinars and/or conference calls between the publication date of this Notice and September 30, 2016.

**ADDRESSES:** Teleconferences and web meetings for the CORs will take place periodically between the publication date of this Notice and September 30, 2016. Meeting dates, call-in information, and other COR updates will be posted on the Community of Research page at <http://us-eu.org/>.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Stacey Standridge at National Nanotechnology Coordination Office, by telephone (703-292-8103) or email ([sstandridge@nnco.nano.gov](mailto:sstandridge@nnco.nano.gov)). Additional information about the CORs and their upcoming meetings is posted at <http://us-eu.org/>.

**SUPPLEMENTARY INFORMATION:** There are seven Communities of Research addressing complementary themes:

- Characterization
- Databases and Computational Modeling for NanoEHS
- Exposure through Product Life
- Ecotoxicity
- Human Toxicity
- Risk Assessment
- Risk Management and Control

The CORs directly address Objectives 4.1.4 ("Participate in international efforts, particularly those aimed at generating [nanoEHS] best practices") and 4.2.3 ("Participate in coordinated international efforts focused on sharing data, guidance, and best practices for environmental and human risk assessment and management") of the 2014 National Nanotechnology Initiative Strategic Plan (see <http://www.nano.gov/2014StrategicPlan>). However, the CORs are not envisioned to provide any government agency with advice or recommendations.



*Registration:* Individuals wishing to participate in any of the CORs should send the participant's name, affiliation, and country of residence to [sstandridge@nnco.nano.gov](mailto:sstandridge@nnco.nano.gov) or mail the information to Stacey Standridge, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. NNCO will collect email addresses from registrants to ensure that they are added to the COR listserv(s) to receive meeting information and other updates relevant to the COR scope from other COR members. Email addresses are submitted on a completely voluntary basis.

*Meeting Accommodations:* Individuals requiring special accommodation to access these public meetings should contact Stacey Standridge (telephone 703-292-8103) at least ten business days prior to each meeting so that appropriate arrangements can be made.

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2015-29428 Filed 11-19-15; 8:45 am]

BILLING CODE 3270-F6-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76443; File No. SR-MSRB-2015-12]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Proposed New MSRB Rule A-18, on Mandatory Participation in Business Continuity and Disaster Recovery Testing

November 16, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2015, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to adopt

proposed new MSRB Rule A-18 to require certain brokers, dealers, municipal securities dealers and municipal advisors registered with the MSRB ("MSRB Registrants") to participate in business continuity and disaster recovery plans ("BC/DR Plans") testing in connection with Regulation Systems Compliance and Integrity ("Regulation SCI")<sup>3</sup> (the "proposed rule change"). The MSRB has designated the proposed rule change as "non-controversial" pursuant to section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6)(iii)<sup>5</sup> thereunder, which renders it effective upon filing with the Commission. A proposed rule change filed under Rule 19b-4(f)(6)<sup>6</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>7</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The MSRB is requesting the Commission waive the 30-day operative delay so that the proposed rule change to require participation in BC/DR Plans testing as mandated by Regulation SCI may become operative immediately upon filing.

The text of the proposed rule change is available on the MSRB's Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx), at the MSRB's principal office, 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 MSRB 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 MSRB 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

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the MSRB), alternative trading systems, plan processors, and exempt clearing agencies (collectively, "SCI entities"), and mandates these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the MSRB and other SCI entities to maintain "[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption."<sup>8</sup>

The MSRB has put extensive time and resources toward planning for system failures and already maintains robust procedures for business continuity and disaster recovery. As set forth below, in connection with Regulation SCI, the MSRB is proposing to require certain MSRB Registrants to participate in the testing of the operation of the MSRB's BC/DR Plans. With respect to an SCI entity's BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: "[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans."<sup>9</sup> Paragraph (b) of Rule 1004 further requires each SCI entity to "[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months."<sup>10</sup> In order to comply with Rule 1004 of Regulation SCI, the MSRB proposes to adopt new Rule A-18 to provide for the mandatory participation

<sup>3</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("SCI Adopting Release").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 242.1001(a)(2)(v).

<sup>9</sup> 17 CFR 242.1004(a).

<sup>10</sup> 17 CFR 242.1004(b).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

of certain MSRB Registrants (“Participants”) in the testing of the MSRB’s BC/DR Plans, as described below.

Section (a) of new Rule A–18 includes language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the MSRB’s obligation pursuant to such rule. Specifically, the MSRB proposes to state that “[p]ursuant to Regulation Systems Compliance and Integrity under the Securities Exchange Act of 1934 and with respect to the MSRB’s business continuity and disaster recovery plans, including its backup systems, the MSRB is required to establish standards for the designation of MSRB Registrants that the MSRB reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The MSRB further proposes that section (a) indicate that the “MSRB has established standards and will designate Participants according to those standards as set forth” in new Rule A–18. Any changes to the standards by which MSRB Registrants might be designated Participants would be applied prospectively and would be publicly announced with reasonable advance notice. The MSRB would first announce the methodology for designating Participants on or before November 3, 2015.

Second, in section (b) of new Rule A–18, the MSRB proposes to specify that it “shall designate Participants as those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period” and that “[t]he percentage of data submission volume and the minimum number of Participants that the MSRB considers to be meaningful and the Measurement Period will be determined by the MSRB, published to MSRB Registrants in advance of the Measurement Period, and applied during the Measurement Period (not retroactively).” The MSRB further proposes that section (b) indicate that the MSRB will, at least forty-five (45) calendar days prior to a functional and performance testing of the operation of the MSRB’s BC/DR Plans, individually notify all Participants that are required to participate in such testing. The MSRB believes the proposed notice requirement is necessary to provide sufficient advance notice to those MSRB Registrants that are designated as Participants in mandatory business continuity and

disaster recovery testing under new Rule A–18.

In adopting the requirements of new Rule A–18(b), the MSRB intends to subject certain MSRB Registrants to mandatory testing as the minimum necessary to maintain fair and orderly markets in the event of the activation of such BC/DR plans. The MSRB believes that designating Participants to participate in mandatory testing because they are among those entities whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants is a measured approach to a threshold criteria to ensure the maintenance of a fair and orderly market.

Third, in section (c) of new Rule A–18, the MSRB proposes that Participants will be required to participate in functional and performance testing of the operation of the MSRB’s BC/DR Plans, in the manner and frequency specified by the MSRB. In addition, new Rule A–18 provides that such testing shall occur at least once every 12 months.

Lastly, in section (d) of new Rule A–18, the MSRB proposes to set forth definitions for purposes of new Rule A–18 of “MSRB Registrants” and “Participants.” For purposes of new Rule A–18, “MSRB Registrants” means “brokers, dealers, municipal securities dealers or municipal advisors registered with the MSRB” and “Participants” means “those MSRB Registrants that the MSRB has determined, pursuant to section (b) of [Rule A–18], are among those MSRB Registrants whose submissions of data to the MSRB, taken as a whole, account for a meaningful percentage of the MSRB’s data submission volume required to be provided by MSRB Registrants, measured during the Measurement Period, which percentage of data submissions volume represents the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the MSRB’s BC/DR Plans.” Further, for purposes of new Rule A–18, “Measurement Period” means “the time period, whether monthly or quarterly, during which time MSRB measures data submission required to be provided by MSRB Registrants for purposes of designating Participants in accordance with section (b).”

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of section 15B(b)(2)(C) of the

Act,<sup>11</sup> which requires, in pertinent part, that the MSRB’s rules shall be designed

to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change will provide that MSRB Registrants necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI.<sup>12</sup>

Specifically, the proposed rule change will adopt standards with respect to the designation of MSRB Registrants that are required to participate in the testing of the MSRB’s BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release,

SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI’s requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>13</sup>

Though the MSRB is not a national securities exchange as provided in section 6 of the Act,<sup>14</sup> the MSRB believes that the proposed rule change is consistent with its authority and legal responsibility under section 15B(b)(2)(C) of the Act.<sup>15</sup>

## B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act<sup>16</sup> requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any additional burdens on competition that are not necessary or

<sup>11</sup> 15 U.S.C. 78o–4(b)(2)(C).

<sup>12</sup> 17 CFR 242.1004.

<sup>13</sup> See SCI Adopting Release, *supra* note 3 at 72350.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78o–4(b)(2)(C).

<sup>16</sup> *Id.*

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*

Written comments were neither solicited nor received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to section 19(b)(3)(A)<sup>17</sup> of the Act and Rule 19b-4(f)(6)<sup>18</sup> thereunder, the MSRB has designated the proposed rule change as one that affects a change that 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. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.<sup>19</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the 30 day operative delay if such action is consistent with the protection of investors and the public interest.<sup>20</sup>

The MSRB has requested that the Commission designate the proposed rule change operative upon filing on November 2, 2015, which is less than 30 days after the date of filing of the proposed rule change, as specified in Rule 19b-4(f)(6)(iii).<sup>21</sup> According to the MSRB, the proposed rule change is necessary for the MSRB to comply with Regulation SCI and the waiver of the 30 day operative delay allows the MSRB to conform its rules prior to the Regulation SCI compliance date of November 3, 2015. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the MSRB to incorporate changes required under Regulation SCI, such as requiring participation in BC/DR Plans testing, prior to the Regulation SCI compliance date.

Accordingly, the Commission designates the proposed rule change to be operative upon filing on November 2, 2015.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2015-12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.
- All submissions should refer to File Number SR-MSRB-2015-12. 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 MSRB. 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-MSRB-2015-12 and should be submitted on or before December 11, 2015.

For the Commission, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-29599 Filed 11-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76447; File No. SR-BOX-2015-36]

**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 Options Facility**

November 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 4, 2015, 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,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 to revise the qualification thresholds for all volume based fees and rebates on the BOX Market LLC ("BOX") options facility. Changes to the fee schedule pursuant to

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> *Id.*

<sup>20</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

<sup>21</sup> See SR-MSRB-2015-12 (filed with the Commission on November 2, 2015).

<sup>22</sup> For purposes only of waiving the 30-day 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).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

this proposal will be effective upon filing. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to revise the qualification thresholds for all

volume based fees and rebates in the BOX Fee Schedule.

Currently the Exchange tiers certain rebates and fees based on a Participant's average daily volume ("ADV") as calculated at the end of each month.<sup>5</sup> The Exchange proposes to revise the qualification thresholds so that tiers will not be based on a fixed number of contracts, but instead be based on a percentage of the Participant's volume relative to the account type's overall total industry equity and ETF option volume,<sup>6</sup> excluding Flex Options.<sup>7</sup>

The Exchange believes that the proposed percentages are generally equivalent to the current fixed thresholds at current volume levels, but will have the advantage of fluctuating with industry volume. The Exchange also notes that other option exchanges have similar methodology when determining volume thresholds.<sup>8</sup> The Exchange does not propose to amend the rebates and fees associated with these tiers, or the market participant categories that the fees and rebates apply to.

**Tiered Volume Rebates for Non-Auction Transactions**

The Exchange currently provides Non-Auction transaction rebates to Public Customers and Market Makers who achieve certain volume based

thresholds. The per contract rebate is based on the Participant's ADV considering all transactions executed on BOX by the Market Maker or Public Customer, respectively, as calculated at the end of each month.

The Exchange proposes to instead calculate percentage thresholds on a monthly basis by totaling the Market Maker or Public Customer's executed volume on BOX, relative to the total national Market Maker or Customer volume in multiply-listed options classes. Market Makers and Public Customers who achieve certain volume based thresholds will continue to receive a per contract rebate on all Non-Auction transactions.

The Exchange proposes the following qualification thresholds for Public Customer and Market Maker rebates in Non-Auction Transactions:

Tier	Percentage thresholds of national market maker volume in multiply-listed options classes (monthly)	Per contract rebate
1	0.000–0.069	\$0.00
2	0.070–0.249	(\$0.03)
3	0.250–0.299	(\$0.05)
4	Above 0.300	(\$0.10)

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate			
		Penny pilot classes		Non-penny pilot classes	
		Maker	Taker	Maker	Taker
1	0.000–0.129	\$0.00	\$0.00	\$0.00	\$0.00
2	0.130–0.339	(\$0.15)	(\$0.15)	(\$0.40)	(\$0.40)
3	0.340–0.549	(\$0.25)	(\$0.25)	(\$0.50)	(\$0.50)
4	Above 0.550	(\$0.40)	(\$0.40)	(\$0.90)	(\$0.70)

**Tiered Fee Schedule for Initiating Participants**

Fees for auction transactions apply to transactions executed through Price Improvement Period ("PIP") and the Complex Order Price Improvement

Period ("COPIP") auction mechanisms. The Exchange currently assesses a tiered per contract execution fee for Primary Improvement Orders that is based on each Initiating Participant's monthly ADV in total Primary Improvement

Order contract quantity submitted on BOX.

The Exchange proposes to instead calculate percentage thresholds on a monthly basis by totaling the Initiating Participant's Primary Improvement

<sup>5</sup> For purposes of calculating monthly ADV, BOX counts as a half day any day that the market closes early for a holiday observance.

<sup>6</sup> The OCC provides volume information in two product categories: Equity and ETF volume and index volume, and the information can be filtered to show only Customer, firm, or market maker account type. Equity and ETF Customer volume numbers are available directly from the OCC each morning, or may be transmitted, upon request, free of charge from the Exchange. Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share. Total Industry equity and ETF option volume is comprised of those equity and ETF option contracts that clear in a respective account type at the OCC (Customer, Market Maker and Firm), including Exchange-Traded Fund Shares,

Trust Issued Receipts, Partnership Units, and Index-Linked Securities such as Exchange-Traded Notes, and does not include contracts overlying a security other than an equity or ETF security. Under the proposed rule change, Total Industry equity and ETF option volume will be that which is reported for the month by OCC in the month in which the credits may apply. For example, November 2015 Total Industry Customer equity and ETF option volume will be used in determining what, if any, credit a Customer on BOX may be eligible for based on the Customer electronic equity and ETF option ADV it transacts on the Exchange in November 2015.

<sup>7</sup> Calculations do not include Flex Options, which are not traded on BOX.

<sup>8</sup> See NASDAQ OMX PHLX, ("PHLX") Pricing Schedule Section A [sic], "Customer Rebate

Program"; Miami International Securities Exchange, LLC ("MIAX") Fee Schedule Section I(a)(iii) "Priority Customer Rebate Program"; BATS Exchange, Inc. ("BATS") BATS Options Exchange Fee Schedule "Quoting Incentive Program ("QIP") Liquidity Rebates"; Chicago Board Options Exchange, Inc. ("CBOE") Fee Schedule "Volume Incentive Program" (page 4); NASDAQ Stock Market LLC ("NOM") Chapter XV, Section 2 NASDAQ Options Market—Fees and Rebates; NYSE Arca, Inc ("Arca") Options Fees and Charges, "Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues" (page 4); and NYSE Amex, Inc. ("AMEX") NYSE AMEX Options Fee Schedule, "Transaction Fee/Credit—Per Contract."

Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. While Primary Improvement Orders are submitted by Market Makers and Broker Dealers, the Exchange believes it is appropriate to calculate the percentage thresholds on national Customer volume as Primary Improvement Orders are only submitted as the matching contra order to the PIP or COPIP on the opposite side of a Customer's PIP or COPIP Order.

The Exchange proposes the following qualification thresholds for Initiating Participants:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract fee (all account types)
1	0.000–0.079	\$0.25
2	0.080–0.159	0.20
3	0.160–0.339	0.12
4	0.340–0.849	0.07
5	Above 0.850	0.03

**BOX Volume Rebate**

The Exchange currently provides a per contract rebate to all PIP and COPIP

Orders of 100 and under contracts that is based on the Participant's monthly ADV in PIP and COPIP Transactions submitted to the Exchange. The Exchange proposes to instead calculate percentage thresholds on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

The Exchange proposes the following qualification thresholds PIP and COPIP Transactions:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (All account types)	
		PIP	COPIP
1	0.000 to 0.159	(\$0.00)	(\$0.00)
2	0.160 to 0.339	(\$0.04)	(\$0.02)
3	0.340 to 0.849	(\$0.11)	(\$0.04)
4	Above 0.850	(\$0.14)	(\$0.06)

The Exchange also proposes to make non-substantive technical changes [sic] to renumber the footnotes within the BOX Fee Schedule.

**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,<sup>9</sup> 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.

The Exchange believes that revising the qualification thresholds for all volume based fees and rebates in the BOX Fee Schedule is reasonable, equitable and not unfairly discriminatory. The Exchange notes that it is not proposing to adjust the actual fees or rebates assessed or the market participant categories that the fees and rebates apply to. The Exchange believes that the proposed percentages are reasonable as they are generally equivalent to the fixed volume thresholds currently in place on the Exchange. The tiered fee and rebate structures in place within the BOX Fee Schedule are equitable and not unfairly discriminatory as they are designed to attract order flow to the Exchange, which will benefit all market participants by providing more trading opportunities.

The Exchange believes that using a percentage based threshold rather than a fixed threshold is reasonable because it will allow the threshold to account for fluctuating industry volume. Further, the Exchange notes that other options exchanges have adopted similar methodology in determining thresholds for their volume incentive programs.<sup>10</sup>

Finally, as stated above the Exchange believes it is reasonable to calculate the percentage thresholds for Initiating Participant's on total national Customer volume in multiply-listed options classes. Primary Improvement Orders are only submitted as the matching contra order to the PIP or COPIP on the opposite side of a Customer's PIP or COPIP Order. Because of this, the Exchange believes that calculating the percentage thresholds on total national Firm or Market Maker volume in multiply-listed options classes would not accurately account for fluctuations in industry volume and it is more appropriate to use total national Customer volume.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to revise the qualification thresholds in its volume based tiers to allow for more fluctuation in industry volume. The

Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</sup> 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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See supra, note 8.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2015-36 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-2015-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2015-36, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-29603 Filed 11-19-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76442; File No. SR-CBOE-2015-101]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 16, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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.

#### 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 its Fees Schedule, effective November 2, 2015. Specifically, the Exchange proposes to increase the Customer Priority Surcharge fee assessed to contracts executed in VIX volatility index options ("VIX options") and weekly S&P 500 options ("SPXW options"). Currently, the VIX Customer Priority Surcharge ("VIX Surcharge") is assessed on all Customer (C) VIX contracts executed electronically that are Maker and not Market Turner. Additionally, the VIX Surcharge is only assessed on such contracts that have a premium of \$0.11 or greater. The Exchange proposes to increase the VIX Surcharge from \$0.10 per contract to \$0.20 per contract on such contracts that have a premium of \$0.11 or greater. The SPXW Customer Priority Surcharge ("SPXW Surcharge") is currently assessed on all Customer (C) SPXW contracts executed electronically.<sup>3</sup> The Exchange also proposes to increase the SPXW Surcharge from \$0.05 per contract to \$0.10 per contract.

The Exchange also proposes to amend the Fees Schedule with respect to the Qualified Contingent Cross ("QCC") Orders Rate Table. By way of background, the Fees Schedule currently provides for a "QCC Rate Table" which sets forth a transaction fee and credit for QCC transactions. In addition, the "Notes" section of the QCC Rate Table includes the definition of a QCC transaction. Specifically the "Notes" section currently provides that "A QCC transaction is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts . . ." The Exchange notes that it recently amended its QCC rules to expand the availability of QCC orders by permitting multiple contra-parties on a QCC order.<sup>4</sup> As such, the definition of QCC Orders in CBOE Rule 6.53 has been amended. The Exchange proposes to similarly amend the Fees Schedule to

<sup>3</sup> The SPXW Surcharge is not assessed to contracts executed by a floor broker using a PAR terminal or orders in SPXW options in SPXW electronic book that are executed during opening rotation on the final settlement day of VIX options and futures which have the expiration that contribute to the VIX settlement calculation.

<sup>4</sup> See Securities Exchange Act Release No. 75756 (August 25, 2015), 80 FR 168 (August 31, 2015) (SR-CBOE-2015-073).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

incorporate this new definition to maintain consistency in the Rules and Fees Schedule and avoid potential confusion.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, 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 also believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>7</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The Exchange believes that the SPXW and VIX Customer Priority Surcharge increases are reasonable because the amount of the new fees are within the range of surcharges assessed for customer transactions in other CBOE proprietary products (for example customers are currently assessed a \$0.20 Hybrid 3.0 Execution Surcharge (which essentially acts as a customer priority surcharge) in SPX options).

The Exchange believes that it is equitable and not unfairly discriminatory to assess the SPXW and VIX Priority Surcharges to Customers and not other market participants because Customers are not subject to additional costs for effecting transactions in SPXW and VIX which are applicable to other market participants, such as license surcharges. Additionally, Customers are not subject to fees applicable to other market participants such as connectivity fees and fees relating to Trading Permits, and are not subject to the same obligations as other market participants, including regulatory and compliance requirements and quoting obligations. The Exchange

believes that it is equitable and not unfairly discriminatory to only assess the VIX Surcharge to Maker Non-Turners because the Exchange wants to encourage improving the market ("turning").

The Exchange believes that it is equitable and not unfairly discriminatory to only assess the VIX Surcharge when the contract premium is at least \$0.11 because the Exchange wants to reduce costs on low priced VIX options to encourage Customers to close and roll over positions close to expiration at low premium levels. Currently, such Customers are less likely to do this because the transaction fee is closer to the premium level. The Exchange believes that maintaining lowered fees overall for VIX options trading with a premium of \$0.00-\$0.10 will encourage the trading of such options. As such, the Exchange does not wish to assess the VIX Surcharge on such options in order to keep the costs low.

Finally, the Exchange believes that codifying the amended definition of a QCC transaction in the Fees Schedule (in addition to the Exchange's Rules, where it is currently provided for), will alleviate potential confusion and maintain clarity in the Fees Schedule, which serves 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.

## B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 because, while different electronic transaction fees are assessed to different market participants, different market participants have different obligations and circumstances as noted above. The Exchange believes that the proposal to increase the surcharge amount assessed to Customers for executions in SPXW and VIX contracts will not cause an unnecessary burden on intermarket competition because SPXW and VIX are only traded on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

Additionally, the proposed change to codify in the Fees Schedule the revised definition of a QCC order is not intended for competitive reasons and only applies to CBOE. The Exchange notes that no rights or obligations of

Trading Permit Holders are affected by this particular change.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2015-101 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-CBOE-2015-101. 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

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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 offices 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-CBOE-2015-101, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-29598 Filed 11-19-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76445; File No. SR-NASDAQ-2015-133]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Market Access and Routing Subsidy or "MARS"

November 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 2, 2015, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 amend the Exchange's transaction fees at Chapter XV, Section 2 entitled "NASDAQ Options Market—Fees and Rebates," which governs pricing for Nasdaq Participants using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to create a subsidy program, the Market Access and Routing Subsidy or "MARS," for NOM Participants that provide certain order routing functionalities<sup>3</sup> to other NOM Participants and/or use such functionalities themselves.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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.

<sup>3</sup> The order routing functionalities permit a NOM Participant to provide access and connectivity to other Participants as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one NOM Participant to be eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment. Consider the following example: both Participants A and B are NOM Participants but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at The Options Clearing Corporation or "OCC," where A is the valid executing clearing Participant or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction [sic] resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing Participant or give-up on the transaction.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NOM proposes a new subsidy program, MARS, which would pay a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. Generally, under MARS, NOM proposes to make payments to participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. The Exchange believes that MARS will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants.

##### MARS System Eligibility

To qualify for MARS, a NOM Participant's routing system (hereinafter "System") would be required to meet certain criteria. Specifically the Participant's System would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. The NOM Participant's System would also need to cause NOM to be one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override NOM as the default destination on an order-by-order basis.

The Exchange would require NOM Participants desiring to participate in MARS<sup>4</sup> to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any NOM Participant would be permitted to apply for MARS, provided the above-referenced requirements are met,

<sup>4</sup> For example, a NOM Participant that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the NOM Participant to identify the NOM Participant seeking the MARS Payment and must list, among other things, the connections utilized by the NOM Participant to provide Exchange access to other NOM Participants and/or itself. MARS Payments would be made one month in arrears (i.e., a MARS Payment earned for activity in November would be paid to the qualifying NOM Participant in December), as is the case with all other transactional payments and assessments made by the Exchange.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



including a robust and reliable System. The Participant would be solely responsible for implementing and operating its System.

#### MARS Eligible Contracts

A MARS Payment would be made to NOM Participants that have System Eligibility and have routed at least 5,000 Eligible Contracts daily in a month, which were executed on NOM. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,<sup>5</sup> Non-NOM Market Maker,<sup>6</sup> Broker-Dealer,<sup>7</sup> Joint Back Office or “JBO”<sup>8</sup> or Professional<sup>9</sup> equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini-Option orders.<sup>10</sup>

NOM Participants using an order routing functionality provided by another Participant or its own functionality will continue to be required to comply with best execution obligations.<sup>11</sup> Specifically, just as with any Customer<sup>12</sup> order and any other routing functionality, a NOM Participant will continue to have an obligation to consider the availability of price improvement at various markets and whether routing a Customer order through a functionality that incorporates the features described above would allow for access to such opportunities if

<sup>5</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>6</sup> The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>7</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>8</sup> The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

<sup>9</sup> The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

<sup>10</sup> Mini Options are further specified in Chapter XV, Section 2(4).

<sup>11</sup> See Nasdaq Rule 5310A.

<sup>12</sup> The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at OCC which is not for the account of [sic] broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

readily available. Moreover, a NOM Participant would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

#### MARS Payment

NOM Participants that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract. The MARS Payment will be paid only on executed Firm orders that add liquidity and which are routed to NOM through a participating NOM Participant’s System. No payment will be made with respect to orders that are routed to NOM, but not executed.

A Participant will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to NOM. The Exchange believes that the MARS Payment will subsidize the costs of NOM Participants in providing the routing services.

The Exchange proposes to add the MARS to new Chapter XV, Section 2(6), entitled “Market Access and Routing Subsidy (“MARS”).”

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act<sup>14</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Participants and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup> Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), the DC Circuit upheld the Commission’s use of a market-based approach in evaluating the

fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>16</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>17</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>18</sup> Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that MARS is reasonable because it is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Moreover, the Exchange believes that the proposed subsidy offered by MARS is both equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

#### MARS System Eligibility

The Exchange believes that requiring NOM Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to NOM, which will contribute to the Exchange’s depth of book as well as to the top of book liquidity. The Exchange also believes that the proposed MARS is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> Exchange Act Release No. 34–51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

<sup>16</sup> See *NetCoalition*, 615 F.3d at 534.

<sup>17</sup> *Id.* at 537.

<sup>18</sup> *NetCoalition I*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782–74783).

those exchanges that offer their own front-end order entry system or one they subsidize in some manner.<sup>19</sup> The Exchange believes that requiring Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is equitable and not unfairly discriminatory because these requirements will uniformly apply to all Participants desiring to qualify for MARS.

The Exchange also notes that the Chicago Board of [sic] Options Exchange, Inc. (“CBOE”) currently offers a similar Order Routing Subsidy (“ORS”), which, similar to the current proposal, allows CBOE Participants [sic] to enter into subsidy arrangements with CBOE Trading Permit Holders (“TPHs”) that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.<sup>20</sup> Also, NYSE MKT LLC (“NYSE MKT”) had a Market Access and Connectivity Subsidy (“MAC”) which allowed NYSE MKT Participants [sic] to enter into subsidy arrangements with ATP Holders that provided certain order routing functionalities to other ATP Holders and/or use such functionalities themselves. The NYSE MKT program was discontinued.<sup>21</sup> Finally, in 2007, NASDAQ OMX PHLX LLC (“Phlx”) offered a Market Access Provider Subsidy or “MAPs” as a per contract fee payable by the Phlx to Eligible Market Access Providers for Eligible Contracts submitted by MAPs for execution on Phlx. The subsidy was applicable to any Phlx member organization that qualified as a MAP and elected to participate for that calendar month.<sup>22</sup>

#### MARS Eligible Contracts

The Exchange believes that excluding the volumes attributable to Mini Options is reasonable, equitable, and not unfairly discriminatory for the reasons below. Mini Options are also

subject to separate pricing.<sup>23</sup> The Exchange does not desire to pay an additional subsidy on top of the already discounted rates for Mini Options. Because all NOM Participants seeking to qualify for MARS would be treated equally with respect to excluding Mini Options volume, the proposal to exclude this volume from the MARS Payment is not inequitable or unfairly discriminatory.

The Exchange further notes that while MARS is only being offered to qualifying NOM Participants for electronically-executed equity option orders for Firms, Non-NOM Market Makers, Broker-Dealers, JBOs or Professionals that add liquidity and not, for example, on the electronic volumes of NOM Customers or NOM Market Makers<sup>24</sup> the Exchange believes this is reasonable, equitable and not unfairly discriminatory for the reasons below. With respect to Customer orders, the Exchange notes that Customer orders have the ability to earn rebates today.<sup>25</sup> Additionally, Customers are assessed lower transaction fees with certain fees.<sup>26</sup> The Exchange believes that the availability of these rebates for Customer volumes as well as certain lower transaction fees does not warrant paying an additional subsidy on Customer volumes in MARS. With respect to NOM Market Makers, the Exchange offers NOM Market Makers certain rebates<sup>27</sup> and assesses them lower transaction fees, as compared to other market participants.<sup>28</sup> The Exchange believes that the rebates coupled with the lower transaction fees already provide ample incentive for attracting NOM Market Maker volumes to the Exchange and that no further subsidy is warranted at this time.

The proposed MAC [sic] Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate assessed to Customers and NOM Market Makers. To offer the proposed subsidy on Customer or NOM Market Maker electronic volume would require funding from some other source, such as raising fees for other Participants. As a

result, the Exchange believes it is appropriate to permit eligibility based on the following type of volume: Firm, Non-NOM Market Maker, Broker-Dealer, JBO and Professional, which Participants are charged higher per contract transaction fees than other market Participants. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer a MARS Payment to qualifying NOM Participants on certain electronic volume is reasonable, equitable and not unfairly discriminatory for the reasons mentioned herein.

Finally, the Exchange believes that 5,000 Eligible Contracts is a reasonable level of contracts, because the Exchange is only counting add liquidity from Firms, Non-NOM Market Makers, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange is not counting remove liquidity and therefore the number reflects what the Exchange believes to be an appropriate level of commitment from NOM Participants. The Exchange believes that 5,000 Eligible Contracts is equitable and not unfairly discriminatory because this level will be uniformly applied to all qualifying Participants.

#### MARS Payment

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MARS Payment to NOM Participants that have System Eligibility and have executed the Eligible Contracts, even when a different NOM Participant may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on other options exchanges such as Phlx which pays a Qualified Contingent Cross (“QCC”) Rebate for floor transactions.<sup>29</sup> Today, this arrangement on Phlx results in a situation where the floor broker is

<sup>19</sup> See, e.g., *supra* note 10 [sic]; Securities Exchange Act Release No. 34-54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31) (describing PreciSE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

<sup>20</sup> See note 34 [sic]. CBOE's programs permit both CBOE Participants and CBOE non-Participants to be eligible for a rebate. CBOE Participants are eligible to receive exchange transaction fees on transactions that earn a non-CBOE Participant a subsidy payment.

<sup>21</sup> See note 35 [sic]. See also Securities Exchange Act Release No. 75609 (August 11 [sic], 2015), 80 FR 48132 (August 5 [sic], 2015) (SR-NYSEMKT-2015-059).

<sup>22</sup> See Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR-Phlx-2007-54). This program is no longer being offered.

<sup>23</sup> See NOM's Rules at Chapter XV Section 2(5) [sic]

<sup>24</sup> The term “NOM Market Maker” or (“M”) is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

<sup>25</sup> See NOM's Rules at Chapter XV, Section 2(1).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See Phlx's Pricing Schedule. A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the NBBO; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Phlx Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders. With the QCC rebates applicable to transactions executed on the trading floor, Phlx does not offer a front-end for order entry; unlike some of the competing exchanges, Phlx has argued that it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order.<sup>30</sup> Also, all qualifying NOM Participants would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

The Exchange believes the \$0.10 per contract rate that is being offered to be paid as a subsidy is reasonable and will allow NOM Participants to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's trading systems. The Exchange believes that offering a flat rate is reasonable because all qualifying NOM Participants would receive the same \$0.10 per contract subsidy, provided they met the qualifications for MARS.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity and are submitted by the qualifying NOM Participant, is reasonable because, as noted herein Customers and NOM Market Makers are offered other pricing incentives such as rebates and lower fees. With respect to Non-NOM Market Makers, Professionals, JBOs and Broker-Dealers the Exchange believes it is reasonable to differentiate these market participants and Firms for the reasons which follow. The Exchange desires to incentivize NOM Participants to transact Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional orders on the Exchange to qualify for MARS and receive the subsidy for Firm orders that add liquidity. The Exchange believes that this proposal may incentivize NOM Participants that receive reduced rates at other options exchanges to select NOM as a venue to send Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional

orders by offering competitive pricing to these market participants in the form of a subsidy, even though the financial benefit will only be made with respect to Firm orders that add liquidity. Such competitive, differentiated pricing exists today on other options exchanges.<sup>31</sup> Further, the Exchange believes there is nothing impermissible about the MARS Payment being made solely on Firm orders that add liquidity. This practice is consistent with longstanding differentials between Firms, other Broker-Dealers, Non-NOM Market Makers and Professionals. The options exchanges have differentiated between: retail customers and professional customers; broker/dealers clearing in the "Firm" range at OCC and broker/dealers registered as market makers and away market makers; early-adopting market makers; and many others. The Commission has also permitted price differentiation based on whether an order is processed manually versus electronically. The proposal is consistent with previously established pricing proposals accepted by the Commission.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity and are submitted by the qualifying NOM Participant, is equitable and not unfairly discriminatory because MARS should provide an incentive for Firms to add liquidity on NOM, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed on [sic] Firm orders that add liquidity and not paying a subsidy for the removal of liquidity, is reasonable because the Exchange desires to incentivize NOM participants to add liquidity to NOM. Today, NOM offers rebates to Customers, Professionals and NOM Market Makers for adding liquidity on NOM.<sup>32</sup> Attracting liquidity on NOM benefits all market participants who have an opportunity to interact with such liquidity. Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed Firm orders that add

liquidity and not orders that remove liquidity, is equitable and not unfairly discriminatory because all NOM Participants that qualify for a MARS Payment would only be paid on add liquidity.

Finally, the Exchange believes that adding a new Chapter XV, Section 2(6) is reasonable, equitable and not unfairly discriminatory as it will make finding MARS easier for all Participants.

#### *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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

#### *MARS System Eligibility*

The Exchange believes that requiring Participants to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS does not create an undue burden on intra-market competition because the proposed requirements will uniformly apply to all Participants desiring to qualify for MARS.

#### *MARS Eligible Contracts*

The Exchange believes that excluding Mini Options does not create an undue burden on intra-market competition because this type of order will uniformly be excluded from the volume calculation for all qualifying NOM Participants for MARS.

The Exchange believes that excluding Customer and NOM Market Makers orders from the types of orders that would be eligible for MARS does not create an undue burden on intra-market competition, because Customers are

<sup>30</sup> See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56) (Order Granting Approval of Proposed Rule Change Establishing a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

<sup>31</sup> See Phlx's Pricing Schedule at Section II. Phlx offers Firms a Monthly Firm Fee Cap to lower transaction fees.

<sup>32</sup> See NOM's Rules at Chapter XV, Section 2(1).

assessed lower transaction fees and are eligible for rebates. With respect to NOM Market Makers, the Exchange offers NOM Market Makers rebates and assesses them lower transaction fees as compared to other Participants.

The Exchange believes that preventing Participants from receiving any other revenue for the use of its System, specifically with respect to orders routed to NOM does not create undue burden on intra-market competition because the Exchange would continue to uniformly apply its MARS requirements to all NOM Participants.

Finally, the Exchange believes that the 5,000 Eligible Contracts requirement does not create an undue burden on intra-market competition because this level will be uniformly applied to all qualifying NOM Participants.

#### MARS Payment

The Exchange believes that paying the proposed MARS Payment to qualifying NOM Participants that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different NOM Participant, other than the NOM Participant receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange [sic] and would be uniformly applied to all qualifying NOM Participants.

The Exchange believes that paying the proposed \$0.10 per contract MARS Payment to qualifying NOM Participants that have System Eligibility and have executed the Eligible Contracts in a month, solely on executed Firm orders that add liquidity, does not create an undue burden on intra-market competition because the Exchange is counting all Firm, Non-NOM Market Maker, JBO, Broker-Dealer and Professional volume toward the Eligible Contracts. Customers and NOM Market Makers are offered other pricing incentives such as rebates and lower fees. The increased order flow will bring increased liquidity to the Exchange for the benefit of all Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that paying the MARS payments to a NOM Participant, solely on electronically delivered and executed Firm orders that add liquidity, and are submitted by the qualifying NOM Participant, does not create an undue burden on intra-market

competition because MARS should provide an incentive for Firms to add liquidity on NOM, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange Participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's Participants, including Non-NOM Market Makers, Professionals and Broker-Dealers, should benefit from the improved market liquidity.

Further, the Exchange believes that paying the MARS payments to a NOM Participant, solely on executed Firm orders that add liquidity and not paying a subsidy for the removal of liquidity does not create an undue burden on intra-market competition because the Exchange desires to incentivize NOM participants to add liquidity to NOM. Attracting liquidity on NOM benefits all Participants who have an opportunity to interact with such liquidity. Also, all NOM Participants that qualify for a MARS Payment would only be paid on add liquidity.

#### 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 Act.<sup>33</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-133 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-NASDAQ-2015-133. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-133, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-29601 Filed 11-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76446; File No. SR-Phlx-2015-89]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to a Market Access and Routing Subsidy or “MARS”

November 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2015, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Pricing Schedule at Section IV, entitled “Other Transaction Fees” to create a subsidy program, the Market Access and Routing Subsidy or “MARS,” for Phlx members that provide certain order routing functionalities<sup>3</sup> to other Phlx members and/or use such functionalities themselves.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The order routing functionalities permit a Phlx member to provide access and connectivity to other members as well utilize such access for themselves. The Exchange notes that under this arrangement it will be possible for one Phlx member to be eligible for payments under MARS, while another Phlx member might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a Phlx member’s connection to the Exchange and that member qualified for the MARS Payment. Consider the following example: both members A and B are Phlx members but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B’s connections. Under this program, B will be eligible for the MARS Payment while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at The Options Clearing Corporation or “OCC,” where A is the valid executing clearing member or give-up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MARS Payment, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B’s connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give-up on the transaction.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.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.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Phlx proposes a new subsidy program, MARS, which would pay a subsidy to Phlx members that provide certain order routing functionalities to other Phlx members and/or use such functionalities themselves. Generally, under MARS, Phlx proposes to make payments to participating Phlx members to subsidize their costs of providing routing services to route orders to Phlx. The Exchange believes that MARS will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-Phlx market participants as well as Phlx members.

###### MARS System Eligibility

To qualify for MARS, a Phlx member’s order routing functionality would be required to meet certain criteria. Specifically the member’s routing system (hereinafter “System”) would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx’s API to access current Phlx match engine functionality. The member’s System would also need to cause Phlx to be one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override Phlx as the default destination on an order-by-order

basis. Specifically, with respect to Complex Orders,<sup>4</sup> the Exchange would not require Complex Orders to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. The Exchange notes that these requirements would not make sense for Complex Orders as some options exchanges do not offer Complex Order execution systems.

The Exchange would require Phlx members desiring to participate in MARS<sup>5</sup> to complete a form, in a manner prescribed by the Exchange, and reaffirm their information on a quarterly basis to the Exchange. Any Phlx member would be permitted to apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System. The member would be solely responsible for implementing and operating its System.

###### MARS Eligible Contracts

A MARS Payment would be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,<sup>6</sup> Broker-Dealer,<sup>7</sup> Joint

<sup>4</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

<sup>5</sup> For example, a Phlx member that desires to qualify for MARS in November must complete the form and submit it to the Exchange no later than the last business day of November. Such form will require the Phlx member to identify the Phlx member seeking the MARS Payment and must list, among other things, the connections utilized by the Phlx member to provide Exchange access to other Phlx members and/or itself. MARS Payments would be made one month in arrears (i.e., a MARS Payment earned for activity in November would be paid to the qualifying Phlx member in December), as is the case with all other transactional payments and assessments made by the Exchange.

<sup>6</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>7</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Back Office or “JBO”<sup>8</sup> or Professional<sup>9</sup> equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or “QCC” orders,<sup>10</sup> price improvement or “PIXL” orders,<sup>11</sup> Mini-Option orders<sup>12</sup> or Singly-Listed Options<sup>13</sup> orders.

Phlx members using an order routing functionality provided by another member or its own functionality will continue to be required to comply with best execution obligations.<sup>14</sup> Specifically, just as with any Customer<sup>15</sup> order and any other routing functionality, a Phlx member will continue to have an obligation to consider the availability of price improvement at various markets and whether routing a Customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. Moreover, a Phlx member would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

<sup>8</sup> The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

<sup>9</sup> The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>10</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the NBBO and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the Exchange’s match engine. See Rule 1080(o).

<sup>11</sup> PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXL<sup>SM</sup>). See Rule 1080(n).

<sup>12</sup> Mini Options are further specified in Phlx Rule 1012, Commentary .13.

<sup>13</sup> Singly Listed Options are options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

<sup>14</sup> See Phlx Rule 764.

<sup>15</sup> The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

## MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of \$0.10 per contract. The MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating member’s System. No payment will be made with respect to orders that are routed to Phlx, but not executed. The Exchange believes that the MARS Payment will subsidize the costs of Phlx members in providing the routing services.

Further, a Phlx member would not be entitled to receive any other revenue<sup>16</sup> for the use of its System specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow.<sup>17</sup>

The Exchange proposes to add the MARS to new Section IV, Part E of the Pricing Schedule, entitled “Market Access and Routing Subsidy (“MARS”).” Additionally, the Exchange proposes to amend the Table of Content to include the new section.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market

<sup>16</sup> This requirement would not prevent the member from charging fees (for example, a flat monthly fee) for the general use of its System. Nor would it prevent the member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its System.

<sup>17</sup> The Payment for Order Flow (“PFOF”) Program assesses fees to Specialists and Market Makers resulting from Customer orders. These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Marker Maker to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>20</sup> Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>21</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>22</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>23</sup> Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that MARS is reasonable because it is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all Phlx market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Moreover, the Exchange believes that the proposed subsidy offered by MARS is both equitable and not unfairly discriminatory because any qualifying Phlx member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

## MARS System Eligibility

The Exchange believes that requiring Phlx members to maintain their Systems according to the various requirements set forth by the Exchange in order to

<sup>20</sup> Exchange Act Release No. 34–51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

<sup>21</sup> See *NetCoalition*, 615 F.3d at 534.

<sup>22</sup> *Id.* at 537.

<sup>23</sup> *NetCoalition I*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782–74783).

qualify for MARS is reasonable because the Exchange seeks to encourage market participants to send higher volumes of orders to Phlx, which will contribute to the Exchange's depth of book as well as to the top of book liquidity. The Exchange also believes that the proposed MARS is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.<sup>24</sup> The Exchange believes that requiring members to maintain their Systems according to the various requirements set forth by the Exchange in order to qualify for MARS is equitable and not unfairly discriminatory because these requirements will uniformly apply to all market participants desiring to qualify for MARS.

With respect to Complex Orders,<sup>25</sup> the Exchange believes that not requiring Phlx members to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges, provided the transaction was effected as a portion of a Complex Order, is reasonable because this requirement would not make sense for Complex Orders as some options exchanges do not offer Complex Order execution systems. Also, Phlx members will be encouraged to provide Complex Order routing functionalities. The Exchange believes that limiting these requirements for Complex Orders, while still paying a subsidy on these types of orders, is equitable and not unfairly discriminatory because Phlx members transacting Complex Orders have devoted resources to provide the order routing functionalities. All Phlx members that qualify for the subsidy will have the ability to count Complex Orders toward their Eligible Contracts and be subject to similar requirements.

The Exchange also notes that the Chicago Board of Options Exchange,

<sup>24</sup> See, e.g., *supra* note 10; Securities Exchange Act Release No. 34-54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange LLC).

<sup>25</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund ("ETF") coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

Inc. ("CBOE") currently offers a similar Order Routing Subsidy ("ORS") and Complex Order Routing Subsidy ("CORS") which, similar to the current proposal, allows CBOE members to enter into subsidy arrangements with CBOE Trading Permit Holders ("TPHs") that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.<sup>26</sup> Also, NYSE MKT LLC ("NYSE MKT") had a Market Access and Connectivity Subsidy ("MAC") which allowed NYSE MKT members to enter into subsidy arrangements with ATP Holders that provided certain order routing functionalities to other ATP Holders and/or use such functionalities themselves. The NYSE MKT program was discontinued.<sup>27</sup> Finally, in 2007, Phlx offered a Market Access Provider Subsidy or "MAPs" as a per contract fee payable by the Exchange to Eligible Market Access Providers for Eligible Contracts submitted by MAPs for execution on the Exchange. The subsidy was applicable to any Exchange member organization that qualified as a MAP and elected to participate for that calendar month.<sup>28</sup>

#### MARS Eligible Contracts

The Exchange believes that excluding the volumes attributable to QCC Orders, PIXL and Mini Options is reasonable, equitable, and not unfairly discriminatory for the reasons below. QCC Order volume is already counted toward a separate rebate that the Exchange pays on both electronic and floor QCC transactions.<sup>29</sup> If the Exchange were to count QCC Orders volumes towards the volume tiers for MARS, the Exchange may have to raise fees for all other participants. The Exchange does not believe such a result would be reasonable or equitable. PIXL Orders are also subject to separate pricing and certain discounts.<sup>30</sup> Mini Options are also subject to separate pricing.<sup>31</sup> The Exchange does not desire to pay an additional subsidy on top of the already discounted rates for PIXL and Mini Options. Because all Phlx

<sup>26</sup> See note 43. CBOE's programs permit both CBOE members and CBOE non-members to be eligible for a rebate. CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.

<sup>27</sup> See note 44. See also Securities Exchange Act Release No. 75609 (August 11, 2015), 80 FR 48132 (August 5, 2015) (SR-NYSEMKT-2015-059).

<sup>28</sup> See Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR-Phlx-2007-54). This program is no longer being offered.

<sup>29</sup> See notes 10 and 39.

<sup>30</sup> See Phlx's Pricing Schedule at Section IV, Part A. The Exchange offers discounted fees provided certain criteria are met.

<sup>31</sup> See Section A of the Phlx Pricing Schedule.

members seeking to qualify for MARS would be treated equally with respect to excluding QCC, PIXL and Mini Options volume, the proposal to exclude these volumes from the MARS Payment is not inequitable or unfairly discriminatory. With respect to excluding Singly Listed options, these orders are not subject to a default destination exchange, and therefore should not be taken into account in calculating Eligible Contracts. The exclusion of these types of orders from MARS is equitable and not unfairly discriminatory because the Exchange will uniformly exclude these orders from the Eligible Contracts for all qualifying Phlx members.

With respect to floor orders, the Exchange's exclusion of such orders from Eligible Contracts is reasonable because the floor model does not lend itself to this type of incentive which requires the maintenance of a front-end system to route orders. The Exchange has two different methods of handling orders. The non-electronic model is one that is represented on the trading floor by a floor broker. An electronic order is an entirely different model. Those orders are entered by members who are connected to the Phlx's match engine. These members are assessed different rates because the Exchange operates two different models, a floor-based model and an electronic model, which both utilize different processes. The Exchange believes that it is appropriate to assess fees and incentivize through rebates and subsidies differently for each model. With respect to floor orders, the Exchange's exclusion of such order from MARS is equitable and not unfairly discriminatory because the Exchange will not permit any floor orders to count toward Eligible Contracts for any market participant for MARS.

The Exchange further notes that while MARS is only being offered to qualifying Phlx members for electronically-executed Firm, Broker-Dealer, JBO or Professional equity option orders and not, for example, on the electronic volumes of Phlx Customer, Specialist<sup>32</sup> or Market Maker<sup>33</sup> the Exchange believes this is reasonable, equitable and not unfairly

<sup>32</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>33</sup> A "market maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

discriminatory for the reasons below. With respect to Customer orders, the Exchange notes that Customer orders have the ability to earn rebates today.<sup>34</sup> Additionally, Customers are not assessed transaction fees.<sup>35</sup> The Exchange believes that the availability of these rebates for Customer volumes as well as no transaction fees does not warrant paying an additional subsidy on Customer volumes in MARS. With respect to Specialists and Market Makers, the Exchange offers Specialists and Market Makers certain rebates in SPY,<sup>36</sup> assesses them lower transaction fees as compared to other market participants<sup>37</sup> and offers them the ability cap their transaction fees.<sup>38</sup> The Exchange believes that the SPY rebates, coupled with the lower transaction fees and Monthly Market Maker Cap, already provide ample incentive for attracting Specialist and Market Maker volumes to the Exchange and that no further subsidy is warranted at this time.

The proposed MAC Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate assessed to Customers, Specialists or Market Makers. To offer the proposed subsidy on Customer, Specialist or Market Maker electronic volume would require funding from some other source, such as raising fees for other participants. As a result, the Exchange believes it is appropriate to offer MARS to only Firms, Broker-Dealers and JBO participants that are charged higher per contract transaction fees than other market participants. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer MARS Payment to qualifying Phlx members on

certain electronic volumes is reasonable, equitable and not unfairly discriminatory for the reasons mentioned herein.

Finally, the Exchange believes that 30,000 Eligible Contracts is a reasonable level of contracts, because the Exchange is only counting volume from Firms, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange believes that this number reflects an appropriate level of commitment from Phlx members to earn the MARS Payment. The Exchange believes that 30,000 Eligible Contracts is equitable and not unfairly discriminatory because this level will be uniformly applied to all qualifying Phlx members.

#### MARS Payment

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MARS Payment to Phlx members that have System Eligibility and have executed the Eligible Contracts, even when a different Phlx member may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on the Exchange with respect to QCC rebates for floor QCC transactions. Today, this arrangement results in a situation where the floor broker is earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders. With the QCC rebates applicable to transactions executed on the trading floor, the Exchange does not offer a front-end for order entry; unlike some of the competing exchanges, the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order. Also, all qualifying Phlx members would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

The Exchange believes the \$0.10 per contract rate that is being offered to be paid as a subsidy is reasonable and will allow Phlx members to price their services at a level that will enable them to attract order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's trading

systems.<sup>39</sup> The Exchange believes that offering a flat rate is reasonable because all qualifying Phlx members would receive the same \$0.10 per contract subsidy, provided they met the qualifications for MARS.

The Exchange believes that paying the MARS payments to a Phlx member, solely on executed Firm orders submitted by the qualifying Phlx member, is reasonable because, as noted herein Customers, Specialists and Market Makers are offered other pricing incentives such as rebates, no fees or lower fees and the Monthly Market Maker Cap. With respect to Professionals, JBOs and Broker-Dealers the Exchange believes it is reasonable to differentiate these market participants and Firms for the reasons which follow. Firms already benefit from certain pricing advantages that Professionals, JBOs and Broker-Dealers do not also enjoy, such as the Firm Monthly Fee Cap.<sup>40</sup> The Exchange desires to incentivize Phlx members to transact Firm, JBO, Broker-Dealer and Professional orders on the Exchange to qualify for MARS and receive the subsidy for Firm orders. The Exchange believes that this proposal may incentivize Phlx members that receive reduced rates at other options exchanges to select Phlx as a venue to send Firm, JBO, Broker-Dealer and Professional orders by offering competitive pricing to these market participants in the form of a subsidy, even though the financial benefit will only be made with respect to Firm orders. Such competitive, differentiated pricing exists today on other options exchanges. Further, the Exchange believes there is nothing impermissible about the MARS Payment

<sup>39</sup> A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the NBBO; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

<sup>40</sup> Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in Section II of the Pricing Schedule) are excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. See Section II of the Pricing Schedule.

<sup>34</sup> See Section B of the Phlx Pricing Schedule.

<sup>35</sup> See Section II of the Phlx Pricing Schedule.

<sup>36</sup> See Section I of SPY Pricing in Phlx Pricing Schedule.

<sup>37</sup> See Section II of the Phlx Pricing Schedule.

<sup>38</sup> Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.



being made solely on Firm orders. This practice is consistent with longstanding differentials between Firms, other Broker-Dealers and Professionals. The options exchanges have differentiated between: retail customers and professional customers; broker/dealers clearing in the "Firm" range at OCC and broker/dealers registered as market makers and away market makers; early-adopting market makers; and many others. The Commission has also permitted price differentiation based on whether an order is processed manually versus electronically. The proposal is consistent with previously established pricing proposals accepted by the Commission.

The Exchange believes that paying the MARS payments to a Phlx member, solely on executed Firm orders submitted by the qualifying Phlx member, is equitable and not unfairly discriminatory for the same reasons that the Firm Monthly Fee Cap which applies to Firms and not to Professionals and Broker-Dealers is equitable and not unfairly discriminatory. The MARS Payment, like the Monthly Firm Fee Cap, provides an incentive for Firms to transact order flow on the Exchange, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's market participants, including Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of Payment for Order Flow or "PFOF" is reasonable because members could still charge fees for the general use of its order routing system as well as charging fees or commissions in accordance with its general practices with respect to transactions effected through its system. PFOF also remains eligible under MARS. The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of PFOF is equitable and not unfairly discriminatory because the Exchange would uniformly apply its MARS requirements to all qualifying Phlx members.

Finally, the Exchange believes that adding a new Part E to Section IV and amending the Table of Content is reasonable, equitable and not unfairly discriminatory as it will make finding

MARS in the Pricing Schedule easier for all participants.

#### *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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

#### MARS System Eligibility

The Exchange believes that requiring members to maintain their order routing systems according to the various requirements set forth by the Exchange in order to qualify for MARS does not create an undue burden on intra-market competition because the proposed requirements will uniformly apply to all market participants desiring to qualify for MARS.

With respect to Complex Orders, the Exchange believes that not requiring the Phlx members to enable the electronic routing of orders to all of the U.S. options exchanges and not requiring Phlx members to provide current consolidated market data from the U.S. options exchanges, in connection with Complex Orders, does not create an undue burden on intra-market competition because all Phlx members that qualify for the subsidy will have the ability to count Complex Orders toward their Eligible Contracts and be subject to similar requirements. The Exchange also notes that CBOE currently offers ORS and CORS which, similar to the current proposal, allow CBOE members to enter into subsidy arrangements with TPHs that provide certain order routing functionalities to other CBOE TPHs and/

or use such functionalities themselves.<sup>41</sup>

#### MARS Eligible Contracts

The Exchange believes that excluding floor, QCC, PIXL, Mini Options and Single Listed Orders does not create an undue burden on intra-market competition because these types of orders will uniformly be excluded from the volume calculation for all qualifying Phlx members for MARS.

The Exchange believes that excluding Customer, Market Makers and Specialists orders from the types of orders that would be eligible for MARS does not create an undue burden on intra-market competition because Customers are not assessed transaction fees and are eligible for rebates. With respect to Specialists and Market Makers, the Exchange offers as Specialists and Market Makers certain rebates in SPY, assesses them lower transaction fees as compared to other market participants and offers them the ability cap their transaction fees.

Finally, the Exchange believes that the 30,000 Eligible Contracts requirement does not create an undue burden on intra-market competition because this level will be uniformly applied to all qualifying Phlx members.

#### MARS Payment

The Exchange believes that paying the proposed MARS Payment to qualifying Phlx members that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different Phlx member, other than the Phlx member receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange and would be uniformly applied to all qualifying Phlx members.

The Exchange believes that paying the proposed MARS Payment to qualifying Phlx members that have System eligibility and have executed the Eligible Contracts in a month, solely on executed Firm orders, does not create an undue burden on intra-market competition because the Exchange is counting all Firm, JBO, Broker-Dealer and Professional volume toward the Eligible Contracts. Customers, Specialists and Market Makers are offered other pricing incentives such as rebates, no fees or lower fees and the Monthly Market Maker Cap. The increased order flow will bring

<sup>41</sup> See note 43. CBOE's programs permit both CBOE members and CBOE non-members to be eligible for a rebate. CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.

increased liquidity to 50th the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed MARS is achieved, all the Exchange's market participants, including Professionals and Broker-Dealers, should benefit from the improved market liquidity.

The Exchange believes that preventing members from receiving any other revenue for the use of its routing system, specifically with respect to orders routed to Phlx, with the exception of PFOF, does not create undue burden on intra-market competition because the Exchange would continue to uniformly apply its MARS requirements to all Phlx members.

*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 Act.<sup>42</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-89 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-Phlx-2015-89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2015-89, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-29602 Filed 11-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76441; File No. SR-Phlx-2015-91]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders"**

November 16, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend Phlx Rule 1014 entitled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders" to remove the maximum option price change from the Rule.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.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.

*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 Phlx Rule 1014, entitled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," to eliminate the provision providing for bids (offers) to be no more than \$1 lower (higher) than the last preceding transaction price for the particular option.

Today, Phlx Rule 1014 specifies, "Bidding no more than \$1 lower and/or offering no more than \$1 higher than the last preceding transaction price for the particular option contract. However,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>43</sup> 17 CFR 200.30-3(a)(31).

this standard shall not ordinarily apply if the price per share of the underlying stock or Exchange-Traded Fund Share has changed by more than \$1 since the last preceding transaction for the particular option contract. Further, this standard shall not apply to U.S. dollar-settled foreign currency options. Phlx Rule 1014 is applicable to specialists<sup>3</sup> and Registered Options Traders<sup>4</sup> (collectively “Market Makers”). Pursuant to Phlx Rule 1014(c)(i)(B), Market Makers are required not to bid more than \$1 lower or offer more than \$1 higher than the last preceding transaction price for the particular option contract (the “one point rule”).

The Exchange proposes to eliminate the one point rule which sets maximum bid and/or ask differentials that may be quoted by Market Makers because market changes have rendered the rule obsolete and unnecessary. The one point rule applies to options on equities (including Exchange-Traded Fund Shares), Index options and U.S. dollar-settled Foreign Currency Options, to the extent applicable within the rule.<sup>5</sup> The Exchange initially adopted this standard as a guideline for Market Makers; however, today, this restriction is no longer necessary. For example, today Market-Makers may stream electronic quotes and are subject to various electronic quotation requirements, including bid/ask quote width requirements contained elsewhere in Rule 1014.<sup>6</sup> In addition, the Exchange has rules in place regarding trade-through and locked/crossed market requirements.<sup>7</sup> The Exchange also has an obvious error rule that contains provisions on erroneous pricing errors and has in place certain price check parameters that will not permit the automatic execution of certain orders if the execution would take place outside an acceptable price range.<sup>8</sup>

<sup>3</sup> A specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>4</sup> A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-Streaming Quote Trader, which by definition is neither a SQT nor a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>5</sup> The one point rule does not ordinarily apply if the price per share of the underlying stock or Exchange-Traded Fund Share has changed by more than \$1 since the last preceding transaction for the particular option contract. Further, this standard does not apply to U.S. dollar-settled foreign currency options. See Phlx Rule 1014(c)(i)(B).

<sup>6</sup> See Phlx Rule 1014(c)(A)(1).

<sup>7</sup> See Phlx Rules 1083 and 1086.

<sup>8</sup> See Phlx Rule 1092.

At this time, the Exchange believes that the one point rule is not necessary and should be eliminated so as not to unreasonably constrain Market Makers when submitting quotes to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>10</sup> 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 eliminating this outdated rule which unnecessarily restricts bids and offers that may be entered by Market Makers. The Exchange has other price protections in place today, such as bid/ask quote requirements, locked and crossed market rules and obvious error rules which protect against certain price movements and constrain quoting.<sup>11</sup> Also, the Chicago Board Options Exchange Incorporated (“CBOE”) had a similar rule in place, which was eliminated in 2009.<sup>12</sup>

The Exchange believes that this constraint on Market Makers may in fact prove harmful. In a volatile market, Market Makers may find it necessary to move their quotes beyond the one point rule restriction of \$1 and would be unnecessarily constrained from moving quotes, while market makers on other options exchanges would not be subject to the same restriction on quoting. The Exchange believes that the one point rule does not serve a reasonable purpose in today’s market and should therefore be eliminated in order to remove impediments to and perfect the mechanism of a free and open market and a national market system.

## 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 eliminating the one point rule does not impose an undue burden on inter-market competition because this constraint on quoting does not exist on other options

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Rule 1014 and *supra* notes 6 and 7.

<sup>12</sup> See Securities Exchange Act Release No. 60295 (July 13, 2009), 74 FR 35215 (July 20, 2009) (SR-CBOE-2009-049).

exchanges,<sup>13</sup> where market participants may quote without such restriction. Further, the Exchange believes that this constraint on Market Makers may in fact prove harmful. In a volatile market, Market Makers may find it necessary to move their quotes beyond the one point rule restriction of \$1 and would be unnecessarily constrained from moving quotes while market makers on other options exchanges would not be subject to the same restriction on quoting. The Exchange does not believe that this rule change imposes an undue burden on intra-market competition because there are other price protections in place today, such as bid/ask quote requirements, locked and crossed market rules and obvious error rules which protect against certain price movements and constrain quoting.<sup>14</sup>

## 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<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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.

<sup>13</sup> For example, CBOE, The NASDAQ Stock Market LLC, and NASDAQ OMX BX, Inc. do not have such constraints.

<sup>14</sup> See Rule 1014 and *supra* notes 6 and 7.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-91 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-Phlx-2015-91. 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 offices 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-Phlx-2015-91, and should be submitted on or before December 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-29597 Filed 11-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76444; File No. SR-FINRA-2015-034]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Merge FINRA Dispute Resolution, Inc. Into and With FINRA Regulation, Inc.

November 16, 2015.

On September 29, 2015, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to merge its dispute resolution subsidiary, FINRA Dispute Resolution, Inc. into and with its regulatory subsidiary, FINRA Regulation, Inc. In addition, the proposed rule change would amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board. The proposed rule change was published for comment in the **Federal Register** on October 13, 2015.<sup>3</sup> The Commission received five comment letters to the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> 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 for this filing is November 27, 2015. The Commission is extending this 45-day time period. The Commission finds it 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 and the comments received.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates January 11, 2016, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-FINRA-2015-034).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-29600 Filed 11-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

#### SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2015-0044]

#### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Department of the Treasury, Internal Revenue Service (IRS))—Match Number 1016

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of an existing computer matching program that will expire on December 31, 2015.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with IRS.

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966-0869 or writing

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76082 (October 6, 2015), 80 FR 61545.

<sup>4</sup> See letters from Hugh D. Berkson, President, Public Investors Arbitration Bar Association, dated November 3, 2015; Ron A. Rhoades, dated November 3, 2015; Jill Gross, Director, Pace Investor Rights Clinic, Pace Law School, dated November 3, 2015; Larry A. Tawwater, President, American Association for Justice, dated November 3, 2015; and William A. Jacobson, Director, Cornell Securities Law Clinic, Cornell Law School, dated November 4, 2015.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;
- (5) Notify applicants and beneficiaries that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of our computer matching programs

comply with the requirements of the Privacy Act, as amended.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

**Notice of Computer Matching Program, SSA With the Department of the Treasury, Internal Revenue Service (IRS)**

*A. Participating Agencies*

SSA and IRS.

*B. Purpose of the Matching Program*

The purpose of this matching program is to set forth the terms, conditions and safeguards under which IRS will disclose to us certain return information for use in verifying eligibility for, and the correct amount of, benefits provided under Title XVI of the Act to qualified aged, blind, and disabled individuals; and Federally administered supplementary payments as described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law (Pub. L.) 93-66 (87 Stat. 152)) 42 U.S.C. 1382 note.

*C. Authority for Conducting the Matching Program*

The legal authority for this matching agreement between IRS and us is executed pursuant to the Privacy Act of 1974, (5 U.S.C. 522a), as amended by the Computer Matching and Privacy Protection Act of 1988, and otherwise; and the Office of Management and Budget (OMB) Final Guidance interpreting those Acts.

Public Law 98-369, Deficit Reduction Act of 1984, requires agencies administering certain Federally-assisted benefit programs to use certain information to ensure proper distribution of benefit payments (98 Stat. 494).

Section 6103 (1)(7) of the Internal Revenue Code (IRC) (26 U.S.C. 6103(1)(7)) authorizes IRS to disclose return information with respect to unearned income to Federal, State and local agencies administering certain Federally-assisted benefit programs under the Act.

Section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)) requires verification of Supplemental Security Income (SSI) eligibility and benefit amounts with independent or collateral sources. This section of the Act provides that the "Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 1103(1)(7) of the Internal Revenue Code of 1986" for purposes of Federally administered

supplementary payments of the type described in 1616(a) of the Act (including payments pursuant to an agreement entered into under 212(a) of Pub. L. 93-66).

The legal authority for the disclosure of our data under this agreement is 1106 of the Act (42 U.S.C. 1306), (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)), and the regulations and guidance promulgated under these provisions.

*D. Categories of Records and Persons Covered by the Matching Program*

We will provide IRS with identifying information with respect to applicants for and recipients of Title XVI benefits from the SSI record and Special Veterans Benefit, SSA/OASSIS 60-0103, as published at 71 FR 1795 (January 11, 2006).

We will disclose certain information to IRS for aged, blind, or disabled individuals who are applicants for, or recipients of, SSI benefits or Federally administered State supplementary payments, or both. IRS will match our information with its Information Return Master File (IRMF) and disclose to us return information with respect to unearned income of applicants or recipients identified by us. The information IRS discloses to us is limited to unearned income reported on information returns.

IRS will extract return information with respect to unearned income from the IRMF, Treas./IRS 22.061, as published at 77 FR 47946-947 (August 10, 2012), through the Disclosure of Information to Federal, State, and Local Agencies (DIFSLA) program.

We will furnish IRS with the Social Security number and Name Control (first four characters of the surname) for each individual for whom unearned income information is being requested in accordance with the current IRS Publication 3373, DIFSLA Handbook: Disclosure of Information to Federal, State and Local Agencies.

When there is a match of an individual identifier, IRS will disclose to us the following: Payee account number, payee name and mailing address, payee taxpayer identification number (TIN), payer name and address, payer TIN, and income type and amount.

*E. Inclusive Dates of the Matching Program*

The effective date of this matching program is January 1, 2016, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB.

The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2015-29646 Filed 11-19-15; 8:45 am]

BILLING CODE 4191-02-P

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** October 1–31, 2015.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

**FOR FURTHER INFORMATION CONTACT:**

Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: [joyler@srbc.net](mailto:joyler@srbc.net). Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified above:

#### Approvals by Rule Issued Under 18 CFR 806.22(e)

1. Lackawanna Energy Center, LLC, Lackawanna Energy Center, ABR-201510005, Borough of Jessup, Lackawanna County, Pa.; Consumptive Use of Up to 0.4000 mgd; Approval Date: October 23, 2015.

#### Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Travis Peak Resources, LLC, Pad ID: Abplanalp, ABR-201510001, Westfield Township, Tioga County, Pa.; Consumptive Use of Up to 1.1760 mgd; Approval Date: October 6, 2015.

2. Travis Peak Resources, LLC, Pad ID: Painter, ABR-201510002, Westfield Township, Tioga County, Pa.; Consumptive Use of Up to 1.1760 mgd; Approval Date: October 6, 2015.

3. Chief Oil & Gas, LLC, Pad ID: Warburton North Drilling Pad, ABR-201510003, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 2.500 mgd; Approval Date: October 6, 2015.

4. Ultra Resources, Inc., Pad ID: Brown #1 Pad Site, ABR-201510004, West Branch Township, Potter County, Pa.; Consumptive Use of Up to 0.0420 mgd; Approval Date: October 6, 2015.

5. Anadarko E&P Onshore, LLC, Pad ID: Harry W Stryker Pad A, ABR-201011044.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 6, 2015.

6. Anadarko E&P Onshore, LLC, Pad ID: Ann C Good Pad B, ABR-201011047.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 6, 2015.

7. Anadarko E&P Onshore, LLC, Pad ID: David O Vollman Pad A, ABR-201011069.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 6, 2015.

8. EOG Resources, Inc., Pad ID: PHC 6H, ABR-20090721.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9999 mgd; Approval Date: October 6, 2015.

9. EOG Resources, Inc., Pad ID: PHC 8H, ABR-20090723.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 1.9999 mgd; Approval Date: October 6, 2015.

10. SWEPI LP, Pad ID: Hedrick 702, ABR-201007092.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 6, 2015.

11. SWEPI LP, Pad ID: Foti 721, ABR-201007118.R1, McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 6, 2015.

12. SWEPI LP, Pad ID: Clegg 722, ABR-201007119.R1, McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 6, 2015.

13. Talisman Energy USA Inc., Pad ID: 05 009 Alderson V, ABR-201008022.R1, Pike Township, Bradford County and Middletown Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

14. Talisman Energy USA Inc., Pad ID: 05-003 Edsell C, ABR-201008076.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

15. Talisman Energy USA Inc., Pad ID: 05 046 O'Rourke, ABR-201008124.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

16. Talisman Energy USA Inc., Pad ID: 01 086 Brelsford, ABR-

201008128.R1, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

17. Talisman Energy USA Inc., Pad ID: 05 005 Ayers, ABR-201008129.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

18. Talisman Energy USA Inc., Pad ID: 05 067 Green Newland LLC, ABR-201008151.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

19. Talisman Energy USA Inc., Pad ID: 05 026 Strobe, ABR-201008152.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 6, 2015.

20. LPR Energy, LLC, Pad ID: Ritchey Unit Drilling Pad, ABR-20091010.R1, Juniata Township, Blair County, Pa.; Consumptive Use of Up to 1.9900 mgd; Approval Date: October 12, 2015.

21. LPR Energy, LLC, Pad ID: Hodge Unit Drilling Pad #1, ABR-20091201.R1, Juniata Township, Blair County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 12, 2015.

22. LPR Energy, LLC, Pad ID: Lightner Drilling Pad #1, ABR-201007045.R1, Juniata Township, Blair County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: October 12, 2015.

23. LPR Energy, LLC, Pad ID: Davis Drilling Pad #1, ABR-201007067.R1, West St. Clair Township, Bedford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: October 12, 2015.

24. LPR Energy, LLC, Pad ID: Lightner East Drilling Pad #1, ABR-201009087.R1, Juniata Township, Blair County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: October 12, 2015.

25. Anadarko E&P Onshore, LLC, Pad ID: Douglas C Kinley Pad A, ABR-201009046.R1, Lycoming Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 13, 2015.

26. Chesapeake Appalachia, LLC, Pad ID: Harnish, ABR-201102006.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 13, 2015.

27. SWEPI LP, Pad ID: Sticklin 610, ABR-201007113.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

28. SWEPI LP, Pad ID: Hamblin 860, ABR-201007117.R1, Middlebury Township, Tioga County, Pa.;

Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

29. SWEPI LP, Pad ID: McNett 708, ABR-201008003.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

30. SWEPI LP, Pad ID: Clark 392, ABR-201008004.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

31. SWEPI LP, Pad ID: Miller 394, ABR-201008005.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

32. SWEPI LP, Pad ID: Bauer 849, ABR-201008032.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

33. SWEPI LP, Pad ID: Davis 829, ABR-201008033.R1, Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

34. SWEPI LP, Pad ID: Fish 301, ABR-201008034.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2015.

35. Chesapeake Appalachia, LLC, Pad ID: Cuthbertson, ABR-201102001.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 19, 2015.

36. Chesapeake Appalachia, LLC, Pad ID: Jokah, ABR-201102005.R1, Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 19, 2015.

37. Chesapeake Appalachia, LLC, Pad ID: Corl, ABR-201102011.R1, Colley Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 19, 2015.

38. Chesapeake Appalachia, LLC, Pad ID: Herr, ABR-201102026.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 19, 2015.

39. EQT Production Company, Pad ID: Stoney Brook, ABR-201105008.R1, Jay Township, Elk County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 19, 2015.

40. EQT Production Company, Pad ID: Phoenix P, ABR-201105024.R1, Duncan Township, Tioga County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 19, 2015.

41. SWEPI LP, Pad ID: Heyler 748, ABR-201008031.R1, Morris and Liberty Townships, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 19, 2015.

42. SWEPI LP, Pad ID: Fuleihan 417, ABR-201008073.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 19, 2015.

43. SWEPI LP, Pad ID: Baker 897, ABR-201008074.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 19, 2015.

44. SWEPI LP, Pad ID: Kinnan 845, ABR-201008135.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 19, 2015.

45. Anadarko E&P Onshore, LLC, Pad ID: William S Kieser Pad A, ABR-201011046.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 20, 2015.

46. EXCO Resources (PA), LLC, Pad ID: Marquardt Drilling Pad #1, ABR-201008008.R1, Davidson Township, Sullivan County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: October 20, 2015.

47. EXCO Resources (PA), LLC, Pad ID: Wistar-Shaffer Tracts Drilling Pad #1, ABR-201009071.R1, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: October 20, 2015.

48. SWEPI LP, Pad ID: Seeley 524, ABR-201007122.R1, Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 20, 2015.

49. SWEPI LP, Pad ID: Dewey Hollow Rod & Gun Club 601, ABR-201007128.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 20, 2015.

50. SWEPI LP, Pad ID: Appold 493, ABR-201008126.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 20, 2015.

51. SWEPI LP, Pad ID: Wood 496, ABR-201009026.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 20, 2015.

52. SWEPI LP, Pad ID: Lingle 1102, ABR-201009049.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 20, 2015.

53. Talisman Energy USA Inc., Pad ID: 02 201 DCNR 594, ABR-201008037.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 20, 2015.

54. Talisman Energy USA Inc., Pad ID: 03 073 Ritz, ABR-201009019.R1, Columbia Township, Bradford County,

Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 20, 2015.

55. Chief Oil & Gas, LLC, Pad ID: Hart North Drilling Pad, ABR-201510006, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: October 27, 2015.

56. Chief Oil & Gas, LLC, Pad ID: Bahl Drilling Pad, ABR-201510007, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: October 27, 2015.

57. Chesapeake Appalachia, LLC, Pad ID: Keir, ABR-201012002.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 27, 2015.

58. Chesapeake Appalachia, LLC, Pad ID: Burkmont Farms, ABR-201012007.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 27, 2015.

59. Chesapeake Appalachia, LLC, Pad ID: Norconk, ABR-201012023.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 27, 2015.

60. Chesapeake Appalachia, LLC, Pad ID: DGSM, ABR-201012038.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 27, 2015.

61. Chesapeake Appalachia, LLC, Pad ID: Hartz, ABR-201012039.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 27, 2015.

62. SWEPI LP, Pad ID: Erickson 448, ABR-201009050.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 27, 2015.

63. Talisman Energy USA Inc., Pad ID: 05 092 Upham, ABR-201009078.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 27, 2015.

64. Talisman Energy USA Inc., Pad ID: 05 074 Zimmerli, ABR-201009079.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 27, 2015.

65. Tenaska Resources, LLC, Pad ID: Traub Pad A, ABR-201111008.R1, Abbott Township, Potter County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 27, 2015.

66. Chief Oil & Gas, LLC, Pad ID: Garrison Drilling Pad #1, ABR-201102032.R1, Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: October 30, 2015.

67. SWN Production Company, LLC, Pad ID: WY-18 WEST PAD, ABR-201510008, Eaton Township, Wyoming

County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 30, 2015.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: November 17, 2015.

**Stephanie L. Richardson,**  
*Secretary to the Commission.*

[FR Doc. 2015–29672 Filed 11–19–15; 8:45 am]

**BILLING CODE 7040–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in Minnesota

**AGENCY:** Federal Highway Administration (FHWA), US DOT.

**ACTION:** Notice of limitations on claims for judicial reviews by FHWA.

**SUMMARY:** This notice announces actions taken by FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, United States Highway 53 between Virginia and Eveleth, in Saint Louis County in the State of Minnesota. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA is advising the public of the final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 18, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Philip Forst, Environmental Specialist, FHWA, Minnesota Division, 380 Jackson Street, Suite 500, Saint Paul, MN 55101, [phil.forst@dot.gov](mailto:phil.forst@dot.gov), Phone: (651) 291–6100. For the United States Army Corps of Engineers (USACE): Daryl Wierzbinski, Saint Paul District Regulatory Project Manager Duluth Office, 600 South Lake Avenue, Suite 211, Duluth, MN 55802, Phone: (218)720–5291. For the Minnesota Department of Transportation, Pat Huston, Project Director, Minnesota Department of Transportation (MnDOT), District 1, 1123 Mesaba Avenue, Duluth, MN 55811, Phone: (218) 725–2707.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA and USACE have taken final agency actions by issuing approvals for the following transportation project in the State of Minnesota: US 53 between Virginia and

Eveleth from the south end of the Midway neighborhood to the existing MN 135 exit ramp for the start of new four-lane construction. The new alignment, consisting of approximately two and one-half miles of new four-lane roadway and non-motorized accommodations, responds to the loss of roadway easement for existing US 53, meets regional and inter-regional system performance targets, and maintains local connectivity.

The FHWA signed a combined Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the project on September 10, 2015. On September 25, 2015, FHWA published a “Notice of Availability for the combined FEIS and ROD in the **Federal Register** [80 FR 57807]. The USACE has taken final agency actions with the meaning of 23 U.S.C. 139(l)(1) by issuing a Section 404 permit for the project. The actions by FHWA and USACE, associated final actions by other Federal agencies, and the laws under which such actions were taken, are described in the FHWA and USACE decisions and its project records, referenced as FHWA Final EIS Number 20150270 and USACE Permit Number 2011–00769–DWW. That information is available by contacting FHWA or USACE at the address provided above.

Information about the project and project records are also available from MnDOT at the addresses provided above. The FEIS and ROD can be viewed at and downloaded from the MnDOT project Web site (<http://www.dot.state.mn.us/d1/projects/hwy53relocation/eis.html>). The Section 404 permit is available from USACE contact above and is typically posted at the USACE Saint Paul District Web site (<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>). This notice applies to the FEIS and ROD [80 FR 57807] as well as all Federal agency final actions taken since the issuance of the **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671q]
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16. U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c].

6. Social and Economic: Farmland Policy Protection Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)].

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.

(Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: November 6, 2015.

**David J Scott,**  
*Assistant Division Administrator, Saint Paul, Minnesota.*

[FR Doc. 2015–29412 Filed 11–19–15; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Information and Guidance on the Inspection, Testing, and Maintenance of Emergency Window Exits on Railroad Passenger Cars

**AGENCY:** Federal Railroad Administration (FRA) Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** FRA has become aware of occurrences when emergency window exits on passenger cars did not operate



as intended because the emergency pull handle became detached from the window gasket when pulled, the gasket tore into multiple pieces, or the gasket was otherwise difficult to remove. While investigating these occurrences, FRA discovered that some railroads were not following, or did not clearly understand, the existing Federal regulations on the inspection, testing, and maintenance (ITM) of these window exits, particularly the requirement that a railroad must utilize a test sampling method that conforms with a formalized statistical test method. FRA does not believe any of these occurrences involved passengers or precluded passengers from opening a window in an emergency situation. However, in light of these concerns, FRA is issuing this document to provide information and guidance to railroads operating passenger train service on the existing regulatory requirements regarding ITM of emergency window exits.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Knote, Staff Director, Passenger Rail Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (631) 965-1827; or Mr. Michael Hunter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-0368.

#### SUPPLEMENTARY INFORMATION:

##### I. Historical Background on Existing Requirements

The current ITM requirements for emergency window exit operability are found in Title 49 Code of Federal Regulations (CFR) 238.113(e) and 238.307(c)(4)(i)(B).<sup>1</sup> These sections require each passenger railroad to test (at an interval not to exceed 184 days, as part of the periodic mechanical inspection) a representative sample<sup>2</sup> of its passenger car emergency window exits to determine they “operate as intended” and “properly operate,” respectively. Title 49 CFR 238.113(e) further requires the sampling method to “conform with a formalized statistical test method.”

As FRA explained in Emergency Order 20 (EO 20), a February 16, 1996,

<sup>1</sup> Before FRA’s November 29, 2013, Passenger Train Emergency Systems II final rule (78 FR 71786), the requirement to test a representative sample of emergency window exits was in 49 CFR 239.107(b)(2) and required each passenger railroad “to verify that they are operating properly.”

<sup>2</sup> The requirement to test a representative sample of emergency window exits, which was based in large part on Emergency Order No. 20 (EO 20), was codified by FRA’s May 4, 1998, Passenger Train Emergency Preparedness final rule (E-Prep final rule). See 63 FR 24630, 24669–24670; EO 20, Notice No. 1, 61 FR 6876, 6881, Feb. 22, 1996, and Notice No. 2, 61 FR 8703, Mar. 5, 1996.

passenger train accident in Silver Spring, Maryland, involving a cab car on fire that filled with smoke, raised concerns that at least some of the train occupants could not exit through the windows.<sup>3</sup> This accident demonstrated why emergency windows must be readily identifiable and operable when needed.

FRA has continually reminded railroads that these windows “provide an additional means of egress in life-threatening situations requiring very rapid exit, such as an on-board fire or submergence of the car in a body of water.” See Passenger Train Emergency Systems (PTES) II final rule (78 FR 71786, 71802). In FRA’s February 1, 2008, PTES final rule, FRA reminded railroads of the requirement to test emergency window exits using commonly accepted sampling techniques<sup>4</sup> to determine how many windows to test. See 73 FR 6370, 6384. In doing so, FRA reemphasized that sampling should be conducted to meet a 95-percent confidence level that no defective units remain after completing the tests for the windows in the sample. See *id.* Further, in the Passenger Train Emergency Preparedness (E-Prep) final rule, FRA stated that each railroad should “properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair.” 63 FR 24669. FRA also made clear its expectations regarding the inspection and maintenance of emergency exits:

Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice

<sup>3</sup> The National Transportation Safety Board’s (NTSB) Railroad Accident Report on this accident reported that it took a Safety Board investigator several minutes to remove the left-side, front emergency window exit of the last passenger coach in the train’s consist. See NTSB/RAR-97/02 report at 17 (July 3, 1997). An NTSB investigator could not remove the same car’s right-side, rear emergency window exit, which was later removed by another investigator after approximately 3 minutes of physical exertion. The report further noted that the lubricant used to install these windows had hardened over time.

<sup>4</sup> Railroads should conduct their sampling under either Military Standard MIL-STD-105(E), “Sampling for Attributes” (formally cancelled by the U.S. Department of Defense, but still acceptable for FRA’s representative sampling purposes) or acceptable non-Government, standard sampling procedures and tables for inspection by attributes, such as the American National Standards Institute (ANSI)/ASQC Z1.4-1993, “Sampling Procedures for Inspections by Attributes.” See 73 FR 6370, 6384.

and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

*Id.*

##### II. FRA Review of Railroads’ Emergency Window Testing Programs

When FRA reviewed various railroads’ emergency window exit testing programs, it discovered that some railroads were not following, or did not clearly understand, the Federal regulations on the ITM of emergency window exits. This was particularly true with respect to adopting a sampling method that conforms with a formalized statistical test method and to recording window test failures. As a result, FRA is providing this guidance to ensure all railroads have in place an appropriate window testing program and understand which window tests they must record as failures.

Specifically, FRA considers a window to have failed testing if the window or a window component (e.g., gasket, pull handle) does not operate as intended, considering both the window design and whether the window removal was “rapid and easy” when opened in a manner simulating a passenger trying to remove the window in an emergency (e.g., to escape a car on fire). Examples of window test failures some railroads were not categorizing as such include situations where the emergency pull handle separated from the gasket, or where the gasket tore or needed to be removed in multiple pieces.<sup>5</sup> In addition, FRA observed one railroad testing its windows by carefully pulling out the window gasket to try to avoid detaching the handle or damaging the gasket. FRA recognizes that many railroads prefer to reinstall the same gaskets and handles for the emergency windows after performing the tests.

However, FRA makes clear it does not consider such a careful test to be properly conducted because a passenger would not act that way in an emergency.

FRA also discovered that some railroads believed they were not required to formally adopt a sampling program because they were testing 100 percent of their emergency window exits over a 1- to 2-year period. FRA

<sup>5</sup> FRA makes clear that for any window that is intentionally designed with one or more counter-intuitive features (such as an emergency pull handle that separates from the gasket when pulled, or a gasket that needs to be removed in multiple pieces), the railroad must ensure that such features are clearly explained in the required operating instructions posted for the affected emergency window exits.

appreciates these railroads' efforts for what they believed was going above and beyond what is considered a reasonable sample size. However, FRA makes clear that for a railroad to truly test 100 percent of its windows, the railroad would need to test all of the emergency windows in each of its cars at least once during a 184-day period. FRA also clarifies that simply testing 100 percent of the emergency window exits does not necessarily ensure that the windows will operate as intended when needed in an emergency situation. As discussed in this document, it is how a railroad characterizes the results of those tests and what a railroad does with the results of those tests that will help ensure the windows will operate as intended.

Choosing the number of windows to test (whether it is 20 percent or 100 percent) is only the first step. Second, if testing fewer than 100 percent of the windows in a 184-day period, railroads must also ensure the sample is representative of the various window types in its fleet or fleets.<sup>6</sup> Third, even if a railroad is testing 100 percent of its emergency window exits, it must have a program in place that requires monitoring of the tests to determine whether the test results demonstrate a 95-percent confidence level that all emergency window exits operate as intended. Although EO 20, Notice No. 1, would have required testing all window exits on a specific series or type of car if one such car had a defective window exit, the amended order, Notice No. 2, permitted the use of commonly accepted sampling techniques to determine how many additional windows to test. *See* 61 FR 8703, 8705. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows the railroad will have to test.

FRA expects all railroads to: (1) Conduct periodic reviews of records of window testing using an acceptable attribute sampling method to determine whether they are achieving a 95-percent confidence level that no defective units remain;<sup>7</sup> (2) assess the probable cause of any window test failures; and (3) address any such failures. In setting up their testing programs, railroads must

<sup>6</sup> Railroads can easily set up a simple spreadsheet (using off-the-shelf software) to generate a random sample that includes windows representing all of the window types in a railroad's fleet or fleets.

<sup>7</sup> Although the goal is to have no defective units remaining in a railroad's emergency window population, FRA recognizes that because the railroad is performing a statistical sample that achieves a 95-percent confidence level, there will always be a possibility that some defective units remain.

set the confidence level of the sample at 95 percent or more and set the defect (failure) rate at less than 5 percent.<sup>8</sup> To perform their analyses, railroads must review the test results at the end of a sampling period (at a minimum) and take further action if the testing reveals that 5 percent or more of the windows in the sample are defective. When assessing the probable cause(s) of any window test failures, railroads should consider whether the failures are a result of design issues, useful life issues, or other systemic issues common to a particular window design or windows in service of a similar age. If the test failure appears to be due to a systemic issue, then the potential exists for the failure to repeatedly present itself. In such cases, FRA strongly urges that the railroad consider replacing all the emergency windows or window components of like design or similar service age, as applicable.

As stated in the E-Prep final rule, a railroad must repair any window found to be broken, disabled, or otherwise incapable of performing its intended safety function before the railroad may return the car to passenger service. *See* 63 FR 24669. This remains true even when the number of windows that failed is below the 5-percent defect rate threshold. Railroads should also document the remedial action(s) planned or taken to address the window test failures, and create a timetable for window inspection and replacement for the window type or car series to remedy the problem in the most expedient manner.

### III. Maintenance of Emergency Window Exits

As noted above, FRA expects railroads to periodically perform visual inspections to verify no emergency window exit has a broken release mechanism or other overt indication that would render it unable to function in an emergency. Ideally, railroads would incorporate these visual inspections as part of the interior calendar day mechanical inspections of passenger cars, since they already need to inspect the window markings daily to ensure that the safety-related signage is in place and legible. *See* 49 CFR 238.305(c)(7). As demonstrated by the 1996 accident that led to EO 20 (in which some of the window gaskets could not readily be pulled out due to lack of lubrication and maintenance), it is important that maintenance, including lubrication or scheduled replacement of degraded parts or

<sup>8</sup> These numbers are not intended always to add up to 100.

mechanisms, be performed using standard industry practice and/or manufacturer recommendations to ensure that window exits will operate as intended during an emergency. This will also help to prevent a situation where a passenger in an emergency would panic or be delayed by trying to determine how to remove a window after the pull handle breaks off or a piece of the gasket tears off, for example.

Finally, FRA discovered in its investigations that some employees were installing the window gaskets with a sharp tool (such as a screwdriver), which may have damaged the gaskets and may explain why, when pulled, the gaskets were not coming out in one piece as designed. Therefore, to ensure that railroads perform proper maintenance, the railroads should ensure that employees have and use proper tools when installing emergency windows to avoid damaging the window gaskets.

As noted previously, FRA is issuing this document to provide basic information and guidance to railroads operating passenger train service to ensure that they understand the existing regulatory requirements regarding the ITM of emergency window exits. FRA believes that compliance with the existing emergency window exit regulatory requirements will help ensure the safety of the Nation's railroad employees, passengers, and the general public. FRA may take other appropriate actions it deems necessary to ensure the highest level of safety, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on November 17, 2015.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety  
Chief Safety Officer.*

[FR Doc. 2015-29641 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 2:00 p.m. to 4 p.m. (EDT) on Tuesday, December 15, 2015, via conference call at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003.

The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Thursday, December 10, 2015, Carrie Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662; 315-764-3231.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 17, 2015.

**Carrie Lavigne,**  
Chief Counsel.

[FR Doc. 2015-29667 Filed 11-19-15; 8:45 am]

**BILLING CODE 4910-61-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 33 (Sub-No. 323X)]

#### **Union Pacific Railroad Company— Abandonment of Freight Easement—in Adams County, Colo.**

On November 2, 2015, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an 8.57-mile freight rail operating easement over a portion of the Boulder Industrial Lead (Lead) extending from milepost 0.70 near Commerce City, Colo., to milepost 9.27 near Eastlake, Colo. (the Line), in Adams County, Colo. The Line traverses U.S. Postal Service Zip Codes 80022, 80640, 80229, 80233, and 80241.

According to UP, in June 2009, it sold the entire 32.97-mile Lead, right-of-way, trackage, and structures, including all bridges, from milepost 0.20 near Commerce City to milepost 33.17 near Valmont, to the Denver Regional Transportation District (RTD), a political subdivision of the State of Colorado. *Reg'l Transp. Dist.—Acquis.*

*Exemption—Union Pac. R.R. in Adams, Boulder, Broomfield, & Weld, Colo.*, FD 35252 (STB served June 29, 2010). UP retained an exclusive, perpetual freight easement over the entire Lead. UP states that following abandonment, the Line would continue to be owned by RTD

and would be rebuilt for inclusion in RTD's integrated mass transit system known as FasTracks. UP points out that this is the same transit use as is planned for the western portion of the Lead, which was the subject matter of *Union Pacific Railroad Co.—Abandonment Exemption—in Adams, Weld, & Boulder Counties, Colo.*, Docket No. AB 33 (Sub-No. 307X) (STB served Oct. 23, 2012). Following consummation of the proposed abandonment, UP would retain its freight easement from milepost 0.20 to milepost 0.70 of the Lead.

According to UP, only one customer located on the Line, Atlas Roofing Corporation (Atlas), has moved traffic over the Line within the past two years. The last Atlas shipment moved over the Line in February 2015. UP states that RTD, Atlas, and Leroy Industries LLC (Leroy) (the owner of the facility Atlas leases for its operations) have entered into an agreement covering alternative transportation arrangements for service off the Line. UP states that it does not anticipate any need for future rail service on the Line to Atlas, Leroy, or any other potential customer and that the proposed abandonment will have no adverse effect on any shippers. UP notes that, in the agreement, Atlas and Leroy state that they do not object to and are willing to support the proposed abandonment.

In addition to an exemption from the provisions of 49 U.S.C. 10903, UP seeks an exemption from 49 U.S.C. 10904 (offer of financial assistance (OFA) procedures) and 49 U.S.C. 10905 (public use conditions) for reasons of overriding public need. In support, UP states that the right-of-way is needed for a valid public purpose by RTD for public passenger transportation purposes, and there is no other overriding public need for continued freight rail service on the Line.<sup>1</sup> UP adds that the area the Lead served has shifted away from rail-oriented industries, and as a consequence, no new shippers are expected to locate on the Line. The request for exemption from § 10904 and § 10905 will be addressed in the final decision.

According to UP, the Line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham &*

<sup>1</sup> According to UP, a transit line will use the former right-of-way from milepost 1.15 to milepost 9.27.

*Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 19, 2016.

Any OFA under 49 CFR 1152.27(b)(2) will be due by February 29, 2016, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a \$1,600 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 10, 2015. Each trail use request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 33 (Sub-No. 323X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before December 10, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: November 17, 2015.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Brendetta S. Jones,**  
Clearance Clerk.

[FR Doc. 2015-29668 Filed 11-19-15; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35969]

#### Motive Rail, Inc. d/b/a Missouri North Central Railroad—Lease and Operation Exemption—Illinois Central Railroad Company

Motive Rail, Inc. d/b/a Missouri North Central Railroad (MNCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Illinois Central Railroad Company (ICRR),<sup>1</sup> and to operate approximately 1.6 miles of rail line (the Line), known as the CN Eldorado Subdivision, between mileposts 110.9 and 112.5 in Galatia, Ill.

MNCR currently holds authority to operate approximately 7.75 miles of rail line in northern Missouri and a terminal switching operation on Michigan's Upper Peninsula. The purpose of this transaction is to allow MNCR to provide switching services for American Coal, the principal shipper in Galatia.

The transaction may be consummated on or after December 6, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

MNCR certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million or result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 27, 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35969, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025

Connecticut Ave. NW., Suite 717,  
Washington, DC 20036.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: November 17, 2015.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Kenyatta Clay,**  
Clearance Clerk.

[FR Doc. 2015-29671 Filed 11-19-15; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities: Information Collection Renewal; Request for Comment; Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003."

**DATES:** Comments must be received by January 19, 2016.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0237, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [prainfo@occ.treas.gov](mailto:prainfo@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400

7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed extension of this collection of information.

*Title:* Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.

*OMB Control No.:* 1557-0237.

*Description:* Section 114 of the FACT Act amended section 615 of the Fair Credit Reporting Act (FCRA) to require the Agencies<sup>1</sup> to issue jointly:

<sup>1</sup> Section 114 required the guidelines and regulations to be issued jointly by the Federal banking agencies (OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation), the National Credit Union Administration, and the Federal Trade Commission. Therefore, for purposes of this filing, "Agencies" refers to these entities. Note that Section 1088(a)(8)

<sup>1</sup> ICRR is a subsidiary of Canadian National Railway Company.

- Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (in developing the guidelines, the Agencies are required to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft; the guidelines must be updated as often as necessary and must be consistent with the policies and procedures required under section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l));

- Regulations that require each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines in order to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and

- Regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances.

Section 315 of the FACT Act also amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding what reasonable policies and procedures a user of consumer reports must have in place and employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA).<sup>2</sup> These regulations are required to describe reasonable policies and procedures for users of consumer reports to:

- Enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report; and

- Reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and, in the ordinary course of business, furnishes information to the CRA.

As required by section 114 of the FACT Act, appendix J to 12 CFR part 41 contains guidelines for financial institutions and creditors to use in identifying patterns, practices, and specific forms of activity that may indicate the existence of identity theft. In addition, 12 CFR 41.90 requires each financial institution or creditor that is a national bank, Federal savings association, Federal branch or agency of a foreign bank, and any of their operating subsidiaries that are not functionally regulated, to establish an

Identity Theft Prevention Program (Program) designed to detect, prevent, and mitigate identity theft in connection with accounts. Pursuant to § 41.91, credit card and debit card issuers must implement reasonable policies and procedures to assess the validity of a request for a change of address under certain circumstances.

Section 41.90 requires each OCC-regulated financial institution or creditor that offers or maintains one or more covered accounts to develop and implement a Program. In developing the Program, financial institutions and creditors are required to consider the guidelines in appendix J and include the suggested provisions, as appropriate. The initial Program must be approved by the institution's board of directors or by an appropriate committee thereof. The board, an appropriate committee thereof, or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff members must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request if it is followed by a request for an additional or replacement card. Before issuing the additional or replacement card, the card issuer must notify the cardholder of the request and provide the cardholder a reasonable means to report incorrect address changes or use another means to assess the validity of the change of address.

As required by section 315 of the FACT Act, § 1022.82 requires users of consumer reports to have in place reasonable policies and procedures that must be followed when a user receives a notice of address discrepancy from a credit reporting agency (CRA).

Section 1022.82 requires each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when it receives a notice of address discrepancy from a CRA. A user of consumer reports also must develop and implement reasonable policies and procedures for furnishing a customer address that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when the user can: (1) Form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) establish a continuing relationship with the consumer; and (3)

establish that it regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

*Type of Review:* Regular.

*Affected Public:* Individuals; Businesses or other for-profit.

*Estimated Number of Respondents:* 1,441.

*Estimated Total Annual Burden:* 161,034 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 16, 2015.

**Mary H. Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division.*

[FR Doc. 2015-29594 Filed 11-19-15; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fiduciary Activities

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor, and a respondent is not

of the Dodd-Frank Act further amended section 615 of FCRA to also require the Securities and Exchange Commission and the Commodity Futures Trading Commission to issue Red Flags guidelines and regulations.

<sup>2</sup> These regulations have been transferred to the CFPB.

required to respond to, an information collection unless it displays a currently valid OMB control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Fiduciary Activities."

**DATES:** You should submit written comments by January 19, 2016.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0140, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [prainfo@occ.treas.gov](mailto:prainfo@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed extension of this collection of information.

*Title:* Fiduciary Activities.

*OMB Control No.:* 1557-0140.

*Description:* The OCC regulates the fiduciary activities of national banks and federal savings associations (FSAs), including the administration of collective investment funds (CIFs), pursuant to 12 U.S.C. 92a and 12 U.S.C. 1464(n), respectively. Twelve CFR part 9 contains the regulations that national banks must follow when conducting fiduciary activities, and 12 CFR part 150 contains the regulations that FSAs must follow when conducting fiduciary activities. Regulations adopted by the former Office of Thrift Supervision, now recodified as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>1</sup> have long required FSAs to comply with the requirements of the OCC's CIF regulation.<sup>2</sup> Thus, 12 CFR 9.18 governs CIFs managed by both national banks and FSAs.

Twelve CFR 9.8 and 150.410-150.430 require that national banks and FSAs document the establishment and termination of each fiduciary account and maintain adequate records. Records must be retained for a period of three years from the later of the termination of the account or the termination of any litigation. The records must be separate and distinct from other records of the institution.

Twelve CFR 9.9 and 12 CFR 150.480 require national banks and FSAs to note the results of an audit (including significant actions taken as a result of the audit) in the minutes of the board of directors. National banks and FSAs that adopt a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.

Twelve CFR 9.17(a) and 150.530 require that a national bank or FSA seeking to surrender its fiduciary powers file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require national banks and FSAs to establish and maintain each CIF in accordance with a written plan approved by the

board of directors or a committee authorized by the board. The plan must include provisions relating to:

- Investment powers and policies with respect to the fund;
- Allocation of income, profits, and losses;
- Fees and expenses that will be charged to the fund and to participating accounts;
- Terms and conditions regarding admission and withdrawal of participating accounts;
- Audits of participating accounts;
- Basis and method of valuing assets in the fund;
- Expected frequency for income distribution to participating accounts;
- Minimum frequency for valuation of fund assets;
- Amount of time following a valuation date during which the valuation must be made;
- Bases upon which the institution may terminate the fund; and
- Any other matters necessary to define clearly the rights of participating accounts.

Twelve CFR 9.18(b)(1) (and 150.260 by cross-reference) require that a national bank or FSA make a copy of any CIF plan available for public inspection at its main office and provide a copy of the plan to any person who requests it.

Twelve CFR 9.18(b)(4)(iii)(E) (and 150.260 by cross-reference) require that national banks and FSAs adopt portfolio and issuer qualitative standards and concentration restrictions for short-term investment funds (STIFs), a type of CIF.

Twelve CFR 9.18(b)(4)(iii)(F) (and 150.260 by cross-reference) require that national banks and FSAs adopt liquidity standards and include provisions that address contingency funding needs for STIFs.

Twelve CFR 9.18(b)(4)(iii)(G) (and 150.260 by cross-reference) require that national banks and FSAs adopt shadow pricing procedures for STIFs that calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest from the STIF's amortized cost per participating interest, and to take certain actions if that difference exceeds \$0.005 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(H) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest and provide for reporting the results.

Twelve CFR 9.18(b)(4)(iii)(I) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a

<sup>1</sup> 76 FR 48950 (August 9, 2011).

<sup>2</sup> See 12 CFR 150.260(b)(3).

national bank or FSA to disclose to the OCC and to STIF participants within five business days after each calendar month-end the following information about the fund: Total assets under management; mark-to-market and amortized cost net asset values; dollar-weighted average portfolio maturity; dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month; and certain other security-level information for each security held.

Twelve CFR 9.18(b)(4)(iii)(f) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a national bank or FSA that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events.

Twelve CFR 9.18(b)(4)(iii)(k) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, certain procedures in the event that the STIF has repriced its net asset value below \$0.995 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(l) (and 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for initiating liquidation of a STIF upon the suspension or limitation of withdrawals as a result of redemptions.

Twelve CFR 9.18(b)(6)(ii) (and 150.260 by cross-reference) require, for CIFs, that national banks and FSAs, at least once during each 12-month period, prepare a financial report of the fund based on the audit required by 12 CFR 9.18(b)(6)(i). The report must disclose the fund's fees and expenses in a manner consistent with applicable state law in the state in which the national bank or FSA maintains the fund and must contain:

- A list of investments in the fund showing the cost and current market value of each investment;
- A statement covering the period after the previous report showing the following (organized by type of investment):
  - A summary of purchases (with costs);
  - A summary of sales (with profit or loss and any investment change);
  - Income and disbursements; and
  - An appropriate notation of any investments in default.

Twelve CFR 9.18(b)(6)(iv) (and 150.260 by cross-reference) require that a national bank or FSA managing a CIF provide a copy of the financial report, or provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic

accounting with respect to each participating account. The national bank or FSA may provide a copy to prospective customers. In addition, the national bank or FSA must provide a copy of the report upon request to any person for a reasonable charge.

Twelve CFR 9.18(c)(5) (and 150.260 by cross-reference) require that, for special exemption CIFs, national banks and FSAs must submit to the OCC a written plan that sets forth:

- The reason the proposed fund requires a special exemption;
- The provisions of the fund that are inconsistent with 12 CFR 9.18(a) and (b);
- The provisions of 12 CFR 9.18(b) for which the national bank or FSA seeks an exemption; and
- The manner in which the proposed fund addresses the rights and interests of participating accounts.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 398.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 109,320 hours.

Comments are solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 16, 2015.

**Mary H. Gottlieb,**

*Regulatory Specialist, Legislative and Regulatory Activities Division.*

[FR Doc. 2015-29595 Filed 11-19-15; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0609]

### Proposed Information Collection (VA Survey of Veteran Enrollees' Health and Use of Health Care (Survey of Enrollees)) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) 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 proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 19, 2016.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov); or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: [Brian.McCarthy4@va.gov](mailto:Brian.McCarthy4@va.gov). Please refer to "OMB Control No. 2900-0609" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Brian McCarthy at (202) 461-6345.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* Survey of Veteran Enrollees' Health and Use of Health Care (Survey of Enrollees).

*OMB Control Number:* 2900-0609.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The Department of Veterans Affairs (VA) Survey of Veteran Enrollees' Health and Use of Health Care (Survey of Enrollees) gathers information from Veterans enrolled in the VA Health Care System regarding factors which influence their health care utilization choices. Data collected are used to gain insights into Veteran preferences and to provide VA and Veterans Health Administration (VHA) management guidance in preparing for future Veteran needs. In addition to factors influencing health care choices, the data collected include enrollees' perceived health status and need for caregiver support, available insurances, self-reported utilization of VA services versus other health care services, reasons for using VA, barriers to seeking care, ability and comfort level with accessing virtual care, as well as general demographics and family characteristics that may influence utilization but cannot be accessed elsewhere.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 14,700 hours.

*Estimated Average Burden per Respondent:* 21 minutes.

*Frequency of Response:* Annually.

*Estimated Annual Responses:* 42,000.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2015-29658 Filed 11-19-15; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0564]

### Agency Information Collection (Direct Deposit Enrollment (24-0296) and International Direct Deposit Enrollment (24-0296a)) Activity Under OMB Review

**AGENCY:** Veterans Benefits 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 Benefits Administration (VBA), 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 December 21, 2015.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://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](mailto:oira_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-0564" in any correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email [crystal.rennie@va.gov](mailto:crystal.rennie@va.gov). Please refer to "OMB Control No. 2900-0564."

#### SUPPLEMENTARY INFORMATION:

*Title:* Direct Deposit Enrollment (24-0296) and International Direct Deposit Enrollment (24-0296a).

*OMB Control Number:* 2900-0564.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The information collected on these forms will be used to enroll VA benefit recipients in the electronic funds transfer (EFT) program.

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 at 80 FR 46103-46104 on August 3, 2015.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,250 hours.

*Estimated Average Burden per*

*Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 5,000.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2015-29657 Filed 11-19-15; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0042]

### Agency Information Collection (Statement of Accredited Representative in Appealed Case) Under OMB Review

**AGENCY:** Board of Veterans' Appeals, 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 Board of Veterans' Appeals (BVA), 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 and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before December 21, 2015.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://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](mailto:oira_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-0042" in any correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email [crystal.rennie@va.gov](mailto:crystal.rennie@va.gov). Please refer to "OMB Control No. 2900-0042" in any correspondence.

**SUPPLEMENTARY INFORMATION:**



*Title:* Statement of Accredited Representative in Appealed Case.

*OMB Control Number:* 2900–0042.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* A recognized organization, attorney, agent, or other authorized person representing VA claimants before the Board of Veterans' Appeals complete VA Form 646 to provide identifying data describing the basis for their claimant's disagreement with the denial of VA benefits. VA uses the data collected to identify the issues in

dispute and to prepare a decision responsive to the claimant's disagreement.

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 at 80 FR 48138 on August 11, 2015.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 50,286.

*Estimated Average Burden per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 50,286.

By direction of the Secretary.

**Kathleen M. Manwell,**  
*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2015–29655 Filed 11–19–15; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

---

Vol. 80

Friday,

No. 224

November 20, 2015

---

Part II

## Environmental Protection Agency

---

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-HQ-OAR-2002-0058; FRL-9936-20-OAR]

RIN 2060-AS09

**National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; notice of final action on reconsideration.

**SUMMARY:** This action sets forth the Environmental Protection Agency's (EPA's) final decision on the issues for which it granted reconsideration on January 21, 2015, that pertain to certain aspects of the January 31, 2013, final amendments to the "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters" (Boiler MACT). The EPA is retaining a minimum carbon monoxide (CO) limit of 130 parts per million (ppm) and the particulate matter (PM) continuous parameter monitoring system (CPMS) requirements, consistent with the January 2013 final rule. The EPA is making minor changes to the proposed definitions of startup and shutdown and work practices during these periods, based on public comments received. Among other things, this final action addresses a number of technical corrections and clarifications of the rule. These corrections will clarify and improve the implementation of the January 2013 final Boiler MACT, but do not have any effect on the environmental, energy, or economic impacts associated with the proposed action. This action also includes our final decision to deny the requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final Boiler MACT for which we did not grant reconsideration.

**DATES:** This rule is effective November 20, 2015.**ADDRESSES:** Docket ID No. EPA-HQ-OAR-2002-0058 contains supporting information for this action on the Boiler MACT. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Mr. Jim Eddinger, Energy Strategies Group, Sector Policies and Programs Division (D243-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5426; fax number: (919) 541-5450; email address: [eddinger.jim@epa.gov](mailto:eddinger.jim@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

ACC American Chemistry Council  
 AF&PA American Forest and Paper Association  
 API American Petroleum Institute  
 CAA Clean Air Act  
 CEMS Continuous emissions monitoring systems  
 CFR Code of Federal Regulations  
 CIBO/ACC Council of Industrial Boiler Owners  
 CISWI Commercial and Industrial Solid Waste Incineration  
 CO Carbon monoxide  
 CO<sub>2</sub> Carbon dioxide  
 CPMS Continuous parameter monitoring systems  
 CRA Congressional Review Act  
 EGU Electric Utility Steam Generating Unit  
 EPA U.S. Environmental Protection Agency  
 ESP Electrostatic precipitator  
 FSI Florida Sugar Industry  
 HCl Hydrogen chloride  
 Hg Mercury  
 HSG Hybrid suspension/grate  
 ICI Industrial, Commercial, Institutional  
 ICR Information collection request  
 MACT Maximum achievable control technology  
 MATS Mercury Air Toxics Standards  
 mmBtu/hr Million British thermal units per hour  
 NAICS North American Industrial Classification System  
 NEDACAP Natural Environmental Development Association's Clean Air Project  
 NESHAP National emission standards for hazardous air pollutants  
 NHPC New Hope Power Company  
 NO<sub>x</sub> Nitrogen oxides  
 NSPS New source performance standards

NTTAA National Technology Transfer and Advancement Act  
 O<sub>2</sub> Oxygen  
 OMB Office of Management and Budget  
 ORD EPA Office of Research and Development  
 PAH Polycyclic aromatic hydrocarbons  
 PCB Polychlorinated biphenyls  
 PM Particulate matter  
 POM Polycyclic organic matter  
 ppm Parts per million  
 SO<sub>2</sub> Sulfur dioxide  
 SSM Startup, shutdown, and malfunction  
 SSP Startup and shutdown plan  
 the Court United States Court of Appeals for the District of Columbia Circuit  
 TSM Total selected metals  
 TTN Technology Transfer Network  
 UARG Utility Air Regulatory Group  
 UMRA Unfunded Mandates Reform Act  
 U.S.C. United States Code  
 WWW World Wide Web

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

- I. General Information
  - A. Does this action apply to me?
  - B. How do I obtain a copy of this document and other related information?
  - C. Judicial Review
- II. Background Information
- III. Summary of Final Action and Significant Changes Since Proposal
  - A. Definition of Startup and Shutdown Periods and the Work Practices That Apply During Such Periods
  - B. Revised CO Limits Based on a Minimum CO Level of 130 ppm
  - C. PM CPMS
- IV. Technical Corrections and Clarifications
  - A. Opacity Is an Operating Parameter
  - B. CO Monitoring and Moisture Corrections
  - C. Affirmative Defense for Violation of Emission Standards During Malfunction
  - D. Definition of Coal
  - E. Other Corrections and Clarifications
- V. Other Actions We Are Taking
  - A. Petitioners' Comments Impacted by Technical Corrections
  - B. Petitions Related to Ongoing Litigation
  - C. Other Petitions
- VI. Impacts of This Final Rule
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act (NTTAA)

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations  
 K. Congressional Review Act (CRA)

**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially affected by this reconsideration action

include those listed in Table 1 of this preamble:

TABLE 1—REGULATED ENTITIES

Category	North American Industrial Classification System (NAICS) code <sup>a</sup>	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the final rule.	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.

<sup>a</sup>North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. To determine whether your facility would be affected by this final action, you should examine the applicability criteria in 40 CFR 63.7490 of subpart DDDDD. If you have any questions regarding the applicability of this final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How do I obtain a copy of this document and other related information?*

The docket number for this final action regarding the Major Source Boiler MACT (40 CFR part 63, subpart DDDDD) is Docket ID No. EPA-HQ-OAR-2002-0058.

*World Wide Web.* In addition to being available in the docket, an electronic copy of this final action is available on the Technology Transfer Network (TTN) Web site. Following signature, the EPA posted a copy of the final action at <http://www.epa.gov/ttn/atw/boiler/boilerpg.html>. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Judicial Review*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in United States Court of Appeals for the District of Columbia Circuit (the Court) by January 19, 2016. Under CAA section 307(d)(7)(B), only an objection to this final rule that was

raised with reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

**II. Background Information**

On March 21, 2011, the EPA established final emission standards for industrial, commercial, and institutional (ICI) boilers and process heaters at major sources to meet hazardous air pollutant (HAP) standards reflecting the application of maximum achievable control technology (MACT)—the Boiler MACT (76 FR 15608). On January 31, 2013, the EPA promulgated final amendments to the Boiler MACT (78 FR 7138). Following that action, the Administrator received 13 petitions for reconsideration that identified certain issues that petitioners claimed warranted further opportunity for public comment.

The EPA received petitions dated March 28, 2013, from New Hope Power Company (NHPC) and the Sugar Cane Growers Cooperative of Florida. The EPA received a petition dated March 29, 2013, from the Eastman Chemical Company (Eastman). The EPA received petitions dated April 1, 2013, from Earthjustice, on behalf of Sierra Club, Clean Air Council, Partnership for Policy Integrity, Louisiana Environmental Action Network, and Environmental Integrity Project (hereinafter referred to as Sierra Club);

American Forest and Paper Association on behalf of American Wood Council, National Association of Manufacturers, Biomass Power Association, Corn Refiners Association, National Oilseed Processors Association, Rubber Manufacturers Association, Southeastern Lumber Manufacturers Association, and U.S. Chamber of Commerce (hereinafter referred to as AF&PA); the Florida Sugar Industry (FSI); Council of Industrial Boiler Owners, American Municipal Power, Inc., and American Chemistry Council (hereinafter referred to as CIBO/ACC); American Petroleum Institute (API); and the Utility Air Regulatory Group (UARG) which also submitted a supplemental petition on July 3, 2013. Finally, the EPA received a petition dated July 2, 2013, from the Natural Environmental Development Association's Clean Air Project (NEDACAP) and CIBO. The EPA received revised petitions from CIBO/ACC on July 1, 2014, and on July 11, 2014, from Eastman. Both of these were revised to withdraw one of the issues raised in their initial submittal.

In response to the petitions, the EPA reconsidered and requested comment on several provisions of the January 31, 2013, final amendments to the Boiler MACT. The EPA published the proposed notice of reconsideration in the **Federal Register** on January 21, 2015 (80 FR 3090).

**III. Summary of Final Action and Significant Changes Since Proposal**

In this notice, we are finalizing amendments associated with certain

issues raised by petitioners in their petitions for reconsideration on the 2013 final amendments to the Boiler MACT. These provisions are: (1) Definitions of startup and shutdown periods and the work practices that apply during such periods; (2) CO limits based on a minimum CO level of 130 ppm; and (3) the use of PM CPMS, including the consequences of exceeding the operating parameter. Additionally, the EPA is finalizing the technical corrections and clarifications that were proposed to correct inadvertent errors in the final rule and to provide the intended accuracy, clarity, and consistency, as well as correcting various typographical errors identified in the rule as published in the Code of Federal Regulations (CFR).

Most of these changes are very similar to those described in the proposed notice of reconsideration on January 21, 2015 (80 FR 3090). However, the EPA has made some changes in this final rule after consideration of the public comments received on the proposed notice of reconsideration. The changes are to clarify applicability and implementation issues raised by the commenters. We address several significant comments in this preamble. For a complete summary of the comments received and our responses thereto, please refer to the memorandum "Response to 2015 Reconsideration Comments for Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants" located in the docket for this rulemaking.

#### *A. Definition of Startup and Shutdown Periods and the Work Practices That Apply During Such Periods*

##### 1. Definitions

In the January 31, 2013, final amendments to the Boiler MACT, the EPA finalized revisions to the definition of startup and shutdown periods, which were based on the time during which fuel is fired in the affected unit for the purpose of supplying steam or heat for heating and/or producing electricity or for any other purpose. Petitioners asserted that the definitions were not sufficiently clear. In response to these petitions, we proposed an alternative definition of startup in the January 21, 2015, proposed notice of reconsideration (80 FR 3093). This alternative definition clarified pre-startup testing activities and also expanded to allow for startup after a shutdown event instead of solely the initial startup of the affected unit. The alternative definition of startup as well as the definition of shutdown also

incorporated a new term "useful thermal energy" to replace the term "steam and heat" to address petitioners' concerns of an ambiguous end of the startup period.

In today's action, the EPA is adopting two alternative definitions of "startup," consistent with the proposed rule. The first definition defines "startup" to mean the first-ever firing of fuel, or the firing of fuel after a shutdown event, in a boiler or process heater for the purpose of supplying useful thermal energy for heating and/or producing electricity or for any other purpose. Under this definition, startup ends when any of the useful thermal energy from the boiler or process heater is supplied for heating, producing electricity, or any other purpose. The EPA is also adopting an alternative definition of "startup" which defines the period as beginning with the first-ever firing of fuel, or the firing of fuel after a shutdown event, in a boiler or process heater for the purpose of supplying useful thermal energy for heating, cooling, or process purposes or for producing electricity, and ending four hours after the boiler or process heater supplies useful thermal energy for those purposes. Sources demonstrating compliance using the alternative definition will be required to meet enhanced recordkeeping provisions. These enhancements will document when useful thermal energy is provided, what fuels are used during startup, parametric monitoring data to verify relevant controls are engaged, and the time when PM controls are engaged.

In the January 31, 2013 final rule, the EPA defined "shutdown" to mean the cessation of operation of a boiler or process heater for any purpose, and said this period begins either when none of the steam from the boiler is supplied for heating and/or producing electricity or for any other purpose, or when no fuel is being fired in the boiler or process heater, whichever is earlier. The EPA received petitions for reconsideration of this definition, asking that the agency clarify the term. The EPA proposed a definition of "shutdown" in January 2015 which clarified that shutdown begins when the boiler or process heater no longer makes useful thermal energy (rather than referring to steam supplied by the boiler) for heating, cooling, or process purposes and/or generates electricity, or when no fuel is being fed to the boiler or process heater, whichever is earlier. In today's action, the EPA is adopting a definition of "shutdown" that is consistent with the proposal, with some minor clarifying revisions. "Shutdown" is defined to begin when the boiler or process heater

no longer supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generation of electricity, or when no fuel is being fed to the boiler or process heater, whichever is earlier.

The EPA received several comments on the proposed edits to the definitions of "useful thermal energy," "startup," and "shutdown."

##### a. Useful Thermal Energy

Several comments supported the alternative definitions of startup and shutdown to include the concept of useful thermal energy, which recognizes that small amounts of steam or heat may be produced when starting up a unit, but the amounts would be insufficient to operate processing equipment and insufficient to safely initiate pollution controls.

One comment stated that an alternative work practice period between the start of fuel combustion until 4 hours after useful thermal energy is supplied is unlawful because the EPA may set work practice standards only for categories or subcategories of sources, not for periods of operation. The comment further noted that work practice standards are allowed only if pollution is not emitted through a conveyance or the application of measurement methodology to a particular class of sources is not practicable, and the EPA has not stated either of these to be the case. The comment also claimed that, because the EPA has changed and extended startup and shutdown periods, the EPA must determine that emissions measurement is impracticable during startup and shutdown as they are now defined, which the EPA has not done.

The EPA recognizes the unique characteristics of ICI boilers and has retained the alternative definition, which incorporates the term "useful thermal energy" in the final rule, with some slight adjustments, as discussed below. The EPA disagrees with the commenter that the reference to "a particular class of sources" in CAA section 112(h)(2) limits the EPA's authority to determine, for a category or subcategory of sources, that it is infeasible to prescribe or enforce an emission standard for those sources during certain identifiable time periods, such as startup and shutdown. Contrary to the commenter's assertion, the EPA did make a determination under CAA section 112(h) that it is not feasible to prescribe or enforce a numeric standard during periods of startup and shutdown, because the application of measurement methodology is impracticable due to technological and economic limitations.

Information provided on the amount of time required for startup and shutdown of boilers and process heaters indicates that the application of measurement methodology for these sources using the required procedures, which would require more than 12 continuous hours in startup or shutdown mode to satisfy all of the sample volume requirements in the rule, is impracticable. In addition, the test methods are required to be conducted under isokinetic conditions (*i.e.*, steady-state conditions in terms of exhaust gas temperature, moisture, flow rate), which is difficult to achieve during these periods where conditions are constantly changing. Moreover, accurate HAP data from those periods is unlikely to be available from either emissions testing (which is designed for periods of steady state operation) or monitoring instrumentation such as continuous emissions monitoring systems (CEMS) (which are designed for measurements occurring during periods other than during startup or shutdown when emissions flow are stable and consistent). Upon review of this information, the EPA determined that it is not feasible to require stack testing, in particular, to complete the multiple required test runs during periods of startup and shutdown due to physical limitations and the short duration of startup and shutdown periods. Based on these specific facts for the Boilers and Process Heater source category, the EPA developed a separate standard for these periods, and we are finalizing amendments to the work practice standards to meet this requirement. As detailed in the response to this commenter in the 2013 final amendments to the Boiler MACT (EPA-HQ-OAR-2002-0058-3511-A1), the EPA continues to maintain that testing is impracticable during periods of startup and shutdown, despite the revisions to the definitions for the two terms as finalized in this action. We set standards based on available information as contemplated by CAA section 112. Compliance with the numeric emission limits (*i.e.*, PM or total selected metals (TSM), hydrogen chloride (HCl), mercury (Hg), and CO) are demonstrated by conducting performance stack tests. The revised definitions of startup and shutdown better reflect when steady-state conditions are achieved, which are required to yield meaningful results from current testing protocols.

Several comments requested that the EPA add the term “flow rate” to the definition of useful thermal energy, consistent with the preamble to the proposed notice of reconsideration (80

FR 3093). The EPA recognizes the importance of flow rate as a parameter for determining when useful thermal energy is being supplied by a boiler or process heater and has added this term to the definition in the final rule.

Two comments argued that for the alternative definitions of startup and shutdown to be useful, the term “useful thermal energy” must incorporate a primary purpose component that assures that the 4-hour startup period is not triggered until useful energy is supplied to the most demanding end use of the boiler. Several comments agreed with the EPA that startup “should not end until such time that all control devices have reached stable conditions” (*see* 80 FR 3094, column 1), but noted that the time frame of 4 hours after a unit supplies useful thermal energy is not workable for some boilers due to site-specific factors and technology differences. One commenter agreed with the EPA that the variation of practices and capabilities among fossil-fuel fired boilers warrants longer periods when work practices apply in lieu of ICI MACT emission limits.

The EPA agrees that the definition of “useful thermal energy” could be further clarified; however, we disagree that basing the end of startup on a primary purpose approach which considers the most demanding end use is an appropriate approach. Often times, ICI boilers can serve more than one purpose. As long as the boiler is providing useful thermal energy to one of its intended purposes, the unit is supplying “useful thermal energy.” The final definition of “useful thermal energy” incorporates the term “flow” to more appropriately reflect when the energy is provided for any primary purpose of the unit. We believe that supplying energy at the minimum temperature, pressure, and flow to any energy use system is the primary purpose of any unit.

#### b. Startup

Several comments claimed that even with an alternative definition of startup to incorporate the term “useful thermal energy,” the first definition remains unworkable. The act of supplying heat, steam, or electricity does not represent the functional end of the startup period, and some processes are designed such that downstream equipment receives heat and/or steam when fuel is being burned during startup of the boilers and/or process heaters.

The EPA has adjusted the first definition of startup to replace “steam” with “useful thermal energy”. Additionally, the term “useful thermal energy” was revised to incorporate a

minimum flowrate to more appropriately reflect when the energy is provided for any primary purpose of the unit. Together, these changes alleviate the concerns of when the startup period functionally ends. Boilers and process heaters should be considered to be operating normally at all times steam or heat of the proper pressure, temperature and flow rate is being supplied to a common header system or energy user(s) for use as either process steam or for the cogeneration of electricity.

#### c. Shutdown

Several comments supported the EPA’s proposed definition of shutdown, because the proposed revisions now adequately address the circumstances for some affected units where fuel remaining in the unit on a grate or elsewhere continues to combust although fuel has been cut off and useful thermal energy is no longer generated. Two comments suggested that the definition could be clarified to recognize that the shutdown period begins when no useful steam or electricity is generated, or when fuel is no longer being combusted in the boiler. After the shutdown period ends, some steam may still be generated temporarily, even though the steam is not useful thermal energy (*i.e.*, the steam does not meet the minimum operating temperature, pressure, and flow rate).

The EPA has adjusted the definition of shutdown to replace the phrase “makes useful thermal energy” to “supplies useful thermal energy.” The shutdown period begins when no useful steam or electricity is generated, or when fuel is no longer being combusted in the boiler. The term “supplies” is the preferred phrase in the definition of shutdown instead of “makes” to be consistent with the definition of startup, and is a more accurate term to use to describe the function of the boiler or process heater.

#### 2. Work Practices

The EPA is adopting work practices that apply during the periods of startup and shutdown which reflect the emissions performance achieved by the best performing units. These work practices include use of clean fuels during startup and shutdown. In addition, under the alternate work practice, sources must engage all applicable control devices so that the emissions standards are met no later than four hours after the start of supplying useful thermal energy and must engage PM controls within one hour of first feeding non-clean fuels.

#### a. Clean Fuels

In the January 31, 2013, final amendments to the Boiler MACT, the EPA finalized a definition of “clean fuels” that could be used during periods of startup and shutdown to satisfy the clean fuels requirement. Petitioners claimed that the list of “clean fuels” was too narrow. In response to these petitions, the EPA proposed revisions to this term in the January 21, 2015, notice of reconsideration to include “other gas 1” fuels, as well as any fuels that meet the applicable TSM, HCl, and Hg emission limits based on fuel analysis. In today’s action, the EPA is finalizing these proposed revisions to the definition of “clean fuels” and also adding “clean dry biomass” to the definition of “clean fuels.”

The EPA received several comments on the proposed changes to the definition of clean fuels. Several comments supported the EPA’s proposal to expand the list of eligible clean fuels for starting up a boiler or process heater to include all gaseous fuels meeting the “other gas 1” classification and any fuel that meets the applicable TSM, HCl, and Hg emission limits using fuel analysis. Another comment claimed that the EPA had not shown that boilers burning “clean fuels” or those fuels newly added to the “clean fuels” list (*i.e.*, other gas 1) can meet CO standards or that emissions of organic HAP will not increase. This comment suggested that allowing sources to emit more CO or organic HAP than is permitted by the standards, is not “consistent with” CAA section 112(d), and is, therefore, unlawful. This comment also expressed concerns that broadening the “clean fuel” definition would allow sources to burn tires as “clean fuel,” provided that they meet fuel analysis requirements for Hg, TSM, and HCl despite the fact that burning tires plainly increases polycyclic aromatic hydrocarbons (PAH).

Based on the comments received, the EPA is finalizing an expanded list of clean fuels to add any fuels that meet the applicable TSM, HCl and Hg emission limits based on fuel analysis. The EPA disagrees with the comment that the clean fuels requirement is inconsistent with CAA section 112(d) because it fails to address emissions of CO or organic HAP. These pollutants are byproducts of the combustion process, and, therefore, emissions are not fuel-dependent and cannot be measured through fuel analysis. For instance, the formation of POM is effectively reduced by good combustion practices (*i.e.*, proper air to fuel ratios). In addition, because these pollutants are byproducts

of the combustion process, the EPA does not expect most units to require post-combustion controls to meet the CO limits once the startup period has ended, but instead will comply by conducting the required tune-up (which serves to reduce HAP emissions at all times, including during startup and shutdown), and adopting other combustion best practices. In contrast, the EPA expects many units to install one or more post-combustion controls to reduce emissions of HCl, Hg, or non-Hg metallic HAP. Because CO and organic HAP are combustion byproducts, emissions of CO and organic HAP are likely to vary little among boilers during startup since combustion practices during that period tend to be similar and well-controlled in order to prevent thermal stresses, and are not dependent on the fuel being combusted, unlike Hg, HCl, and other hazardous metals. Therefore, it is reasonable for EPA to conclude that emissions during startup will reflect the maximum degree of reduction of CO and organic HAP, as well as other HAP, achieved during startup. For these reasons, today’s action retains the proposed requirements to qualify as a clean fuel through fuel analysis data.

Regarding the commenter’s concerns with tires, specifically, the EPA has reviewed the fuel analysis data for tire derived fuel for HCl, Hg, and TSM emissions submitted in the databases used in the final rule. None of the samples indicate that tires could demonstrate compliance with the TSM limit for solid fossil fuels. Thus, the EPA believes that tires would not qualify as a “clean fuel.”

Two commenters asked the EPA to include dry biomass (*i.e.*, moisture content less than 20 percent) in the list of clean fuels allowed during startup and shutdown. The commenters noted that the chemical makeup and combustion characteristics are similar to paper and cardboard which are currently included. Further, dry biomass has low chloride, Hg, and moisture content, burns cleaner than other solid fuels, and produces low HCl, Hg, and CO. The list of clean fuels was expanded to include “clean dry biomass.” The EPA has reviewed boiler information collection request (ICR) fuel analysis data and AP-42 emission factor data for wood combustion. The ICR fuel analysis data for solid fuels often exclude numeric values for certain metallic HAP that were reported as below detection levels. These data show that clean dry biomass can meet the Hg and HCl limits for solid fuels and the TSM levels in dry biomass are 6 times lower than in solid fossil fuels.

Therefore, the EPA has finalized the list of clean fuels to include clean dry biomass. The EPA added the phrase “clean dry biomass” to Table 3 to subpart DDDDD of part 63, item 5.b. The EPA also defined this new term for this subpart drawing on similarly defined term in the “Identification of Non-Hazardous Secondary Materials That Are Solid Waste” rulemaking. Under the final rule, clean dry biomass fuels are now categorically accepted as clean fuels and do not need to demonstrate that the fuel meets the TSM, Hg, and HCl emission limits with each new fuel shipment.

Based on comments received to clarify how the “clean fuel” provision works, the EPA also made several corrections in the final rule. Text in 40 CFR 63.7555(d)(11) is added to acknowledge the possibility for additional clean fuels. Language in 40 CFR 63.7555(d)(11) was revised to replace the phrase “coal/solid fossil fuel, biomass/bio-based solids, heavy liquid fuel, or gas 2 (other) gases” with “fuels that are not clean fuel.”

For consistency, the phrase “coal/solid fossil fuel, biomass/bio-based solids, heavy liquid fuel, or gas 2 (other) gases” was replaced with “fuels that are not clean fuel” in Table 3 to subpart DDDDD of part 63, items 5.c and 6.

#### b. Engaging Pollution Controls

The January 2013 final amendments to the Boiler MACT included a provision for boilers and process heaters when they start firing coal/solid fossil fuel, biomass/bio-based solids, heavy liquid fuel, or gas 2 (other) gases to engage applicable pollution control devices except for limestone injection in fluidized bed combustion (FBC) boilers, dry scrubbers, fabric filters, selective non-catalytic reduction, and selective catalytic reduction, which must start as expeditiously as possible. The EPA received several petitions for reconsideration of this aspect of the work practice standard expressing safety concerns with engaging electrostatic precipitator (ESP) control devices. These petitions urged the EPA to revise requirements to include ESP energization with the other controls that are to be started as expeditiously as possible rather than when solid fuel firing is first started.

In response to these petitions, the January 2015 proposal included an alternate requirement to engage all control devices so as to comply with the emission limits within 4 hours of start of supplying useful thermal energy. Under the proposal, owners or operators would be required to engage PM control within 1 hour of first firing coal/solid

fossil fuel, biomass/bio-based solids, heavy liquid fuel, or gas 2 (other) gases. Owners or operators using this alternative would have to develop and implement a written startup and shutdown plan (SSP) and the SSP must be maintained on site and available upon request for public inspection. The EPA also proposed to allow a source to request a case-by-case extension to the 1-hour period for engaging the PM controls based on evidence of a documented manufacturer-identified safety issue and proof that the PM control device is adequately designed and sized to meet the filterable PM emission limit. The EPA is adopting the proposed requirements with minor revisions.

The EPA received several comments on the proposed revisions for engaging pollution controls. One comment supported the EPA's recognition that some HAP emission control technologies require specific operating conditions before being engaged and should be excluded from operation as soon as primary fuel firing begins. Several comments requested that the EPA add ESPs to the list of controls that must be started as expeditiously as possible, noting that the 1-hour requirement for engaging ESPs is unreasonable. Another comment considered the EPA's decision to set a less stringent work practice standard that allows boilers to operate without pollution controls to be inconsistent with CAA section 112(d)(2) and arbitrary. This commenter also considered the requirement to engage applicable pollution controls "as expeditiously as possible" within the startup period to be inconsistent with CAA section 112(d) and unlawful, as well as arbitrary and capricious. The commenter states that it is not acceptable for a standard to allow sources to do whatever is "possible" for them. The commenter stated that the point of a national standard is to set one limit that governs all the sources to which it applies.

The EPA has established a work practice for periods of startup and shutdown because it is infeasible to measure emissions during these periods. Moreover, accurate HAP data from those periods are unlikely to be available from either emissions testing (which is designed for periods of steady state operation) or monitoring instrumentation such as CEMS (which are designed for measurements occurring during periods other than during startup or shutdown when emissions flow is stable and consistent). The work practice for PM controls was established by evaluating the

performance of the best performing sources as determined by the EPA. For the Mercury and Air Toxics Standards (MATS), the EPA conducted an analysis of nitrogen oxide (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) CEMS data from electric utility steam generating units (EGUs) to determine the best performing sources with respect to NO<sub>x</sub> and SO<sub>2</sub> emissions (79 FR 68779 November 19, 2014). The best performing sources are those whose control devices are operational within 4 hours of starting electrical generation. Since the types of controls used on EGUs are similar to those used on industrial boilers and the start of electricity generation is similar to the start of supplying useful thermal energy, we believe that the controls on the best performing industrial boilers would also reach stable operation within four hours after the start of supplying useful thermal energy and have included this timeframe in the proposed alternate definition. This conclusion was supported by the limited information (13 units) the EPA did have on industrial boilers and by information (76 units) submitted by CIBO obtained from an informal survey of its members on the time needed to reach stable conditions during startup. The time reported, in the CIBO survey summary, to reach stable operation after coming online (supplying useful thermal energy) of the best performing units ranged from 1 to 4 hours. See the docketed memorandum "2015 Assessment of Startup Period for Industrial Boilers."

The EPA also maintains that the best performers are able to engage their PM control devices within 1 hour of coal, biomass, or residual oil combustion. In the January 2013 final Boiler MACT rule and in the January 2015 reconsideration proposal, the EPA stated that once an affected unit starts firing coal, biomass, or heavy liquid fuel, all of the applicable control devices had to be engaged (with certain listed exceptions). The listed exceptions did not include ESP for controls of PM emissions and, thus, the EPA's intent was that ESP controls would be engaged (*i.e.*, operational) at the moment non-clean fuel are fired. We did receive comments making us question the ability of most affected units to engage their ESP controls so quickly after first firing non-clean fuel. These comments suggested that there may need to be some flexibility. For this reason, we are providing a 1-hour period of time following the initiation of firing of non-clean fuels before PM controls must be engaged. Therefore, we are finalizing as part of the alternative work practice that

PM control must be engaged within 1 hour of the time non-clean fuels are introduced into the affected unit. We have also added requirements to document that PM control is being achieved through the operation of the PM controls. The requirement to engage and operate the PM controls within 1 hour of non-clean fuels being charged to the units is intended to ensure that PM and HAP reductions will occur as quickly as possible after primary fuel combustion begins. We continue to believe that sources will be able to engage and operate their controls to comply with the standards at the end of startup, and that sources can make physical and/or operational changes at the facility to ensure compliance at the end of startup. As noted before, the EPA believes it appropriate to base its startup and shutdown work practices on those practices employed by the best performers. Because the above information indicates that ESPs can be energized within 1 hour of coal firing being started, we are finalizing that PM controls must be engaged within 1 hour of starting to fire non-clean fuels.

Several commenters were also concerned with compliance deadlines and asked the EPA to provide and finalize a more streamlined procedure for units needing more than 1 hour to safely initiate PM control during startup. They were concerned that their case-by-case extensions would not be approved by the local authority by the compliance deadlines, considering that the EPA must finalize this rule before it is adopted by the state.

The EPA is finalizing the provision allowing an owner or operator to apply for a boiler-specific case-by-case alternative timeframe with the requirement to engage PM control devices within 1 hour of firing non-clean fuels. However, the delegated authority will only consider such requests for boilers that can provide evidence of a documented manufacturer-identified safety issue, proof that the PM control device is adequately designed and sized to meet the final PM emission limit, and that it can demonstrate it is unable to safely engage and operate the PM controls. In its request for the case-by-case determination, the owner or operator must provide, among other materials, documentation that: (1) The boiler is using clean fuels to the maximum extent possible to bring the boiler and PM control device up to the temperature necessary to alleviate or prevent the safety issues prior to the combustion of non-clean fuels in the boiler, (2) the boiler has explicitly followed the manufacturer's procedures to alleviate



or prevent the safety issue, (3) the source provides details of the manufacturer's statement of concern, and (4) the source provides evidence that the PM control device is adequately designed and sized to meet the final PM emission limit. In addition, the source will have to indicate the other measures it will implement to limit HAP emissions during periods of startup and shutdown to ensure a control level consistent with the final work practice requirements.

The EPA is finalizing a provision, 40 CFR 63.7555(d)(13), that provides that an owner or operator may apply for an alternative timeframe with the PM controls requirement to the permitting authority. We recognize that there may be very limited circumstances that compel an alternative approach for a specific unit. The EPA has added language to Table 3 to subpart DDDDD of part 63, item 5.c to clarify that a written SSP must be developed. Text was added to Table 3 to subpart DDDDD of part 63—footnote “a” to acknowledge that an alternative timeframe to the PM controls requirement can be granted by the EPA or the appropriate state, local, or tribal permitting authority that has been delegated authority.

#### *B. Revised CO Limits Based on a Minimum CO Level of 130 ppm*

In the January 2013 final amendments to the Boiler MACT, the EPA established a CO emission limit for certain subcategories at a level of 130 ppm, based on an analysis of CO levels and associated organic HAP emission reductions. The January 2015 proposal retained these emission limits, but requested additional data to support whether or not these limits were appropriate or should be modified. The EPA is retaining these limits, as discussed below.

The EPA received numerous comments supporting the minimum CO level of 130 ppm, adjusted to 3-percent oxygen (O<sub>2</sub>). These comments agreed that the level selected was within the range of where the relationship between CO and organic HAP breaks down. Many of these comments also noted that the level was consistent with other EPA regulations for hazardous waste combustors and industrial furnace rules.

One comment disagreed that the minimum CO level of 130 ppm reflects the CO emissions achieved by the best performers in this subcategory, and contended that this level does not satisfy the requirements of CAA section 112(d)(3). This comment also disagreed with the use of formaldehyde as a surrogate for other organic HAPs and

provided supporting evidence.<sup>1</sup> The commenter concluded that formaldehyde emissions are formed differently than polychlorinated biphenyls (PCBs) and PAHs, and they noted that combustion practices that reduce emissions of PCBs and PAHs (*i.e.* extremely high temperatures) can increase emissions of CO. The comments also noted that the gaseous properties of formaldehyde emissions differ from PCBs and PAH emissions, which are particles.

After consideration of the comments received, the EPA is maintaining a minimum level of 130 ppm CO at 3-percent O<sub>2</sub>. The issue of whether or not CO is an appropriate surrogate for formaldehyde (a representative organic HAP in boiler emissions), or non-dioxin organic HAP in general, is outside the scope of this reconsideration, since the reconsideration solicited comment only on the CO limits established at 130 ppm, not on the broader issue of using CO as a surrogate for organic HAP. Moreover, the appropriateness of CO as a surrogate is currently part of ongoing litigation before the Court (*United States Sugar Corporation v. EPA*, pending case No. 11–1108). As noted in the final amendments to the Boiler MACT (78 FR 7145 January 31, 2013), the EPA selected formaldehyde “. . . as the basis of the organic HAP comparison because it is the most prevalent organic HAP in the emission database and a large number of paired tests existed for boilers and process heaters for CO and formaldehyde.” As for the additional evidence submitted with the comments, we do not disagree that the gaseous properties of formaldehyde emissions differ from PCBs and PAH emissions. However, the surrogacy testing conducted by the EPA's Office of Research and Development (ORD) clearly show a high correlation between CO and PAH, similar to the correlation between formaldehyde and CO. Furthermore, as shown in figure 2 of the technical report provided in Attachment A to the commenter letter, PAH emissions decrease with increasing O<sub>2</sub> levels, but then increase with higher levels of excess O<sub>2</sub>, similar to the trend we saw in our assessment of the correlation between CO and formaldehyde.

#### *C. PM CPMS*

The March 2011 Boiler MACT final rule required units greater than 250 million British thermal units per hour (MMBtu/hr) combusting solid fossil fuel or heavy liquid to install, maintain, and

operate PM CEMS to demonstrate compliance with the applicable PM emission limit (*see* 76 FR 15615, March 21, 2011). In response to petitions for reconsideration challenging PM CEMS, the EPA finalized a CPMS for demonstrating continuous compliance with the PM standards in the January 2013 final amendments to the Boiler MACT. The CPMS requirement allowed sources a number of exceedances of the operating limit before the exceedance would be presumed to be a violation, and also allowed certain low emitting sources to “scale” their site-specific operating limit to 75 percent of the emission standard. The EPA received petitions for reconsideration on the PM CPMS provisions and proposed these provisions again in January 2015 to provide additional opportunity for comment.

Several comments expressed concern about the cost and burden of the PM CPMS requirements. The combination of periodic compliance emissions testing and continuous monitoring of operational and parametric control measure conditions is appropriate for assuring continuous compliance with the emissions limitations. Without recurring testing, the EPA would have no way to know if parameter ranges established during initial performance testing remained viable in the future.

Several comments also contended that the CPMS limit should be based on the highest reading during the initial performance test instead of the average of the readings during each of the three test runs. The EPA disagrees with the commenters. Requiring PM CPMS to correspond to the average of three PM test runs rather than the single highest test run during the performance test alleviates the potential for setting an operating limit that corresponds to an emissions result higher than the emission standard, which could occur if the limit corresponded to the highest reading.<sup>2</sup> The EPA reiterates the statement in the January 2015 preamble that a 4th deviation of the PM CPMS operating limit in a 12-month period is a presumptive violation of the emissions standard. However, this is just a presumption which may be rebutted with evidence from the process controls, control monitoring parameters, repair logs, and associated Method 5 performance tests. In addition, the operating limit is based on a 30-day rolling average, which provides for additional cushion on variability of PM

<sup>1</sup> See Exhibit A from commenter, EPA-HQ-OAR-2002-0058-3919-A1.

<sup>2</sup> S. Johnson, memo to Docket ID No. EPA-HQ-OAR-2011-0817, “Establishing an Operating Limit for PM CPMS,” November 2012.

readings beyond just the initial performance test.

Based on comments, the EPA is maintaining the PM CPMS requirement as promulgated with minor adjustments as discussed below.

One commenter requested that the word “certify” be removed from 40 CFR 63.7525(b) and (b)(1). The EPA agrees that a PM CPMS is not a “certified” instrument, in that it is not certified through a performance specification. We have removed this language from the final rule.

#### IV. Technical Corrections and Clarifications

In the January 21, 2015, notice of reconsideration, the EPA also proposed to correct typographical errors and clarify provisions of the final rule that may have been unclear. This section of the preamble summarizes the significant changes made to the proposed corrections and clarifications, as well as corrections and clarifications being finalized based on comment.

##### A. Opacity Is an Operating Parameter

Commenters contended that the opacity operating limit of 10-percent may be an appropriate indicator of compliance with the applicable Boiler MACT PM limits for some boilers, but it is not an appropriate indicator of compliance for all boilers in all solid fuel subcategories.

Commenters also contend that the 10-percent opacity level is an “operating limit,” not an emission limit, and is utilized as an indicator of compliance with the Boiler MACT PM limit. Operating limit requirements are provided in Table 4 to subpart DDDDD of part 63, and include opacity. Emission limits are included in Tables 1 and 2 to subpart DDDDD of part 63 and do not include opacity. Commenters added that the language in 40 CFR 63.7500(a)(2) creates a conflict. By requiring a facility to request an alternate opacity parameter limit via 40 CFR 63.6(h)(9), the commenters claim that the EPA will be subjecting units to a more stringent PM standard than the established MACT floor because this process will not be feasible to complete prior to the compliance date. To resolve this issue, commenters asked that the EPA delete 40 CFR 63.7570(b)(2) so it will be clear that a request for an alternate opacity operating parameter limit is accomplished under 40 CFR 63.8(f) per 40 CFR 63.7570(b)(4) and 40 CFR 63.7500(a)(2).

The EPA agrees that the variation in PM limits for various solid fuel subcategories warrants some flexibility and similar variation in opacity limits.

Opacity serves as a surrogate indicator of PM emissions, but was not intended by the EPA as an emission limit under the rule. Rather, it was intended to be an operating limit, which is established on a source-specific basis. Therefore we are revising the opacity operating limit such that affected facilities will have the option to comply with the 10-percent operating limit or a site-specific value established during the performance test based on the highest hourly average, which is consistent with how the other operating limits are established.

To implement this change in the final rule, 40 CFR 63.7570(b) is revised to remove the text currently in paragraph (b)(2), and the phrase “or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation” is added to Table 4 to subpart DDDDD of part 63, item 3; Table 4 to subpart DDDDD of part 63, item 6; and Table 8 to subpart DDDDD of part 63, item 1.c. Table 7 to subpart DDDDD of part 63 is expanded to include the process for establishing operating limits and item c is added.

##### B. CO Monitoring and Moisture Corrections

Commenters asked that since the applicable CO emission limits of the rule are expressed on a “dry” basis, the EPA should include additional provisions in the final rule to allow carbon dioxide (CO<sub>2</sub>) CEMS to be used without petitioning for alternative monitoring procedures. Commenters also observed that 40 CFR 63.7525(a)(2) cross-references other requirements, including 40 CFR part 75, which do not address CO monitoring and do not fully address the moisture correction.

Language is added to 40 CFR 63.7525(a)(2)(vi) to clarify requirements when CO<sub>2</sub> is used to correct CO emissions and CO<sub>2</sub> is measured on a wet basis.

It is also acknowledged that CO concentration on a dry basis corrected to 3-percent O<sub>2</sub> can be calculated using data from the CO<sub>2</sub> CEMS and equations contained in EPA Method 19 instead of during the initial compliance test. Language is added to Table 1 to subpart DDDDD of part 63, as well as footnote “d” and footnote “c” in the following tables: Table 2, Table 12, and Table 13 to subpart DDDDD of part 63.

##### C. Affirmative Defense for Violation of Emission Standards During Malfunction

The EPA received numerous comments on its proposal to remove from the current rule the affirmative defense to civil penalties for violations

caused by malfunctions. Several commenters supported the removal of the affirmative defense for malfunctions. Other commenters opposed the removal of the affirmative defense provision.

First, commenters (AF&PA and Georgia-Pacific) urged the EPA to publish a new or supplemental statement of basis and purpose for the proposed rule that explains (and allows for public comment on) the appropriateness of applying the boiler/process heater emission standards to malfunction periods without an affirmative defense provision.

Second, a commenter (AF&PA) argued the affirmative defense was something that the EPA considered necessary when the current standards were promulgated; it was part of the statement of basis and purpose for the standards required to publish under CAA section 307(d)(6)(A).

Third, commenters (CIBO/ACC) argued that the EPA should not remove the affirmative defense until the issue is resolved by the Court. Furthermore commenters argued the *NRDC* Court decision that the EPA cites as the reason for eliminating the affirmative defense provisions does not compel the EPA’s proposed action here to remove the affirmative defense in this rule.

Fourth, several commenters argued that without affirmative defense, or adjusted standards, the final rule provides sources no means of demonstrating compliance during malfunctions.

Fifth, commenters (AF&PA, Class of ’85 Regulatory Response Group, CIBO/ACC, American Electric Power, NHPC) urged the EPA to establish work practice standards that would apply during periods of malfunction instead of the emission rate limits or a combination of work practices and alternative numerical emission limitation. The EPA can address malfunctions using the authority Congress gave it in CAA sections 112(h) and 302(k) to substitute a design, equipment, work practice, or operational standard for a numerical emission limitation.

The Court recently vacated an affirmative defense in one of the EPA’s CAA section 112(d) regulations. *NRDC v. EPA*, No. 10–1371 (D.C. Cir. April 18, 2014) 2014 U.S. App. LEXIS 7281 (vacating affirmative defense provisions in the CAA section 112(d) rule establishing emission standards for Portland cement kilns). The Court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the

EPA. Specifically, the Court found: “As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are ‘appropriate.’ *see NRDC*, 2014 U.S. App. LEXIS 7281 at \*21 (“[U]nder this statute, deciding whether penalties are ‘appropriate’ in a given private civil suit is a job for the courts, not EPA.”). As a result, the EPA is not including a regulatory affirmative defense provision in the final rule. The EPA notes that removal of the affirmative defense does not in any way alter a source’s compliance obligations under the rule, nor does it mean that such a defense is never available.

Second, the EPA notes that the issue of establishing a work practice standard for periods of malfunctions or developing standards consistent with performance of best performing sources under all conditions, including malfunctions, was raised previously; see the discussion in the March 21, 2011 preamble to the final rule (76 FR 15613). In the most recent notice of proposed reconsideration (80 FR 3090, January 21, 2015), the EPA proposed to remove the affirmative defense provision, in light of the *NRDC* decision. The EPA did not propose or solicit comment on any revisions to the requirement that emissions standards be met at all times, or on alternative standards during periods of malfunctions. Therefore, the question of whether the EPA can and should establish different standards during malfunction periods, including work practice standards, is outside the scope of this final reconsideration action. The EPA further notes that this issue is currently before the Court in the pending case *United States Sugar Corporation v. EPA*, pending case No. 11–1108.

Finally, in the event that a source fails to comply with an applicable CAA section 112(d) standard as a result of a malfunction event, the EPA’s ability to exercise its case-by-case enforcement discretion to determine an appropriate response provides sufficient flexibility in such circumstances as was explained in the preamble to the proposed rule. Further, as the Court recognized, in an EPA or citizen enforcement action, the Court has the discretion to consider any defense raised and determine whether penalties are appropriate. Cf. *NRDC*, 2014 U.S. App. LEXIS 7281 at \*24 (arguments that violation were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions.

#### D. Definition of Coal

The last part of the definition of coal published in the final amendments to the Boiler MACT on January 31, 2013 (78 FR 7186), reads as follows: “Coal derived gases are excluded from this definition [of coal].” In the January 2015 proposal (80 FR 3090), the EPA proposed to modify this definition to read as follows: “Coal derived gases and liquids are excluded from this definition [of coal].” The EPA characterized its proposed change to the definition as one of several “clarifying changes and corrections.” This proposed change was based on a question received on whether coal-derived liquids were meant to be included in the coal definition.

The EPA received several comments disagreeing with the proposed change to the definition of coal, and indicating such a change would have a substantive effect on some affected facilities. One

commenter who operates a facility with coal-derived liquids contended that the composition and emission profile of these liquids more closely resemble the coal from which they are derived than any of light or heavy liquid fuels used to set standards for the liquid fuel categories. The commenter added that the delegated authority for this facility, North Dakota Department of Health, accepted an applicability determination for the facility to classify the coal derived liquid fuels as the coal/solid-fossil fuel subcategory. This commenter also noted that coal-derived liquid fuels are treated as coal/solid fossils in other related rules such as 40 CFR part 60, subpart Db.

Based on these comments, the EPA is not finalizing any changes to the definition of coal. The definition published on January 31, 2013 (78 FR 7186), remains unchanged. As noted by the commenters, treating coal liquids as coal is consistent with the ICI boiler NSPS (40 CFR part 60, subpart Db), and EPA agrees with the commenters that coal derived liquids are more similar to coal solid fuels than liquid fuels.

#### E. Other Corrections and Clarifications

In finalizing the rule, the EPA is addressing several other technical corrections and clarifications in the regulatory language based on public comments that were received in response to the January 2015 proposal and other feedback as a result of implementing the rule. In addition to the changes outlined in Table 1 of the January 21, 2015, proposed notice of reconsideration (80 FR 3098), the EPA is finalizing several other changes, as outlined in Table 2 of this preamble.

TABLE 2—SUMMARY OF TECHNICAL CORRECTIONS AND CLARIFICATIONS SINCE JANUARY 2015 PROPOSAL

Section of subpart DDDDD (40 CFR part 63)	Description of correction (40 CFR part 63)
63.7495(h) .....	<ul style="list-style-type: none"> <li>Replaced “January 31, 2016” with “the compliance date of this subpart” to cover sources that might be making changes between January 31, 2016, and the extended compliance date of January 31, 2017.</li> </ul>
63.7500(a)(1) .....	<ul style="list-style-type: none"> <li>Fixed the term “common heaters” to “common headers.”</li> </ul>
63.7515(e) .....	<ul style="list-style-type: none"> <li>Revised to clarify that a source may take multiple samples during a month and the 14-day separation does not apply.</li> </ul>
63.7521(g)(2)(ii) .....	<ul style="list-style-type: none"> <li>Replaced the word “notification” with the word “identification” so the sentence reads as follows: “For each anticipated fuel type, the identification of whether you or a fuel supplier will be conducting the fuel specification analysis.”</li> </ul>
63.7521(g)(2)(vi) .....	<ul style="list-style-type: none"> <li>Revised this paragraph to indicate that, when using a fuel supplier’s fuel analysis, the owner or operator is not required to submit the information in 40 CFR 63.7521(g)(2)(iii). Commenters found difficulties when they purchased fuel from another source.</li> </ul>
63.7525(a)(2)(vi) .....	<ul style="list-style-type: none"> <li>Language was added because 40 CFR part 75 does not address CO monitoring and does not fully address the moisture correction. See section IV.B of the preamble.</li> </ul>
63.7525(b) and (b)(1) .....	<ul style="list-style-type: none"> <li>Removed the word certify since PM CPMS does not have a performance specification. See section III.C of the preamble.</li> </ul>

TABLE 2—SUMMARY OF TECHNICAL CORRECTIONS AND CLARIFICATIONS SINCE JANUARY 2015 PROPOSAL—Continued

Section of subpart DDDDD (40 CFR part 63)	Description of correction (40 CFR part 63)
63.7525(g)(3) .....	<ul style="list-style-type: none"> <li>Revised the paragraph to clarify that the pH monitor is to be calibrated each day and not performance evaluated which is covered in 40 CFR 63.7525(g)(4).</li> </ul>
63.7530(c)(3), (c)(4), and (c)(5) .....	<ul style="list-style-type: none"> <li>Revised equations 7, 8, and 9 to clarify that for “Qi” the highest content of chlorine, Hg, and TSM is used only for initial compliance and the actual fraction is used for continuous compliance demonstration.</li> </ul>
63.7530(d) .....	<ul style="list-style-type: none"> <li>Paragraphs 63.7530(d) and 63.7545(e)(8)(i) contained requirements that were similar in that they both required the submittal of a signed statement or certification of compliance that an initial tune-up of the subject unit has been completed.</li> <li>Paragraph 63.7530(d) was deleted and 63.7545(e)(8)(i) was modified to clarify that the requirement to include a signed statement that the tune-up was conducted is applicable to all of the boilers and process heaters covered by 40 CFR part 63, subpart DDDDD.</li> </ul>
63.7530(e) .....	<ul style="list-style-type: none"> <li>Amended paragraph to clarify that the energy assessment is also considered to have been completed if the maximum number of on-site technical hours specified in the definition of energy assessment applicable to the facility has been expended.</li> </ul>
63.7540(a)(2) .....	<ul style="list-style-type: none"> <li>Corrected the typographical error in the proposed regulatory text so that it has the proper cross-reference: 40 CFR 63.7555(d).</li> </ul>
63.7540(a)(10)(i) .....	<ul style="list-style-type: none"> <li>Revised to provide owners and operators the flexibility to perform burner inspections at any time prior to tune-up.</li> </ul>
63.7540(a)(12) .....	<ul style="list-style-type: none"> <li>Revised this paragraph to clarify the O<sub>2</sub> set point for a source not subject to emission limits.</li> </ul>
63.7540(a)(14)(i) and (15)(i) .....	<ul style="list-style-type: none"> <li>Clarified the length of the performance test depending on the basis of the rolling average for each operating parameter, for internal rule consistency.</li> </ul>
63.7545(e) .....	<ul style="list-style-type: none"> <li>Clarification that notification for these sources is due within 60 days.</li> </ul>
63.7545(e)(2)(iii) .....	<ul style="list-style-type: none"> <li>Added a requirement to state the basis of the 30-day rolling average for each operating parameter, for internal rule consistency.</li> </ul>
63.7545(e)(8)(i) .....	<ul style="list-style-type: none"> <li>Paragraphs 63.7530(d) and 63.7545(e)(8)(i) contained requirements that were similar in that they both required the submittal of a signed statement or certification of compliance that an initial tune-up of the subject unit has been completed.</li> <li>Paragraph 63.7530(d) was deleted and 63.7545(e)(8)(i) was modified to clarify that the requirement to include a signed statement that the tune-up was conducted is applicable to all of the boilers and process heaters covered by 40 CFR part 63, subpart DDDDD.</li> </ul>
63.7550(b)(1) .....	<ul style="list-style-type: none"> <li>Clarified that the first reporting period for units submitting an annual, biennial, or 5 year compliance report ends on December 31 within 1, 2, or 5 years, as applicable, after the initial compliance date.</li> </ul>
63.7550(b)(5) .....	<ul style="list-style-type: none"> <li>Paragraph was included in the March 2011 rule and in the December 2011 reconsideration proposal, but inadvertently removed from the January 2013 final. The text has been reinserted.</li> </ul>
63.7550(c)(5)(xvi) .....	<ul style="list-style-type: none"> <li>Clarification that a rolling average is not an arithmetic mean. An arithmetic mean requires more space in a data acquisition system and more effort to review the information for accuracy. Furthermore, the intent is that ALL readings for CEMS and only deviations for non-CEMS are required.</li> </ul>
63.7555(d)(11) and (12) .....	<ul style="list-style-type: none"> <li>Text added to clarify that the new requirements apply only if startup definition 2 is selected.</li> <li>Changed from “fired” to “fed” to alleviate concerns about units firing solid fuels on a grate or in a FBC where the residual material in the unit keeps burning after fuel feed to the unit is stopped.</li> <li>Changed from the list of fuels (“coal/solid fossil fuel, biomass/biobased solids, heavy liquid fuel, or gas 2 (other) gases”) to “fuels that are not clean fuels” as an acknowledgement that additional clean fuels could be named.</li> </ul>
63.7570(b)(1) .....	<ul style="list-style-type: none"> <li>Removed “non-opacity” since opacity is not an emission limit, but instead an operating limit.</li> <li>Added “except as specified in §63.7555(d)(13)” to clarify the procedures for requesting an alternative timeframe with the PM controls requirement to the permitting authority.</li> </ul>
63.7575 .....	<ul style="list-style-type: none"> <li>Revised definition of energy assessment to include both process heaters and boilers.</li> </ul>
63.7575 .....	<ul style="list-style-type: none"> <li>Revised definition of minimum sorbent injection rate to clarify that the ratio of sorbent to sulfur applies only to fluidized bed boilers that do not have sorbent injection systems installed.</li> </ul>
63.7575 .....	<ul style="list-style-type: none"> <li>Revised definition of 30-day rolling average for internal rule consistency.</li> </ul>
63.7575 .....	<ul style="list-style-type: none"> <li>Revised definition of liquid fuel to remove “comparable fuels as defined under 40 CFR 261.38.” This section of the part 261 was vacated by the Court.</li> </ul>
63.7575 .....	<ul style="list-style-type: none"> <li>Edited definition of operating day and added a definition of rolling average to clarify the procedures for demonstration of compliance.</li> </ul>
Table 1 to subpart DDDDD (footnotes c and d) .....	<ul style="list-style-type: none"> <li>Revised footnote “c” to change “January 31, 2013” to “April 1, 2013” to make consistent with effective date of final rule.</li> </ul>

TABLE 2—SUMMARY OF TECHNICAL CORRECTIONS AND CLARIFICATIONS SINCE JANUARY 2015 PROPOSAL—Continued

Section of subpart DDDDD (40 CFR part 63)	Description of correction (40 CFR part 63)
Table 4 to subpart DDDDD .....	<ul style="list-style-type: none"> <li>• Revised footnote “d” to clarify that CO concentration on a dry basis corrected to 3-percent O<sub>2</sub> can be calculated using data from the CO<sub>2</sub> CEMS and equations contained in EPA Method 19 instead of an initial compliance test.</li> <li>• This revision also applies to footnote “c” in the following tables: Table 2, Table 12, and Table 13 to subpart DDDDD.</li> <li>• Items 3, 4, and 6, insert “or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation” to be consistent with other operating limits.</li> <li>• Item 7, insert 30-day rolling average before the term “operating load” since the load parameter includes an averaging time.</li> <li>• Added a footnote to clarify that an acid gas scrubber is a control device that uses an alkaline solution.</li> </ul>
Tables 4 and 8 to subpart DDDDD .....	<ul style="list-style-type: none"> <li>• Continuous compliance is based on monthly fuel analysis and there are no operating limits related to fuel. Fuel analysis language is deleted from Table 4, item 7 and moved to Table 8, line 8.</li> </ul>
Table 6 to subpart DDDDD .....	<ul style="list-style-type: none"> <li>• Clarification: References to Equations 7, 8, and 9 in 40 CFR 63.7530 are incorrect in items 1.g, 2.g, and 4.g of Table 6.</li> <li>• Move EPA Method 1631, EPA Method 1631E, and EPA 821–R–01–013 from line 1.a to 1.f because these methods cover the analytical method, not the sample collection method.</li> <li>• Remove ASTM D4177 and D4057 from line 1.e and 2.e because these are sampling methods, not methods for determining moisture.</li> </ul>
Table 7 to subpart DDDDD (item 5) .....	<ul style="list-style-type: none"> <li>• Revised Table 7—item 5 by adding “highest hourly” to resolve an inconsistency with Table 4—item 8 and Table 8—item 10.</li> <li>• Added a footnote to clarify how to set operating parameters when multiple tests are conducted.</li> <li>• Added a footnote to clarify that future tests can confirm operating scenarios.</li> </ul>
Table 8 to subpart DDDDD (lines 9.c, 10.c, and 11.c; footnotes).	<ul style="list-style-type: none"> <li>• Revised to clarify how to set operating parameters, such as load, when multiple performance test conditions are required. The wording in Table 8, lines 9.c, 10.c, and 11.c was revised to be consistent with the wording in lines 2.c, 4.c, 5.c, 6.c, and 7.c.</li> </ul>
Table 10 to subpart DDDDD .....	<ul style="list-style-type: none"> <li>• For 63.6(g), revised the 3rd column to say “Yes, except § 63.7555(d)(13) specifies the procedure for application and approval of an alternative timeframe with the PM controls requirement in the startup work practice (2).” The edit is consistent with the revision to 40 CFR 63.7555(d)(13).</li> <li>• For 63.6(h)(2) to (h)(9), revised the 3th column to say “No.” The edit is consistent with the revision to 40 CFR 63.7570(b).</li> </ul>
Table 13 to subpart DDDDD .....	<ul style="list-style-type: none"> <li>• Revise the heading to change “January 31, 2013” to “April 1, 2013” to make consistent with effective date of final rule.</li> </ul>

**V. Other Actions We Are Taking**

Section 307(d)(7)(B) of the CAA states that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the

appropriate circuit (as provided in subsection (b)).”

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action). The EPA is denying the petitions for reconsideration on a number of issues because this criterion has not been met. In many cases, the petitions reiterate comments made on the proposed December 2011 rule during the public comment period for that rule. On those issues, the EPA responded to those comments in the final rule and made appropriate revisions to the proposed rule after consideration of public comments received. It is well established that an agency may refine its proposed approach without providing an

additional opportunity for public comment. *See Community Nutrition Institute v. Block*, 749 F.2d at 58 and *International Fabricare Institute v. EPA*, 972 F.2d 384, 399 (D.C. Cir. 1992) (notice and comment is not intended to result in “interminable back-and-forth[.]” nor is agency required to provide additional opportunity to comment on its response to comments) and *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983) (“notice requirement should not force an agency endlessly to repropose a rule because of minor changes”).

In the EPA’s view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. *See Union Oil v. EPA*, 821 F.2d 768, 683 (D.C. Cir. 1987) (the Court declined to remand the rule because petitioners failed to show substantial likelihood that the final rule would have

been changed based on information in the petition). See also the EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202 of the Clean Air Act, 75 FR at 49556, 49561 (August 13, 2010). See also, 75 FR at 49556, 49560–49563 (August 13, 2010) and 76 FR at 4780, 4786–4788 (January 26, 2011) for additional discussion of the standard for reconsideration under CAA section 307(d)(7)(B).

This action includes our final decision to deny the requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final boiler and process heater rule for which we did not grant reconsideration.

In this final decision, several changes that are corrections, editorial changes, and minor clarifications have been made. These changes made petitioners' comments moot. Therefore, we are denying reconsideration of these issues, as described below.

#### A. Petitioners' Comments Impacted by Technical Corrections

##### 1. Operating Capacity Limitation

Issue 1: The petitioners (AF&PA, CIBO/ACC) requested that the EPA resolve language conflicts in Tables 4, 7, and 8. Specifically, they claimed there is a conflict as to whether you use the highest hourly average operating load times 1.1 as the operating limit or the test average operating load times 1.1 as the operating limit. The petitioners contended that Table 7 to subpart DDDDD of part 63, item 5 should be revised to clearly state that the limit is set based on the highest hourly average during the performance test times 1.1.

Response to Issue 1: Item 5.c of Table 7 to subpart DDDDD of part 63 has been revised to correctly state, consistent with Tables 4 and 8 to subpart DDDDD of part 63, that the highest hourly average of the three test run averages during the performance test should be multiplied by 1.1 (110 percent) and used as your operating limit. The petitioners' comments are, therefore, now moot and we are denying reconsideration on this issue.

##### 2. Averaging Time for Operating Load Limits

Issue 2: Petitioners (CIBO/ACC) requested clarification of operating load limits. The rule implies that the 110-percent load limit established during a performance test is instantaneous. The area source ICI boiler rule operating load requirement includes a 30-day rolling average period (see Table 7 to

subpart DDDDD of part 63, Item 9–78 FR 7521). By contrast, the EPA did not add the 30-day rolling average to the Boiler MACT rule operating load requirement (see Table 8 to subpart DDDDD of part 63, Item 10–78 FR 7205). The EPA did, however, add the 30-day average to other requirements (see Table 8 to subpart DDDDD of part 63, items 2, 4, 5, 6, 7, 9, 11–78 FR 7204–7205).

The petitioners note that operating parameter limits were raised in public comments submitted on the 2013 Boiler MACT. Specifically, a commenter (AF&PA) requested a change be made in Table 4 to subpart DDDDD of part 63, item 8 (add “30-day average” prior to “operating load”). The operating parameter ranges are established using test data obtained at steady state, so a 30-day averaging period allows for some fluctuations that will occur over the range of operating conditions.

Response to Issue 2: Table 8 to subpart DDDDD of part 63 has been amended to clarify that operating load compliance is demonstrated with a 30-day average, as specified in 40 CFR 63.7525(d). Table 4 to subpart DDDDD of part 63, item 7 (previously item 8 as noted by the petitioner), has also been clarified to reflect that the affected source must maintain the 30-day rolling average operating load of each unit. The petitioners' comments are, therefore, now moot and we are denying reconsideration on this issue.

##### 3. A Gas Fired Boiler, Capacity >25MW, Is an EGU, It Is Not Subject to UUUUU, and Should Not Be Subject to the Boiler MACT

Issue 3: Petitioners (UARG/NHPC) alleged that the EPA has broadened the applicability of 40 CFR part 63, subpart DDDDD with regard to EGUs by stating that only “[a]n electric utility steam generating unit (EGU) covered by subpart UUUUU of [part 63]” is “not subject to” the Boiler MACT. Because 40 CFR part 63, subpart UUUUU does not cover all EGUs, the language in 40 CFR 63.7491(a) seems unlawful because it suggests that some boilers that are EGUs could be subject to 40 CFR part 63, subpart DDDDD. Under 40 CFR 63.9983(b), natural gas-fired EGUs (as defined in 40 CFR part 63, subpart UUUUU) are not subject to 40 CFR part 63, subpart UUUUU, but would not seem to be exempt from 40 CFR part 63, subpart DDDDD. Narrowing the exclusion in 40 CFR 63.7491(a) cannot be a “logical outgrowth” of the proposed rule.

The petitioners point out that “Natural gas-fired electric utility steam generating unit” is defined in 40 CFR part 63, subpart UUUUU as “an electric

utility steam generating unit meeting the definition of ‘fossil fuel-fired’ that is not a coal-fired, oil-fired, or integrated gasification combined cycle (IGCC) electric utility steam generating unit and that burns natural gas for more than 10.0 percent of the average annual heat input during any 3 consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year” 40 CFR 63.10042. As a result, natural gas-fired EGUs for purposes of 40 CFR part 63, subpart UUUUU include those units that combust only natural gas as well as those units that combust natural gas for more than the proportion(s) specified in 40 CFR 63.10042 and some other fuel(s) (e.g., oil) for the remainder of heat input, as long as they are not an IGCC unit and do not combust coal or oil in sufficient quantity to meet the definition of “coal-fired” or “oil-fired” EGU.

The petitioners refer to CAA section 112(n)(1)(A), which requires the EPA to conduct a health study of the effects of EGU HAP emissions prior to regulating HAP emissions from EGUs under CAA section 112. Then, if EGU HAP emissions pose a threat to public health, the EPA can regulate those emissions only as “appropriate and necessary.” The EPA already has regulated under 40 CFR part 63, subpart UUUUU all those EGUs for which the Administrator has made the statutorily required finding under CAA section 112(n)(1)(A)—i.e., coal-fired and oil-fired EGUs; the EPA has no basis to regulate any other EGU under 40 CFR part 63, subpart DDDDD. That conclusion is consistent with the EPA's March 21, 2011, final rule and proposed rule on reconsideration, both of which made clear that no boiler meeting the definition of EGU was subject to 40 CFR part 63, subpart DDDDD.

Petitioners also allege that issues regarding the EGU definition in 40 CFR part 63, subpart DDDDD were raised in public comments submitted on the 2013 Boiler MACT. Specifically, the commenter (UARG) requested that the EGU definition in 40 CFR part 63, subpart DDDDD be consistent with relevant definitions in 40 CFR part 63, subpart UUUUU, and remain that way even after the EPA finalizes its revisions to 40 CFR part 63, subpart UUUUU. The EPA should revise the definition in 40 CFR 63.7575 of subpart DDDDD to incorporate, rather than restate, the definition of applicable “fossil fuel-fired” EGU in 40 CFR 63.10042 of the MATS rule.

Response to Issue 3: As stated in the June 2010 proposal (75 FR 32016), it is and has always been the EPA's intent that biomass boilers are regulated under

either the Boiler MACT or the area source ICI boiler rules. The 2010 Boiler MACT proposal stated:

The CAA specifically requires that fossil fuel-fired steam generating units of more than 25 megawatts that produce electricity for sale (*i.e.*, utility boilers) be reviewed separately by EPA. Consequently, this proposed rule would not regulate fossil fuel-fired utility boilers greater than 25 megawatts, but would regulate fossil fuel-fired units less than 25 megawatts and all utility boilers firing a non-fossil fuel that is not a solid waste.

The Boiler MACT defines the biomass/bio-based solid subcategory as any boiler or process heater that burns at least 10-percent biomass or bio-based solids on an annual heat input basis. The EPA disagrees with the commenter who recommends that EPA simply adopt provisions from the MATS rule into the Boiler MACT rule. We considered what would be the maximum amount of fuel that can be co-fired in a boiler that is designed to burn a different fuel type. We are aware that boilers are designed for specific fuel types and will frequently encounter operational problems if a fuel with characteristics other than those originally specified is fired in amounts above a certain level. The purpose of 63.7491(a) is, in part, to identify a threshold of natural gas operation above which EPA is reasonably certain that the unit is designed to operate on natural gas. At a level below that threshold, the EPA cannot be certain that the unit is not of a different type, designed to burn other fuels. In this final rule, the EPA edited text in 40 CFR 63.7491(a) from “An electric utility steam generating unit (EGU) covered by subpart UUUUU of this part or a natural gas-fired EGU as defined in subpart UUUUU of this part firing at least 90 percent natural gas on an annual heat input basis.” to “. . . at least . . . 85 percent . . .” This change was made to address variation in heat input of biomass fuels. This clarification does not change the underlying applicability of biomass EGU boilers under the Boiler MACT rule.

With respect to the petitioners’ reference to CAA section 112(n)(1)(A), the EPA disagrees that this provision is relevant here, as biomass boilers are not EGUs, but instead are classified as ICI boilers. Therefore, because the petitioners did not demonstrate that it was impracticable to comment on this issue during the comment period on the 2010 proposed rule, the EPA is denying reconsideration on this issue.

4. Use of the Publication Date Rather Than the Effective Date of the Rule To Establish Various Compliance and Reporting Dates

Issue 4: Petitioner (API) alleged that the compliance schedules are based on the date of publication rather than the effective date. Using the publication date rather than the effective date conflicts with certain CAA provisions and certain 40 CFR, part 63 general provisions.

Response to Issue 4: With respect to existing units, the petitioner’s allegation is incorrect. Section 112(i)(3)(A) of the CAA states “After the effective date of any emission standard . . . the Administrator shall establish a compliance date . . . for . . . existing source, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date . . .” However, it is appropriate that compliance provisions applicable to new units should be based on the effective date because, otherwise, as stated in 40 CFR 63.7495(a), new units would be required to comply with the subpart by the publication date even though the amendments have not yet taken effect. Wherever January 31, 2013, was specified for new affected units as a compliance date or a basis for compliance activity, the date has been revised to April 1, 2013. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

5. Existing EGUs That Become Subject to the Boiler MACT After January 31, 2013 Do Not Get the Intended 180-Day Period for Demonstrating Compliance

Issue 5: Petitioner (UARG, supplemental July 3, 2013, petition) objected to the language in 40 CFR 63.7510(i), which states that “For an existing EGU that becomes subject after January 31, 2013, you must demonstrate compliance within 180 days after becoming an affected source” (78 FR 7165). The petitioner argued the provision is inconsistent with the existing source compliance dates in 40 CFR 63.7495(b) and (f), which require compliance by January 31, 2016, and the existing source deadline for demonstrating compliance in 40 CFR 63.7510(e), which requires completion of the initial compliance demonstration within 180 days after the January 31, 2016, compliance date (78 FR at 7162–63, 7165).

Response to Issue 5: For consistency and to correct the inadvertent error of failing to change the date, the compliance date in 40 CFR 63.7510(i)

has been revised from 2013 to 2016. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

6. Using Fuel Analysis Rather Than Performance Testing Required Use of the 90th Percentile Confidence Level; a Monthly Average Is More Appropriate

Issue 6: Petitioner (Eastman) requested clarification of the methodology that provides facilities with multiple combustion units the ability to demonstrate compliance with the limits through emissions averaging across affected units. Specifically, the petitioner urged modification of Table 6 to 40 CFR part 63, subpart DDDDD to delete references to equations requiring use of the 90th percentile.

Response to Issue 6: Edits to Table 6 to subpart DDDDD of 40 CFR part 63 have been made to delete the inadvertent references to equations requiring the use of the 90th percentile. These equations are required only for determining initial compliance as specified in 40 CFR 63.7530(c). The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

7. Gas 1 Unit Requirements

Issue 7: Petitioner (CIBO/NEDACAP) alleged that to meet 40 CFR 63.7555(i) and (j) recordkeeping requirements, each regulated gas 1 boiler, regardless of size, needs electronic controls, a recording device, individual gas meters, and sensors to detect both steam/hot water flow and fuel cycling events. The petitioner further claimed that records of startup and shutdown for gas 1 units are irrelevant to emission control or enforcement of the Boiler MACT requirements because their installation and operation provide no environmental benefits.

Response to Issue 7: The startup and shutdown recordkeeping provisions in 40 CFR 63.7555(i) and (j) have been removed. These paragraphs were inadvertently not deleted when the rule was amended. These paragraphs were intended to be deleted because 40 CFR 63.7555(d) was amended incorporating these recordkeeping requirements. These recordkeeping requirements are intended only for sources subject to emission standards, whereas 40 CFR 63.7555(i) and (j) have the unintended purpose of requiring sources not subject to emission standards to startup and shutdown recordkeeping requirements. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

## 8. Gas 1 Reporting Requirements

Issue 8: Petitioner (CIBO/NEDACAP) asked for clarity with respect to the operating time reporting in 40 CFR 63.7550(c)(5)(iv) for gas 1 units. Specifically, “operating time” is not a defined term and it is unclear whether operating time must be reported separately for each unit. Furthermore, the petitioner alleged that operating time (like records of startup and shutdown) adds no information that is useful in determining compliance, nor is it useful in calculating emissions from reported units, since emissions are related to fuel combusted, not to total operating time.

Response to Issue 8: Operating time reporting in 40 CFR 63.7550(c)(5)(iv) has been removed from 40 CFR 63.7550(c)(1), which effectively removes the reporting requirement for gas 1 units. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

## 9. Sampling for Other Gas 1 Fuels

Issue 9: Petitioner (CIBO/NEDACAP) asked for clarifying text in 40 CFR 62.7521 to parallel Table 6 to subpart DDDDD of part 63, item 3.b alternative compliance approach for cases where sampling and analysis of the fuel gas itself are not possible or practical.

Response to Issue 9: Text describing the compliance procedures, applicable to other gas 1 fuels in 40 CFR 63.7521(f), has been amended as a technical correction. When the rule was amended the EPA added a second compliance procedure that was intended to be an alternative approach but the amendments inadvertently failed to add the “or” after the first compliance procedure. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

## 10. Fuel Analysis Plan for Gas 1 Sampling

Issue 10: Petitioner (CIBO/NEDACAP) alleged that the Fuel Analysis Plan requirements for other gas 1 fuels are more onerous than those required for solid and liquid fuels. There is no logical reason to require submission of the fuel analysis plan to the Administrator for review and approval for other gas 1 fuels when only alternative analytical methods listed in Table 6 to subpart DDDDD of part 63 are used; 40 CFR 63.7521(g) should be amended.

Response to Issue 10: Administrator review and approval for other gas 1 fuels requirement in 40 CFR 63.7521(g) has been revised to clarify the intended scope of the Fuel Analysis Plan

requirements and to be consistent with 40 CFR 63.7521(b)(1). As specified in 40 CFR 63.7521(b)(1), a fuel analysis plan is required to be submitted for Administrator review and approval only when alternative methods other than those listed in Table 6 to subpart DDDDD of part 63 are used. The petitioner’s comments are, therefore, now moot and we are denying reconsideration on this issue.

## 11. Affirmative Defense

Issue 11: Petitioner (FSI) asked that the EPA amend the affirmative defense provisions included in 40 CFR 63.7501 or otherwise clarify in the rule the scope of the affirmative defense for violations that occur during malfunctions. The petitioner also asked that subpart A of 40 CFR part 63, which defines emission standard as “a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act,” provide additional guidance concerning the proper interpretation of 40 CFR 63.7501.

Response to Issue 11: The EPA has removed affirmative defense provisions from 40 CFR part 63, subpart DDDDD, as discussed in section IV.C of this preamble. Because the petitioner has not demonstrated that it was impracticable to comment on this issue during the public comment period on the December 2011 proposed rule, and because the issue is now moot, the EPA is denying this petition.

### B. Petitions Related to Ongoing Litigation

#### 1. Authority To Require an Energy Assessment

Issue 12: Petitioners (AF&PA/FSI) alleged that a beyond the floor requirement of an energy assessment is outside EPA’s authority for setting emissions standards under CAA section 112(d)(1) “for each category or subcategory of major sources and area sources.” The EPA has defined the source category for these rules to include only specified types of boilers and process heaters and, therefore, those are the only sources for which the EPA may set standards under these rules.

The petitioners also alleged that the energy assessment requirement is not an “emissions standard” as that term is defined in the CAA and, therefore, the EPA does not have authority to prescribe such requirements. Furthermore, as a practical matter, even if energy efficiency projects are implemented, there is no guarantee that there will be a corresponding reduction

in HAP emissions from affected boilers and process heaters.

Response to Issue 12: Petitioners have not demonstrated that it was impracticable to comment on these issues during the public comment period on the proposed Boiler MACT. In fact, petitioners provided the same comments during that comment period, and subsequently challenged EPA’s establishment of the energy assessment requirement. That issue is currently pending before the Court in *U.S. Sugar v. EPA* (No. 11–1108). Therefore the EPA is denying the petition for reconsideration of this issue.

#### 2. Energy Assessment Requirement

Issue 13: Issues regarding the owner or operator obligations after the energy assessment is completed were raised in public comments submitted on the 2013 Boiler MACT. Specifically, commenters (AF&PA/FSI) asked that the EPA confirm that the Boiler MACT does not require a facility owner or operator to implement any of the recommendations contained in the energy assessment report.

Response to Issue 13: Comments on this issue have been previously submitted and the EPA responded to those comments. AF&PA made this same comment during the public comment period on the Boiler MACT, and the EPA responded to that in the Beyond-the-Floor Analysis Section (pp. 1428–1702) of the February 2011 Response To Comment document, explaining that the rule does not require owners and operators to implement the recommendations of the energy assessment, but that the EPA expects that sources will do so in order to realize the cost savings from those recommendations. Because petitioners have not demonstrated that it was impracticable to comment on these issues during the public comment period on the proposed Boiler MACT, the EPA is denying the petition for reconsideration of this issue.

### C. Other Petitions

#### 1. Expanded Exemption for Limited Use Units

Issue 14: Petitioner (Sierra Club) objected to the 2013 Boiler MACT proposed rule, which revised the definition of “limited-use units” to include all units that operate at 10 percent of their full annual capacity (78 FR 7144). A unit that operated full time at 10-percent capacity would qualify, as would a unit that operated for one-third of the year at 30-percent capacity. The petitioner also disputed the EPA’s finding that “it is technically infeasible



to schedule stack testing for these limited use units since these units serve as back up energy sources and their operating schedules can be intermittent and unpredictable.”

Response to Issue 14: The EPA is denying the petition for reconsideration on this issue because the petitioner previously submitted comments on this issue, and the EPA responded to those comments in finalizing the definition of a limited use unit at that time (76 FR 15633, March 21, 2011).

The 2013 revision in the final amendments to the Boiler MACT was a logical outgrowth of the comments received during the public comment period. See *NRDC v. Thomas*, 838 F.2d 1224, 1242 (D.C. Cir. 1988) and *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d at 547 (the agency may make changes to proposed rule without triggering new round of comments, where changes are logical outgrowth of proposal and comments).

## 2. Failure to Set Standards Requiring MACT (*i.e.*, Beyond the Floor)

Issue 15: Petitioner (Sierra Club) asserted that the EPA failed to assure that the standards it revised in the final rule reflect the maximum achievable degree of reduction in emissions, as required by CAA section 112(d)(2). The commenter noted that for existing sources, 10 of the Hg standards, five of the PM standards, and 11 of the CO limits were revised in the final rule. The petitioner also noted that two of the PM limits and 11 of the CO limits for new sources were weakened in the final rule. The petitioner asserted that the EPA did not propose any of these changes, nor did it discuss them in its proposed rule (78 FR 7145).

Response to Issue 15: The EPA is denying the petition for reconsideration on this issue because the changes to the standards between the 2011 and 2013 final rules were based only on changes to the underlying dataset to reflect unit shutdowns or corrections to emission test run data and on changes made to the subcategories after consideration of comments received on the proposed rule. These changes were discussed in the MACT Floor Memorandum for the final rule (See Docket ID No.: EPA-HQ-2002-0058-3836), as well as documented in the database for the final rule (See Docket ID No.: EPA-HQ-OAR-2002-0058-3835). There were no significant changes to the methodology used to calculate the MACT standards. Therefore, the petition does not raise an issue of central relevance to this rulemaking as it does not demonstrate that there is a substantial likelihood that

the final rule would have changed based on the information in the petition.

## 3. Beyond the Floor PM Standards

Issue 16: The petitioner (Sierra Club) objected to the EPA's final “beyond the floor” PM standards for certain categories of new biomass units. The petitioner claimed that the EPA did not provide an explanation of its conclusion that “[w]e did not identify any beyond the floor options for existing source PM limits or new and existing limits for other pollutants as technically feasible or cost effective” (78 FR 7145). The petitioner alleged that such cursory and unexplained conclusion that no beyond the floor standards are technically feasible or cost effective is both unlawful and arbitrary. Moreover, the petitioner also alleges that because the EPA did not propose the standards contained in the 2013 rule and did not discuss changing the level of these standards in its proposed rule, it was “impracticable” to object to the EPA's failure to set more stringent standards during the public comment period. 42 United States Code (U.S.C.) 7607(d)(7)(B). Likewise, the petitioner indicated it was impracticable to object to the EPA's rationale for not setting more stringent standards.

Response to Issue 16: The EPA disagrees with the petitioner's claim that we failed to set standards based on the degree of emission reduction that can be achieved. The EPA must consider cost, non-air quality health and environmental impacts, and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond the floor controls). The EPA's beyond the floor analysis did evaluate these factors in determining PM standards for certain categories of new biomass units.

To the extent the petitioner is concerned about the degree of emission reduction that can be achieved, that issue does not warrant reconsideration. The EPA made changes based on new data and changes to subcategories, but the methodology essentially remained the same, including the beyond the floor methodology in the final rule. The petitioner did not provide data or information that was unavailable at the time the EPA proposed the rule. Therefore, the EPA is denying reconsideration of this issue.

## 4. No Allowance for Liquid Firing in Gas 1 or Gas 2 Units; Other Subcategories Allow for Less Than 10 Percent Annual Heat Input

Issue 17: Petitioners (API, CIBO/ACC) contended that the gas 1 subcategory should place no restriction on liquid

(*e.g.*, oil) firing during startup. In the 2013 final amendments to the Boiler MACT, there is no allowance for liquid fuel firing in units in the gas 1 or gas 2 subcategories except under the gas curtailment or interruption provisions, whereas other subcategories allow use of liquid fuels for less than 10-percent annual heat input basis (78 FR 7193). The definition for the gas 1 subcategory should read “Unit designed to burn gas 1 subcategory includes any boiler or process heater that burns at least 90-percent natural gas, refinery gas, and/or other gas 1 fuels on a heat input basis on an annual average and less than 10 percent of any solid or liquid fuel.” The definitional change would simplify the process of determining whether a unit qualifies for the gas 1 subcategory.

Issues regarding the consistency between the exempt unit description in 40 CFR part 63, subpart DDDDD and the definition of an oil-fired EGU in 40 CFR part 63, subpart UUUUU were raised in public comments submitted on the 2013 Boiler MACT. Specifically, a commenter (DTE Energy) argued that subpart UUUUU allows for “high” usage in one calendar year without becoming an affected unit so long as the 10-percent annual average heat input during 3 consecutive calendar years is not exceeded.

Response to Issue 17: Because the EPA received comments that gas 1 subcategory units should allow for limited use of liquid fuel in the June 4, 2010, proposal and petitioners have not demonstrated that it was impractical for them to comment, we are denying the petition for reconsideration on this issue.

In addition, the petitioners have provided no new data or information that calls into question the underlying determination.

## 5. Refine and Clarify the Scope of the Subcategory for Hybrid Suspension/Grate Boilers

Issue 18: Petitioner (SugarCane Growers) asked that the definition of a hybrid suspension/grate (HSG) boiler needs clarification; there are facilities that are unsure whether their boilers fit within the HSG subcategory. Specifically, the petitioner requested that the definition add a phrase referring to the fact that an HSG boiler is “highly integrated into the production process via steam connections with the sugar mill and the boiler primarily combusts fuels that are generated on-site by the mill.”

Response to Issue 18: The EPA has made a minor technical correction to the final HSG boiler definition that helps clarify the intent of the subcategory. The

moisture content threshold of 40 percent on an as-fired annual heat input basis is to be demonstrated by monthly fuel analysis. By requiring demonstration on a monthly fuel analysis, the moisture in the fuel piles will need to be consistently high from month to month in order to meet the 40 percent moisture threshold. Beyond this minor clarification, the EPA is denying this petition for reconsideration because the petition does not demonstrate that the petitioner lacked the opportunity to comment on this definition, and we continue to believe that the definition is specifically clear as to whether specific boilers fit within the definition. The definition reflects a logical outgrowth of the comments received during the comment period. (see 76 FR 15634, March 21, 2011).

#### 6. Applicability Based on Commercial and Industrial Solid Waste Incineration (CISWI) Recordkeeping Requirements

Issue 19: The petitioner (API) alleged that it is unreasonable to have Boiler MACT applicability determined based on a recordkeeping requirements contained in the CISWI rule, and added that nothing in the Boiler MACT proposal requested comment on the CISWI definition of traditional fuels. The petitioner alleged that any unit that uses any material not specifically listed in the traditional fuels definition is a CISWI unit, rather than a Boiler MACT unit, unless it keeps specific records that the CISWI rule requires. The definitions of CISWI unit in the February 7, 2013, final amendments to the CISWI NSPS standard and the associated emission guideline include the sentence "If the operating unit burns materials other than traditional fuels as defined in § 241.2 that have been discarded, and you do not keep and produce records as required by [§ 60.2740(u) or § 60.2175(v)], the operating unit is a CISWI unit."

Response to Issue 19: The EPA is denying this petition because it is not of central relevance. The issue addresses recordkeeping requirements in the CISWI rule, not requirements in the Boiler MACT. To ensure that owners or operators of units combusting materials review and apply the non-waste provisions in the Solid Waste Definition Rule, the EPA requires owners or operators that combust materials that are not clearly listed as traditional fuels document how the materials meet the legitimacy criteria and/or the processing requirements in the Solid Waste Definition Rule. Failure of a source owner or operator to correctly apply the non-waste criteria would result in incorrect self-assessments as to whether

their combustion units are subject to CISWI. Requiring sources to document how the non-waste criteria apply to the materials combusted will both improve self-assessments of applicability, and will assist the EPA and states in the proper identification of sources subject to CISWI.

#### 7. Definitions for Rolling Averages Are Inconsistent With Other Rule Requirements, and Increase Burdens

Issue 20: The petitioner (API) alleged that both 10- and 30-day rolling average definitions, if read literally, say owners or operators must average a total of 240 or 720 hours of valid data, regardless of the calendar period they span, rather than requiring that only hours within the last 240 or 720 calendar hours that contain valid data be averaged. As a result, since the number of hours of valid data over any calendar period is constantly varying, the time period covered by each average will vary. Individual hours will be counted in varying numbers of averages, and all units at a facility will end up on different, constantly varying averaging schedules. This approach is also inconsistent with the definition of "daily block average," which calls for averaging all valid data occurring within each daily 24-hour period and includes other averaging requirements. Revisions to the definitions of 10-day rolling average and 30-day rolling average should be amended.

Response to Issue 20: The EPA is denying this petition because it is not of central relevance to this rulemaking for the reasons set forth below. The definitions of 10- and 30-day rolling averages include the word "valid." Valid data excludes hours during startup and shutdown and data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan. Further, the 30-day rolling average for CO CEMS has been revised to clarify that for CO CEMS, the 720 hours should be consecutive, but not necessarily continuous to reflect intermittent operations.

#### 8. CO Limits for Hybrid Suspension Grate Boilers

Issue 21: The petitioner (FSI) alleged that the CO CEMS emission limit for existing HSG boilers is set at the same level as the CO CEMS limit for new HSG boilers, because the EPA has CO CEMS data for only one HSG boiler. The CO CEMS limit for existing boilers should be revised to account for the variability in the emissions data for existing HSG boilers, as reflected by the EPA's stack test data for such boilers.

Response to Issue 21: CO CEM data were only available for one unit. Therefore, the alternative CO CEMS-based limit is the same for both new and existing units. The petitioner could have provided additional data to the EPA prior to the close of the comment period for the final rule. Indeed, the EPA modified several emission limits upon receipt of new data. Setting emission limits based on available data is consistent with MACT floor methodology. Therefore, the EPA is denying the petition for reconsideration.

#### 9. Correction of Math Error

Issue 22: The petitioner (FSI) alleged that a math (*i.e.*, conversion) error was committed when converting stack test data within the EPA's emissions database. According to the petitioner, this error significantly affected the EPA's determination of the MACT floor for CO emissions from the existing HSG boilers. The petitioner stated that the EPA should correct this error and then use its existing emissions database to re-determine the CO emission limit for existing HSG boilers. The petitioner calculated a revised CO emission limit for existing HSG boilers of 3,500 ppm by dry volume at 3-percent O<sub>2</sub>.

Response to Issue 22: As discussed in section IV.E of this preamble, the EPA has finalized the correction to the CO limit for this subcategory.

#### 10. Conducting Tune-ups at Seasonally Operated Boilers

Issue 23: The petitioner (FSI) alleged that collecting meaningful CO data before and after an annual tune-up will be problematic because HSG boilers are operated on a seasonal basis and the annual tune-ups will be performed between the annual harvest seasons. With regard to these seasonally operated boilers, the Boiler MACT should explicitly acknowledge that the "before" measurement will be taken at the end of one harvest season and the "after" measurement will be taken at the beginning of a different harvest.

Response to Issue 23: The EPA is denying reconsideration on this issue. The EPA believes the rule is sufficiently clear on the timing of a tune-up and refers the petitioner to 40 CFR 63.7540(a)(10). If the unit is not operating on the required date for a tune-up (*i.e.*, because it is a seasonal boiler, or because it is down for maintenance, for example), the tune-up must be conducted within 30 days of startup. Before and after measurements are not seasons apart, instead they are within minutes or hours (depending on how long it takes to make adjustments). See the tune-up guide for additional

guidance ([http://www.epa.gov/ttn/atw/boiler/imptools/boiler\\_tune-up\\_guide-v1.pdf](http://www.epa.gov/ttn/atw/boiler/imptools/boiler_tune-up_guide-v1.pdf)).

## VI. Impacts of This Final Rule

This action finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the January 2013 final Boiler MACT (78 FR 7138). Therefore, there are no environmental, energy, or economic impacts associated with this final action. The impacts associated with the Boiler MACT are discussed in detail in the January 2013 final amendments to the Boiler MACT.

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

### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations (40 CFR part 63, subpart DDDDD) and has assigned OMB control number 2060–0551. This action is believed to result in no changes to the information collection requirements of the January 2013 final amendments to the Boiler MACT, so that the information collection estimate of project cost and hour burden from the final Boiler MACT have not been revised.

### 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. This action will not impose any requirements on small entities. This action finalizes the EPA's response to petitions for reconsideration on three issues of the Boiler MACT as well as minor changes to the rule to correct and clarify implementation issues raised by stakeholders.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does

not significantly or uniquely affect small governments. This rule promulgates amendments to the January 2013 final Boiler MACT provisions, but the amendments are mainly clarifications to existing rule language to aid in implementation, or are being made to maintain consistency with other, more recent, regulatory actions. Therefore, the action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

### 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. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. This action clarifies certain components of the January 2013 final Boiler MACT. 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 does not concern any such environmental health risks or safety risks.

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

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

### I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any new technical standards from those contained in the March 21, 2011, final rule. Therefore, the EPA did not consider the use of any voluntary consensus standards. See 76 FR 15660–15662 for the NTTAA discussion in the March 21, 2011, final rule.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment.

The environmental justice finding in the January 2013 final amendments to the Boiler MACT remain relevant in this action, which finalizes three aspects of the Boiler MACT as well as finalizing minor changes to the rule to correct and clarify implementation issues raised by stakeholders.

### K. Congressional Review Act (CRA)

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

### List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

Dated: November 5, 2015.

**Gina McCarthy,**  
Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

### PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority for part 63 continues to read as follows:

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

### Subpart DDDDD—[Amended]

■ 2. Section 63.7491 is amended by revising paragraphs (a), (j), and (l) and adding paragraph (n) to read as follows:

**§ 63.7491 Are any boilers or process heaters not subject to this subpart?**

\* \* \* \* \*

(a) An electric utility steam generating unit (EGU) covered by subpart UUUUU of this part or a natural gas-fired EGU as defined in subpart UUUUU of this part firing at least 85 percent natural gas on an annual heat input basis.

\* \* \* \* \*

(j) Temporary boilers and process heaters as defined in this subpart.

\* \* \* \* \*

(l) Any boiler or process heater specifically listed as an affected source in any standard(s) established under section 129 of the Clean Air Act.

\* \* \* \* \*

(n) Residential boilers as defined in this subpart.

■ 3. Section 63.7495 is amended by revising paragraphs (a), (e), and (f) and adding paragraphs (h) and (i) to read as follows:

**§ 63.7495 When do I have to comply with this subpart?**

(a) If you have a new or reconstructed boiler or process heater, you must comply with this subpart by April 1, 2013, or upon startup of your boiler or process heater, whichever is later.

\* \* \* \* \*

(e) If you own or operate an industrial, commercial, or institutional boiler or process heater and would be subject to this subpart except for the exemption in § 63.7491(l) for commercial and industrial solid waste incineration units covered by part 60, subpart CCCC or subpart DDDD, and you cease combusting solid waste, you must be in compliance with this subpart and are no longer subject to part 60, subparts CCCC or DDDD beginning on the effective date of the switch as identified under the provisions of § 60.2145(a)(2) and (3) or § 60.2710(a)(2) and (3).

(f) If you own or operate an existing EGU that becomes subject to this subpart after January 31, 2016, you must be in compliance with the applicable existing source provisions of this subpart on the effective date such unit becomes subject to this subpart.

\* \* \* \* \*

(h) If you own or operate an existing industrial, commercial, or institutional boiler or process heater and have switched fuels or made a physical change to the boiler or process heater that resulted in the applicability of a different subcategory after the compliance date of this subpart, you must be in compliance with the applicable existing source provisions of

this subpart on the effective date of the fuel switch or physical change.

(i) If you own or operate a new industrial, commercial, or institutional boiler or process heater and have switched fuels or made a physical change to the boiler or process heater that resulted in the applicability of a different subcategory, you must be in compliance with the applicable new source provisions of this subpart on the effective date of the fuel switch or physical change.

■ 4. Section 63.7500 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (f) to read as follows:

**§ 63.7500 What emission limitations, work practice standards, and operating limits must I meet?**

(a) \* \* \*

(1) You must meet each emission limit and work practice standard in Tables 1 through 3, and 11 through 13 to this subpart that applies to your boiler or process heater, for each boiler or process heater at your source, except as provided under § 63.7522. The output-based emission limits, in units of pounds per million Btu of steam output, in Tables 1 or 2 to this subpart are an alternative applicable only to boilers and process heaters that generate either steam, cogenerate steam with electricity, or both. The output-based emission limits, in units of pounds per megawatt-hour, in Tables 1 or 2 to this subpart are an alternative applicable only to boilers that generate only electricity. Boilers that perform multiple functions (cogeneration and electricity generation) or supply steam to common headers would calculate a total steam energy output using equation 21 of § 63.7575 to demonstrate compliance with the output-based emission limits, in units of pounds per million Btu of steam output, in Tables 1 or 2 to this subpart. If you operate a new boiler or process heater, you can choose to comply with alternative limits as discussed in paragraphs (a)(1)(i) through (iii) of this section, but on or after January 31, 2016, you must comply with the emission limits in Table 1 to this subpart.

\* \* \* \* \*

(ii) If your boiler or process heater commenced construction or reconstruction on or after May 20, 2011 and before December 23, 2011, you may comply with the emission limits in Table 1 or 12 to this subpart until January 31, 2016.

(iii) If your boiler or process heater commenced construction or reconstruction on or after December 23, 2011 and before April 1, 2013, you may comply with the emission limits in

Table 1 or 13 to this subpart until January 31, 2016.

\* \* \* \* \*

(f) These standards apply at all times the affected unit is operating, except during periods of startup and shutdown during which time you must comply only with items 5 and 6 of Table 3 to this subpart.

**§ 63.7501 [Removed and Reserved]**

■ 5. Section 63.7501 is removed and reserved.

■ 6. Section 63.7505 is amended by revising paragraphs (a), (c), and (d) introductory text and adding paragraph (e) to read as follows:

**§ 63.7505 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limits, work practice standards, and operating limits in this subpart. These emission and operating limits apply to you at all times the affected unit is operating except for the periods noted in § 63.7500(f).

\* \* \* \* \*

(c) You must demonstrate compliance with all applicable emission limits using performance stack testing, fuel analysis, or continuous monitoring systems (CMS), including a continuous emission monitoring system (CEMS), or particulate matter continuous parameter monitoring system (PM CPMS), where applicable. You may demonstrate compliance with the applicable emission limit for hydrogen chloride (HCl), mercury, or total selected metals (TSM) using fuel analysis if the emission rate calculated according to § 63.7530(c) is less than the applicable emission limit. (For gaseous fuels, you may not use fuel analyses to comply with the TSM alternative standard or the HCl standard.) Otherwise, you must demonstrate compliance for HCl, mercury, or TSM using performance stack testing, if subject to an applicable emission limit listed in Tables 1, 2, or 11 through 13 to this subpart.

(d) If you demonstrate compliance with any applicable emission limit through performance testing and subsequent compliance with operating limits through the use of CPMS, or with a CEMS or COMS, you must develop a site-specific monitoring plan according to the requirements in paragraphs (d)(1) through (4) of this section for the use of any CEMS, COMS, or CPMS. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 63.8(f).

\* \* \* \* \*

(e) If you have an applicable emission limit, and you choose to comply using definition (2) of "startup" in § 63.7575, you must develop and implement a written startup and shutdown plan (SSP) according to the requirements in Table 3 to this subpart. The SSP must be maintained onsite and available upon request for public inspection.

■ 7. Section 63.7510 is amended by revising paragraphs (a) introductory text, (a)(2)(ii), (c), (e), (g), and (i) and adding paragraph (k) to read as follows:

**§ 63.7510 What are my initial compliance requirements and by what date must I conduct them?**

(a) For each boiler or process heater that is required or that you elect to demonstrate compliance with any of the applicable emission limits in Tables 1 or 2 or 11 through 13 of this subpart through performance (stack) testing, your initial compliance requirements include all the following:

\* \* \* \* \*

(2) \* \* \*

(ii) When natural gas, refinery gas, or other gas 1 fuels are co-fired with other fuels, you are not required to conduct a fuel analysis of those Gas 1 fuels according to § 63.7521 and Table 6 to this subpart. If gaseous fuels other than natural gas, refinery gas, or other gas 1 fuels are co-fired with other fuels and those non-Gas 1 gaseous fuels are subject to another subpart of this part, part 60, part 61, or part 65, you are not required to conduct a fuel analysis of those non-Gas 1 fuels according to § 63.7521 and Table 6 to this subpart.

\* \* \* \* \*

(c) If your boiler or process heater is subject to a carbon monoxide (CO) limit, your initial compliance demonstration for CO is to conduct a performance test for CO according to Table 5 to this subpart or conduct a performance evaluation of your continuous CO monitor, if applicable, according to § 63.7525(a). Boilers and process heaters that use a CO CEMS to comply with the applicable alternative CO CEMS emission standard listed in Tables 1, 2, or 11 through 13 to this subpart, as specified in § 63.7525(a), are exempt from the initial CO performance testing and oxygen concentration operating limit requirements specified in paragraph (a) of this section.

\* \* \* \* \*

(e) For existing affected sources (as defined in § 63.7490), you must complete the initial compliance demonstrations, as specified in paragraphs (a) through (d) of this section, no later than 180 days after the compliance date that is specified for

your source in § 63.7495 and according to the applicable provisions in § 63.7(a)(2) as cited in Table 10 to this subpart, except as specified in paragraph (j) of this section. You must complete an initial tune-up by following the procedures described in § 63.7540(a)(10)(i) through (vi) no later than the compliance date specified in § 63.7495, except as specified in paragraph (j) of this section. You must complete the one-time energy assessment specified in Table 3 to this subpart no later than the compliance date specified in § 63.7495.

\* \* \* \* \*

(g) For new or reconstructed affected sources (as defined in § 63.7490), you must demonstrate initial compliance with the applicable work practice standards in Table 3 to this subpart within the applicable annual, biennial, or 5-year schedule as specified in § 63.7515(d) following the initial compliance date specified in § 63.7495(a). Thereafter, you are required to complete the applicable annual, biennial, or 5-year tune-up as specified in § 63.7515(d).

\* \* \* \* \*

(i) For an existing EGU that becomes subject after January 31, 2016, you must demonstrate compliance within 180 days after becoming an affected source.

\* \* \* \* \*

(k) For affected sources, as defined in § 63.7490, that switch subcategories consistent with § 63.7545(h) after the initial compliance date, you must demonstrate compliance within 60 days of the effective date of the switch, unless you had previously conducted your compliance demonstration for this subcategory within the previous 12 months.

■ 8. Section 63.7515 is amended by revising paragraphs (d), (e), and (h) to read as follows:

**§ 63.7515 When must I conduct subsequent performance tests, fuel analyses, or tune-ups?**

\* \* \* \* \*

(d) If you are required to meet an applicable tune-up work practice standard, you must conduct an annual, biennial, or 5-year performance tune-up according to § 63.7540(a)(10), (11), or (12), respectively. Each annual tune-up specified in § 63.7540(a)(10) must be no more than 13 months after the previous tune-up. Each biennial tune-up specified in § 63.7540(a)(11) must be conducted no more than 25 months after the previous tune-up. Each 5-year tune-up specified in § 63.7540(a)(12) must be conducted no more than 61 months after the previous tune-up. For a new or

reconstructed affected source (as defined in § 63.7490), the first annual, biennial, or 5-year tune-up must be no later than 13 months, 25 months, or 61 months, respectively, after April 1, 2013 or the initial startup of the new or reconstructed affected source, whichever is later.

(e) If you demonstrate compliance with the mercury, HCl, or TSM based on fuel analysis, you must conduct a monthly fuel analysis according to § 63.7521 for each type of fuel burned that is subject to an emission limit in Tables 1, 2, or 11 through 13 to this subpart. You may comply with this monthly requirement by completing the fuel analysis any time within the calendar month as long as the analysis is separated from the previous analysis by at least 14 calendar days. If you burn a new type of fuel, you must conduct a fuel analysis before burning the new type of fuel in your boiler or process heater. You must still meet all applicable continuous compliance requirements in § 63.7540. If each of 12 consecutive monthly fuel analyses demonstrates 75 percent or less of the compliance level, you may decrease the fuel analysis frequency to quarterly for that fuel. If any quarterly sample exceeds 75 percent of the compliance level or you begin burning a new type of fuel, you must return to monthly monitoring for that fuel, until 12 months of fuel analyses are again less than 75 percent of the compliance level. If sampling is conducted on one day per month, samples should be no less than 14 days apart, but if multiple samples are taken per month, the 14-day restriction does not apply.

\* \* \* \* \*

(h) If your affected boiler or process heater is in the unit designed to burn light liquid subcategory and you combust ultra-low sulfur liquid fuel, you do not need to conduct further performance tests (stack tests or fuel analyses) if the pollutants measured during the initial compliance performance tests meet the emission limits in Tables 1 or 2 of this subpart providing you demonstrate ongoing compliance with the emissions limits by monitoring and recording the type of fuel combusted on a monthly basis. If you intend to use a fuel other than ultra-low sulfur liquid fuel, natural gas, refinery gas, or other gas 1 fuel, you must conduct new performance tests within 60 days of burning the new fuel type.

\* \* \* \* \*

■ 9. Section 63.7521 is amended by:  
■ a. Revising paragraph (a).

- b. Revising paragraph (c) introductory text.
- c. Revising paragraph (c)(1)(ii).
- d. Revising paragraph (f) introductory text.
- e. Revising paragraphs (g) introductory text, (g)(2)(ii), and (g)(2)(vi).
- f. Revising paragraph (h).  
The revisions read as follows:

**§ 63.7521 What fuel analyses, fuel specification, and procedures must I use?**

(a) For solid and liquid fuels, you must conduct fuel analyses for chloride and mercury according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable. For solid fuels and liquid fuels, you must also conduct fuel analyses for TSM if you are opting to comply with the TSM alternative standard. For gas 2 (other) fuels, you must conduct fuel analyses for mercury according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable. (For gaseous fuels, you may not use fuel analyses to comply with the TSM alternative standard or the HCl standard.) For purposes of complying with this section, a fuel gas system that consists of multiple gaseous fuels collected and mixed with each other is considered a single fuel type and sampling and analysis is only required on the combined fuel gas system that will feed the boiler or process heater. Sampling and analysis of the individual gaseous streams prior to combining is not required. You are not required to conduct fuel analyses for fuels used for only startup, unit shutdown, and transient flame stability purposes. You are required to conduct fuel analyses only for fuels and units that are subject to emission limits for mercury, HCl, or TSM in Tables 1 and 2 or 11 through 13 to this subpart. Gaseous and liquid fuels are exempt from the sampling requirements in paragraphs (c) and (d) of this section.

(c) You must obtain composite fuel samples for each fuel type according to the procedures in paragraph (c)(1) or (2) of this section, or the methods listed in Table 6 to this subpart, or use an automated sampling mechanism that provides representative composite fuel samples for each fuel type that includes both coarse and fine material. At a minimum, for demonstrating initial compliance by fuel analysis, you must obtain three composite samples. For monthly fuel analyses, at a minimum, you must obtain a single composite sample. For fuel analyses as part of a performance stack test, as specified in

§ 63.7510(a), you must obtain a composite fuel sample during each performance test run.

- (1) \* \* \*
- (ii) Each composite sample will consist of a minimum of three samples collected at approximately equal one-hour intervals during the testing period for sampling during performance stack testing.

(f) To demonstrate that a gaseous fuel other than natural gas or refinery gas qualifies as an other gas 1 fuel, as defined in § 63.7575, you must conduct a fuel specification analyses for mercury according to the procedures in paragraphs (g) through (i) of this section and Table 6 to this subpart, as applicable, except as specified in paragraph (f)(1) through (4) of this section, or as an alternative where fuel specification analysis is not practical, you must measure mercury concentration in the exhaust gas when firing only the gaseous fuel to be demonstrated as an other gas 1 fuel in the boiler or process heater according to the procedures in Table 6 to this subpart.

(g) You must develop a site-specific fuel analysis plan for other gas 1 fuels according to the following procedures and requirements in paragraphs (g)(1) and (2) of this section.

- (2) \* \* \*
- (ii) For each anticipated fuel type, the identification of whether you or a fuel supplier will be conducting the fuel specification analysis.

(vi) If you will be using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 6 to this subpart. When using a fuel supplier's fuel analysis, the owner or operator is not required to submit the information in § 63.7521(g)(2)(iii).

(h) You must obtain a single fuel sample for each fuel type for fuel specification of gaseous fuels.

- 10. Section 63.7522 is amended by:
  - a. Revising paragraphs (c), (d), (f)(1) introductory text, (g)(1), (g)(3) introductory text, and (i).
  - b. Revising parameters "En" and "ELi" of Equation 6 in paragraph (j)(1).  
The revisions read as follows:

**§ 63.7522 Can I use emissions averaging to comply with this subpart?**

\* \* \* \* \*

(c) For each existing boiler or process heater in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on April 1, 2013 or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on April 1, 2013.

(d) The averaged emissions rate from the existing boilers and process heaters participating in the emissions averaging option must not exceed 90 percent of the limits in Table 2 to this subpart at all times the affected units are subject to numeric emission limits following the compliance date specified in § 63.7495.

(f) \* \* \*

(1) For each calendar month, you must use Equation 3a or 3b or 3c of this section to calculate the average weighted emission rate for that month. Use Equation 3a and the actual heat input for the month for each existing unit participating in the emissions averaging option if you are complying with emission limits on a heat input basis. Use Equation 3b and the actual steam generation for the month if you are complying with the emission limits on a steam generation (output) basis. Use Equation 3c and the actual electrical generation for the month if you are complying with the emission limits on an electrical generation (output) basis.

(g) \* \* \*

(1) If requested, you must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emission averaging option.

(3) If submitted upon request, the Administrator shall review and approve or disapprove the plan according to the following criteria:

(i) For a group of two or more existing units in the same subcategory, each of which vents through a common emissions control system to a common stack, that does not receive emissions from units in other subcategories or categories, you may treat such averaging group as a single existing unit for purposes of this subpart and comply with the requirements of this subpart as if the group were a single unit.

- (j) \* \* \*
- (1) \* \* \*

En = HAP emission limit, pounds per million British thermal units (lb/MMBtu) or parts per million (ppm).  
Eli = Appropriate emission limit from Table 2 to this subpart for unit i, in units of lb/MMBtu or ppm.

\* \* \* \* \*

■ 11. Section 63.7525 is amended by:

- a. Revising paragraphs (a) introductory text, (a)(1), (a)(2) introductory text, (a)(3), and (a)(5).
- b. Adding paragraph (a)(2)(vi).
- c. Revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iii).
- d. Revising paragraphs (g)(3) and (4).
- e. Revising paragraphs (m) introductory text and (m)(2).

The revisions and addition read as follows:

**§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?**

(a) If your boiler or process heater is subject to a CO emission limit in Tables 1, 2, or 11 through 13 to this subpart, you must install, operate, and maintain an oxygen analyzer system, as defined in § 63.7575, or install, certify, operate and maintain continuous emission monitoring systems for CO and oxygen (or carbon dioxide (CO<sub>2</sub>)) according to the procedures in paragraphs (a)(1) through (6) of this section.

(1) Install the CO CEMS and oxygen (or CO<sub>2</sub>) analyzer by the compliance date specified in § 63.7495. The CO and oxygen (or CO<sub>2</sub>) levels shall be monitored at the same location at the outlet of the boiler or process heater. An owner or operator may request an alternative test method under § 63.7 of this chapter, in order that compliance with the CO emissions limit be determined using CO<sub>2</sub> as a diluent correction in place of oxygen at 3 percent. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3 percent oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.

(2) To demonstrate compliance with the applicable alternative CO CEMS emission standard listed in Tables 1, 2, or 11 through 13 to this subpart, you must install, certify, operate, and maintain a CO CEMS and an oxygen analyzer according to the applicable procedures under Performance Specification 4, 4A, or 4B at 40 CFR part 60, appendix B; part 75 of this chapter

(if an CO<sub>2</sub> analyzer is used); the site-specific monitoring plan developed according to § 63.7505(d); and the requirements in § 63.7540(a)(8) and paragraph (a) of this section. Any boiler or process heater that has a CO CEMS that is compliant with Performance Specification 4, 4A, or 4B at 40 CFR part 60, appendix B, a site-specific monitoring plan developed according to § 63.7505(d), and the requirements in § 63.7540(a)(8) and paragraph (a) of this section must use the CO CEMS to comply with the applicable alternative CO CEMS emission standard listed in Tables 1, 2, or 11 through 13 to this subpart.

\* \* \* \* \*

(vi) When CO<sub>2</sub> is used to correct CO emissions and CO<sub>2</sub> is measured on a wet basis, correct for moisture as follows: Install, operate, maintain, and quality assure a continuous moisture monitoring system for measuring and recording the moisture content of the flue gases, in order to correct the measured hourly volumetric flow rates for moisture when calculating CO concentrations. The following continuous moisture monitoring systems are acceptable: A continuous moisture sensor; an oxygen analyzer (or analyzers) capable of measuring O<sub>2</sub> both on a wet basis and on a dry basis; or a stack temperature sensor and a moisture look-up table, *i.e.*, a psychrometric chart (for saturated gas streams following wet scrubbers or other demonstrably saturated gas streams, only). The moisture monitoring system shall include as a component the automated data acquisition and handling system (DAHS) for recording and reporting both the raw data (*e.g.*, hourly average wet- and dry basis O<sub>2</sub> values) and the hourly average values of the stack gas moisture content derived from those data. When a moisture look-up table is used, the moisture monitoring system shall be represented as a single component, the certified DAHS, in the monitoring plan for the unit or common stack.

(3) Complete a minimum of one cycle of CO and oxygen (or CO<sub>2</sub>) CEMS operation (sampling, analyzing, and data recording) for each successive 15-minute period. Collect CO and oxygen (or CO<sub>2</sub>) data concurrently. Collect at least four CO and oxygen (or CO<sub>2</sub>) CEMS data values representing the four 15-minute periods in an hour, or at least two 15-minute data values during an hour when CEMS calibration, quality assurance, or maintenance activities are being performed.

\* \* \* \* \*

(5) Calculate one-hour arithmetic averages, corrected to 3 percent oxygen

(or corrected to an CO<sub>2</sub> percentage determined to be equivalent to 3 percent oxygen) from each hour of CO CEMS data in parts per million CO concentration. The one-hour arithmetic averages required shall be used to calculate the 30-day or 10-day rolling average emissions. Use Equation 19-19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A-7 for calculating the average CO concentration from the hourly values.

\* \* \* \* \*

(b) If your boiler or process heater is in the unit designed to burn coal/solid fossil fuel subcategory or the unit designed to burn heavy liquid subcategory and has an average annual heat input rate greater than 250 MMBtu per hour from solid fossil fuel and/or heavy liquid, and you demonstrate compliance with the PM limit instead of the alternative TSM limit, you must install, maintain, and operate a PM CPMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraphs (b)(1) through (4) of this section. As an alternative to use of a PM CPMS to demonstrate compliance with the PM limit, you may choose to use a PM CEMS. If you choose to use a PM CEMS to demonstrate compliance with the PM limit instead of the alternative TSM limit, you must install, certify, maintain, and operate a PM CEMS monitoring emissions discharged to the atmosphere and record the output of the system as specified in paragraph (b)(5) through (8) of this section. For other boilers or process heaters, you may elect to use a PM CPMS or PM CEMS operated in accordance with this section in lieu of using other CMS for monitoring PM compliance (*e.g.*, bag leak detectors, ESP secondary power, and PM scrubber pressure). Owners of boilers and process heaters who elect to comply with the alternative TSM limit are not required to install a PM CPMS.

(1) Install, operate, and maintain your PM CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 63.7505(d), the requirements in § 63.7540(a)(9), and paragraphs (b)(1)(i) through (iii) of this section.

\* \* \* \* \*

(iii) The PM CPMS must have a documented detection limit of 0.5 milligram per actual cubic meter, or less.

\* \* \* \* \*

(g) \* \* \*

(3) Calibrate the pH monitoring system in accordance with your monitoring plan and according to the

manufacturer's instructions. Clean the pH probe at least once each process operating day. Maintain on-site documentation that your calibration frequency is sufficient to maintain the specified accuracy of your device.

(4) Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(m) If your unit is subject to a HCl emission limit in Tables 1, 2, or 11 through 13 of this subpart and you have an acid gas wet scrubber or dry sorbent injection control technology and you elect to use an SO<sub>2</sub> CEMS to demonstrate continuous compliance with the HCl emission limit, you must install the monitor at the outlet of the boiler or process heater, downstream of all emission control devices, and you must install, certify, operate, and maintain the CEMS according to either part 60 or part 75 of this chapter.

(2) For on-going quality assurance (QA), the SO<sub>2</sub> CEMS must meet either the applicable daily and quarterly requirements in Procedure 1 of appendix F of part 60 or the applicable daily, quarterly, and semiannual or annual requirements in sections 2.1 through 2.3 of appendix B to part 75 of this chapter, with the following addition: You must perform the linearity checks required in section 2.2 of appendix B to part 75 of this chapter if the SO<sub>2</sub> CEMS has a span value of 30 ppm or less.

■ 12. Section 63.7530 is amended by:

- a. Revising paragraph (a) and paragraph (b) introductory text.
- b. Revising parameter "Qi" of Equation 7 in paragraph (b)(1)(iii), Equation 8 in paragraph (b)(2)(iii), and Equation 9 in paragraph (b)(3)(iii).
- c. Revising parameter "n" of Equation 14 in paragraph (b)(4)(ii)(D).
- d. Revising paragraph (b)(4)(ii)(F).
- e. Redesignating paragraphs (b)(4)(iii) through (viii) as paragraphs (b)(4)(iv) through (ix) and adding new paragraph (b)(4)(iii).
- f. Revising parameters "Ci90" and "Qi" of Equation 16 in paragraph (c)(3), parameters "Hgi90" and "Qi" of Equation 17 in paragraph (c)(4), and parameters "TSMi90" and "Qi" of Equation 18 in paragraph (c)(5).
- g. Removing and reserving paragraph (d).

■ h. Revising paragraphs (e), (h), and (i)(3).

The revisions and additions read as follows:

**§ 63.7530 How do I demonstrate initial compliance with the emission limitations, fuel specifications and work practice standards?**

(a) You must demonstrate initial compliance with each emission limit that applies to you by conducting initial performance tests and fuel analyses and establishing operating limits, as applicable, according to § 63.7520, paragraphs (b) and (c) of this section, and Tables 5 and 7 to this subpart. The requirement to conduct a fuel analysis is not applicable for units that burn a single type of fuel, as specified by § 63.7510(a)(2). If applicable, you must also install, operate, and maintain all applicable CEMS (including CEMS, COMS, and CPMS) according to § 63.7525.

(b) If you demonstrate compliance through performance stack testing, you must establish each site-specific operating limit in Table 4 to this subpart that applies to you according to the requirements in § 63.7520, Table 7 to this subpart, and paragraph (b)(4) of this section, as applicable. You must also conduct fuel analyses according to § 63.7521 and establish maximum fuel pollutant input levels according to paragraphs (b)(1) through (3) of this section, as applicable, and as specified in § 63.7510(a)(2). (Note that § 63.7510(a)(2) exempts certain fuels from the fuel analysis requirements.) However, if you switch fuel(s) and cannot show that the new fuel(s) does (do) not increase the chlorine, mercury, or TSM input into the unit through the results of fuel analysis, then you must repeat the performance test to demonstrate compliance while burning the new fuel(s).

- (1) \* \* \*
- (iii) \* \* \*

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine during the initial compliance test. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of "1" for Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

- \* \* \* \* \*
- (2) \* \* \*
- (iii) \* \* \*

Qi = Fraction of total heat input from fuel type, i, based on the fuel

mixture that has the highest mercury content during the initial compliance test. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

- \* \* \* \* \*
- (3) \* \* \*
- (iii) \* \* \*

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of TSM during the initial compliance test. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of "1" for Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

- \* \* \* \* \*
- (4) \* \* \*
- (ii) \* \* \*
- (D) \* \* \*

n = is the number of valid hourly parameter values collected over the previous 30 operating days.

- \* \* \* \* \*

(F) For PM performance test reports used to set a PM CPMS operating limit, the electronic submission of the test report must also include the make and model of the PM CPMS instrument, serial number of the instrument, analytical principle of the instrument (e.g. beta attenuation), span of the instruments primary analytical range, milliamp value equivalent to the instrument zero output, technique by which this zero value was determined, and the average milliamp signals corresponding to each PM compliance test run.

(iii) For a particulate wet scrubber, you must establish the minimum pressure drop and liquid flow rate as defined in § 63.7575, as your operating limits during the three-run performance test during which you demonstrate compliance with your applicable limit. If you use a wet scrubber and you conduct separate performance tests for PM and TSM emissions, you must establish one set of minimum scrubber liquid flow rate and pressure drop operating limits. The minimum scrubber effluent pH operating limit must be established during the HCl performance test. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pressure



drop operating limits at the higher of the minimum values established during the performance tests.

(iv) For an electrostatic precipitator (ESP) operated with a wet scrubber, you must establish the minimum total secondary electric power input, as defined in § 63.7575, as your operating limit during the three-run performance test during which you demonstrate compliance with your applicable limit. (These operating limits do not apply to ESP that are operated as dry controls without a wet scrubber.)

(v) For a dry scrubber, you must establish the minimum sorbent injection rate for each sorbent, as defined in § 63.7575, as your operating limit during the three-run performance test during which you demonstrate compliance with your applicable limit.

(vi) For activated carbon injection, you must establish the minimum activated carbon injection rate, as defined in § 63.7575, as your operating limit during the three-run performance test during which you demonstrate compliance with your applicable limit.

(vii) The operating limit for boilers or process heaters with fabric filters that demonstrate continuous compliance through bag leak detection systems is that a bag leak detection system be installed according to the requirements in § 63.7525, and that each fabric filter must be operated such that the bag leak detection system alert is not activated more than 5 percent of the operating time during a 6-month period.

(viii) For a minimum oxygen level, if you conduct multiple performance tests, you must set the minimum oxygen level at the lower of the minimum values established during the performance tests.

(ix) The operating limit for boilers or process heaters that demonstrate continuous compliance with the HCl emission limit using a SO<sub>2</sub> CEMS is to install and operate the SO<sub>2</sub> according to the requirements in § 63.7525(m) establish a maximum SO<sub>2</sub> emission rate equal to the highest hourly average SO<sub>2</sub> measurement during the most recent three-run performance test for HCl.

(c) \* \* \*

(3) \* \* \*

Ci90 = 90th percentile confidence level concentration of chlorine in fuel type, i, in units of pounds per million Btu as calculated according to Equation 15 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for

Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

\* \* \* \* \*

(4) \* \* \*

Hgi90 = 90th percentile confidence level concentration of mercury in fuel, i, in units of pounds per million Btu as calculated according to Equation 15 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest mercury content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

\* \* \* \* \*

(5) \* \* \*

TSMi90 = 90th percentile confidence level concentration of TSM in fuel, i, in units of pounds per million Btu as calculated according to Equation 15 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest TSM content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi. For continuous compliance demonstration, the actual fraction of the fuel burned during the month should be used.

\* \* \* \* \*

(e) You must include with the Notification of Compliance Status a signed certification that either the energy assessment was completed according to Table 3 to this subpart, and that the assessment is an accurate depiction of your facility at the time of the assessment, or that the maximum number of on-site technical hours specified in the definition of energy assessment applicable to the facility has been expended.

\* \* \* \* \*

(h) If you own or operate a unit subject to emission limits in Tables 1 or 2 or 11 through 13 to this subpart, you must meet the work practice standard according to Table 3 of this subpart. During startup and shutdown, you must only follow the work practice standards according to items 5 and 6 of Table 3 of this subpart.

(i) \* \* \*

(3) You establish a unit-specific maximum SO<sub>2</sub> operating limit by collecting the maximum hourly SO<sub>2</sub> emission rate on the SO<sub>2</sub> CEMS during

the paired 3-run test for HCl. The maximum SO<sub>2</sub> operating limit is equal to the highest hourly average SO<sub>2</sub> concentration measured during the HCl performance test.

■ 13. Section 63.7533 is amended by revising paragraph (e) to read as follows:

**§ 63.7533 Can I use efficiency credits earned from implementation of energy conservation measures to comply with this subpart?**

\* \* \* \* \*

(e) The emissions rate as calculated using Equation 20 of this section from each existing boiler participating in the efficiency credit option must be in compliance with the limits in Table 2 to this subpart at all times the affected unit is subject to numeric emission limits, following the compliance date specified in § 63.7495.

\* \* \* \* \*

■ 14. Section 63.7535 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 63.7535 Is there a minimum amount of monitoring data I must obtain?**

\* \* \* \* \*

(c) You may not use data recorded during periods of startup and shutdown, monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in data averages and calculations used to report emissions or operating levels. You must record and make available upon request results of CMS performance audits and dates and duration of periods when the CMS is out of control to completion of the corrective actions necessary to return the CMS to operation consistent with your site-specific monitoring plan. You must use all the data collected during all other periods in assessing compliance and the operation of the control device and associated control system.

(d) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits, calibration checks, and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements. In calculating monitoring results, do not use any data collected during periods of startup and shutdown, when the monitoring system is out of control as specified in your site-specific monitoring plan, while conducting repairs associated with periods when

the monitoring system is out of control, or while conducting required monitoring system quality assurance or quality control activities. You must calculate monitoring results using all other monitoring data collected while the process is operating. You must report all periods when the monitoring system is out of control in your semi-annual report.

- 15. Section 63.7540 is amended by:
- a. Revising paragraph (a)(2).
- b. Revising paragraphs (a)(3) introductory text and (a)(3)(iii).
- c. Revising paragraphs (a)(5) introductory text and (a)(5)(iii).
- d. Revising paragraph (a)(8)(ii).
- e. Revising paragraph (a)(10) introductory text.
- f. Revising paragraph (a)(10)(i).
- g. Revising paragraph (a)(10)(vi) introductory text.
- h. Revising paragraphs (a)(12).
- i. Revising paragraphs (a)(14)(i) and (a)(15)(i).
- j. Revising paragraphs (a)(17) introductory text and (a)(17)(iii).
- k. Revising paragraph (a)(18)(i).
- l. Revising paragraph (a)(19)(iii).
- m. Revising paragraph (d).

The revisions read as follows:

**§ 63.7540 How do I demonstrate continuous compliance with the emission limitations, fuel specifications and work practice standards?**

(a) \* \* \*

(2) As specified in § 63.7555(d), you must keep records of the type and amount of all fuels burned in each boiler or process heater during the reporting period to demonstrate that all fuel types and mixtures of fuels burned would result in either of the following:

- (i) Equal to or lower emissions of HCl, mercury, and TSM than the applicable emission limit for each pollutant, if you demonstrate compliance through fuel analysis.
- (ii) Equal to or lower fuel input of chlorine, mercury, and TSM than the maximum values calculated during the last performance test, if you demonstrate compliance through performance testing.

(3) If you demonstrate compliance with an applicable HCl emission limit through fuel analysis for a solid or liquid fuel and you plan to burn a new type of solid or liquid fuel, you must recalculate the HCl emission rate using Equation 16 of § 63.7530 according to paragraphs (a)(3)(i) through (iii) of this section. You are not required to conduct fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the HCl emission rate.

\* \* \* \* \*

(iii) Recalculate the HCl emission rate from your boiler or process heater under these new conditions using Equation 16 of § 63.7530. The recalculated HCl emission rate must be less than the applicable emission limit.

\* \* \* \* \*

(5) If you demonstrate compliance with an applicable mercury emission limit through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the mercury emission rate using Equation 17 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section. You are not required to conduct fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the mercury emission rate.

\* \* \* \* \*

(iii) Recalculate the mercury emission rate from your boiler or process heater under these new conditions using Equation 17 of § 63.7530. The recalculated mercury emission rate must be less than the applicable emission limit.

\* \* \* \* \*

(8) \* \* \*

(ii) Maintain a CO emission level below or at your applicable alternative CO CEMS-based standard in Tables 1 or 2 or 11 through 13 to this subpart at all times the affected unit is subject to numeric emission limits.

\* \* \* \* \*

(10) If your boiler or process heater has a heat input capacity of 10 million Btu per hour or greater, you must conduct an annual tune-up of the boiler or process heater to demonstrate continuous compliance as specified in paragraphs (a)(10)(i) through (vi) of this section. You must conduct the tune-up while burning the type of fuel (or fuels in case of units that routinely burn a mixture) that provided the majority of the heat input to the boiler or process heater over the 12 months prior to the tune-up. This frequency does not apply to limited-use boilers and process heaters, as defined in § 63.7575, or units with continuous oxygen trim systems that maintain an optimum air to fuel ratio.

(i) As applicable, inspect the burner, and clean or replace any components of the burner as necessary (you may perform the burner inspection any time prior to the tune-up or delay the burner inspection until the next scheduled unit shutdown). Units that produce electricity for sale may delay the burner inspection until the first outage, not to exceed 36 months from the previous inspection. At units where entry into a

piece of process equipment or into a storage vessel is required to complete the tune-up inspections, inspections are required only during planned entries into the storage vessel or process equipment;

\* \* \* \* \*

(vi) Maintain on-site and submit, if requested by the Administrator, a report containing the information in paragraphs (a)(10)(vi)(A) through (C) of this section,

\* \* \* \* \*

(12) If your boiler or process heater has a continuous oxygen trim system that maintains an optimum air to fuel ratio, or a heat input capacity of less than or equal to 5 million Btu per hour and the unit is in the units designed to burn gas 1; units designed to burn gas 2 (other); or units designed to burn light liquid subcategories, or meets the definition of limited-use boiler or process heater in § 63.7575, you must conduct a tune-up of the boiler or process heater every 5 years as specified in paragraphs (a)(10)(i) through (vi) of this section to demonstrate continuous compliance. You may delay the burner inspection specified in paragraph (a)(10)(i) of this section until the next scheduled or unscheduled unit shutdown, but you must inspect each burner at least once every 72 months. If an oxygen trim system is utilized on a unit without emission standards to reduce the tune-up frequency to once every 5 years, set the oxygen level no lower than the oxygen concentration measured during the most recent tune-up.

\* \* \* \* \*

(14) \* \* \*

(i) Operate the mercury CEMS in accordance with performance specification 12A of 40 CFR part 60, appendix B or operate a sorbent trap based integrated monitor in accordance with performance specification 12B of 40 CFR part 60, appendix B. The duration of the performance test must be 30 operating days if you specified a 30 operating day basis in § 63.7545(e)(2)(iii) for mercury CEMS or it must be 720 hours if you specified a 720 hour basis in § 63.7545(e)(2)(ii) for mercury CEMS. For each day in which the unit operates, you must obtain hourly mercury concentration data, and stack gas volumetric flow rate data.

\* \* \* \* \*

(15) \* \* \*

(i) Operate the continuous emissions monitoring system in accordance with the applicable performance specification in 40 CFR part 60, appendix B. The duration of the performance test must be 30 operating

days if you specified a 30 operating day basis in § 63.7545(e)(2)(iii) for HCl CEMS or it must be 720 hours if you specified a 720 hour basis in § 63.7545(e)(2)(iii) for HCl CEMS. For each day in which the unit operates, you must obtain hourly HCl concentration data, and stack gas volumetric flow rate data.

\* \* \* \* \*

(17) If you demonstrate compliance with an applicable TSM emission limit through fuel analysis for solid or liquid fuels, and you plan to burn a new type of fuel, you must recalculate the TSM emission rate using Equation 18 of § 63.7530 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section. You are not required to conduct fuel analyses for the fuels described in § 63.7510(a)(2)(i) through (iii). You may exclude the fuels described in § 63.7510(a)(2)(i) through (iii) when recalculating the TSM emission rate.

\* \* \* \* \*

(iii) Recalculate the TSM emission rate from your boiler or process heater under these new conditions using Equation 18 of § 63.7530. The recalculated TSM emission rate must be less than the applicable emission limit.

\* \* \* \* \*

(18) \* \* \*

(i) To determine continuous compliance, you must record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. You must demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (milliamps) on a 30-day rolling average basis.

\* \* \* \* \*

(19) \* \* \*

(iii) Collect PM CEMS hourly average output data for all boiler operating hours except as indicated in paragraph (v) of this section.

\* \* \* \* \*

(d) For startup and shutdown, you must meet the work practice standards according to items 5 and 6 of Table 3 of this subpart.

■ 16. Section 63.7545 is amended by revising paragraphs (e) introductory text, (e)(8)(i), adding paragraph (e)(2)(iii), and revising paragraph (h) introductory text to read as follows:

**§ 63.7545 What notifications must I submit and when?**

\* \* \* \* \*

(e) If you are required to conduct an initial compliance demonstration as specified in § 63.7530, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For the initial compliance demonstration for each boiler or process heater, you must submit the Notification of Compliance Status, including all performance test results and fuel analyses, before the close of business on the 60th day following the completion of all performance test and/or other initial compliance demonstrations for all boiler or process heaters at the facility according to § 63.10(d)(2). The Notification of Compliance Status report must contain all the information specified in paragraphs (e)(1) through (8) of this section, as applicable. If you are not required to conduct an initial compliance demonstration as specified in § 63.7530(a), the Notification of Compliance Status must only contain the information specified in paragraphs (e)(1) and (8) of this section and must be submitted within 60 days of the compliance date specified at § 63.7495(b).

\* \* \* \* \*

(2) \* \* \*

(iii) Identification of whether you are complying the arithmetic mean of all valid hours of data from the previous 30 operating days or of the previous 720 hours. This identification shall be specified separately for each operating parameter.

\* \* \* \* \*

(8) \* \* \*

(i) "This facility completed the required initial tune-up for all of the boilers and process heaters covered by 40 CFR part 63 subpart DDDDD at this site according to the procedures in § 63.7540(a)(10)(i) through (vi)."

\* \* \* \* \*

(h) If you have switched fuels or made a physical change to the boiler or process heater and the fuel switch or physical change resulted in the applicability of a different subcategory, you must provide notice of the date upon which you switched fuels or made the physical change within 30 days of the switch/change. The notification must identify:

\* \* \* \* \*

■ 17. Section 63.7550 is amended by revising paragraphs (b), (c)(1) through (4), (c)(5)(viii) and (xvi), adding paragraph (c)(5)(xviii), and revising paragraph (d) introductory text, (d)(1), and (h) to read as follows:

**§ 63.7550 What reports must I submit and when?**

\* \* \* \* \*

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report, according to paragraph (h) of this section, by the date in Table 9 to this subpart and according to the requirements in paragraphs (b)(1) through (4) of this section. For units that are subject only to a requirement to conduct subsequent annual, biennial, or 5-year tune-up according to § 63.7540(a)(10), (11), or (12), respectively, and not subject to emission limits or Table 4 operating limits, you may submit only an annual, biennial, or 5-year compliance report, as applicable, as specified in paragraphs (b)(1) through (4) of this section, instead of a semi-annual compliance report.

(1) The first semi-annual compliance report must cover the period beginning on the compliance date that is specified for each boiler or process heater in § 63.7495 and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days after the compliance date that is specified for your source in § 63.7495. If submitting an annual, biennial, or 5-year compliance report, the first compliance report must cover the period beginning on the compliance date that is specified for each boiler or process heater in § 63.7495 and ending on December 31 within 1, 2, or 5 years, as applicable, after the compliance date that is specified for your source in § 63.7495.

(2) The first semi-annual compliance report must be postmarked or submitted no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for each boiler or process heater in § 63.7495. The first annual, biennial, or 5-year compliance report must be postmarked or submitted no later than January 31.

(3) Each subsequent semi-annual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31. Annual, biennial, and 5-year compliance reports must cover the applicable 1-, 2-, or 5-year periods from January 1 to December 31.

(4) Each subsequent semi-annual compliance report must be postmarked or submitted no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period. Annual, biennial, and 5-year compliance reports must be postmarked or submitted no later than January 31.

(5) For each affected source that is subject to permitting regulations pursuant to part 70 or part 71 of this

chapter, and if the permitting authority has established dates for submitting semiannual reports pursuant to 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established in the permit instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) \* \* \*

(1) If the facility is subject to the requirements of a tune up you must submit a compliance report with the information in paragraphs (c)(5)(i) through (iii) of this section, (xiv) and (xvii) of this section, and paragraph (c)(5)(iv) of this section for limited-use boiler or process heater.

(2) If you are complying with the fuel analysis you must submit a compliance report with the information in paragraphs (c)(5)(i) through (iii), (vi), (x), (xi), (xiii), (xv), (xvii), (xviii) and paragraph (d) of this section.

(3) If you are complying with the applicable emissions limit with performance testing you must submit a compliance report with the information in (c)(5)(i) through (iii), (vi), (vii), (viii), (ix), (xi), (xiii), (xv), (xvii), (xviii) and paragraph (d) of this section.

(4) If you are complying with an emissions limit using a CMS the compliance report must contain the information required in paragraphs (c)(5)(i) through (iii), (v), (vi), (xi) through (xiii), (xv) through (xviii), and paragraph (e) of this section.

(5) \* \* \*

(viii) A statement indicating that you burned no new types of fuel in an individual boiler or process heater subject to an emission limit. Or, if you did burn a new type of fuel and are subject to a HCl emission limit, you must submit the calculation of chlorine input, using Equation 7 of § 63.7530, that demonstrates that your source is still within its maximum chlorine input level established during the previous performance testing (for sources that demonstrate compliance through performance testing) or you must submit the calculation of HCl emission rate using Equation 16 of § 63.7530 that demonstrates that your source is still meeting the emission limit for HCl emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel and are subject to a mercury emission limit, you must submit the calculation of mercury input, using Equation 8 of § 63.7530, that demonstrates that your source is still within its maximum mercury input level established during the previous performance testing (for sources that

demonstrate compliance through performance testing), or you must submit the calculation of mercury emission rate using Equation 17 of § 63.7530 that demonstrates that your source is still meeting the emission limit for mercury emissions (for boilers or process heaters that demonstrate compliance through fuel analysis). If you burned a new type of fuel and are subject to a TSM emission limit, you must submit the calculation of TSM input, using Equation 9 of § 63.7530, that demonstrates that your source is still within its maximum TSM input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of TSM emission rate, using Equation 18 of § 63.7530, that demonstrates that your source is still meeting the emission limit for TSM emissions (for boilers or process heaters that demonstrate compliance through fuel analysis).

\* \* \* \* \*

(xvi) For each reporting period, the compliance reports must include all of the calculated 30 day rolling average values for CEMS (CO, HCl, SO<sub>2</sub>, and mercury), 10 day rolling average values for CO CEMS when the limit is expressed as a 10 day instead of 30 day rolling average, and the PM CPMS data.

\* \* \* \* \*

(xviii) For each instance of startup or shutdown include the information required to be monitored, collected, or recorded according to the requirements of § 63.7555(d).

(d) For each deviation from an emission limit or operating limit in this subpart that occurs at an individual boiler or process heater where you are not using a CMS to comply with that emission limit or operating limit, or from the work practice standards for periods if startup and shutdown, the compliance report must additionally contain the information required in paragraphs (d)(1) through (3) of this section.

(1) A description of the deviation and which emission limit, operating limit, or work practice standard from which you deviated.

\* \* \* \* \*

(h) You must submit the reports according to the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance tests, including any fuel analyses, following the procedure

specified in either paragraph (h)(1)(i) or (ii) of this section.

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<http://www.epa.gov/ttn/chief/ert/index.html>), you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>)). Performance test data must be submitted in a file format generated through use of the EPA's ERT or an electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(2) Within 60 days after the date of completing each CEMS performance evaluation (as defined in 63.2), you must submit the results of the performance evaluation following the procedure specified in either paragraph (h)(2)(i) or (ii) of this section.

(i) For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT

Web site. If you claim that some of the performance evaluation information being transmitted is CBI, you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13.

(3) You must submit all reports required by Table 9 of this subpart electronically to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) You must use the appropriate electronic report in CEDRI for this subpart. Instead of using the electronic report in CEDRI for this subpart, you may submit an alternate electronic file consistent with the XML schema listed on the CEDRI Web site (<http://www.epa.gov/ttn/chief/cedri/index.html>), once the XML schema is available. If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate address listed in § 63.13. You must begin submitting reports via CEDRI no later than 90 days after the form becomes available in CEDRI.

■ 18. Section 63.7555 is amended by:

- a. Adding paragraph (a)(3).
- b. Removing paragraph (d)(3).
- c. Redesignating paragraphs (d)(4) through (11) as paragraphs (d)(3) through (10).
- d. Revising newly designated paragraphs (d)(3), (d)(4), and (d)(8).
- e. Adding new paragraph (d)(11) and paragraphs (d)(12) and (d)(13).
- f. Removing paragraphs (i) and (j).

The additions and revisions read as follows:

**§ 63.7555 What records must I keep?**

(a) \* \* \*

(3) For units in the limited use subcategory, you must keep a copy of

the federally enforceable permit that limits the annual capacity factor to less than or equal to 10 percent and fuel use records for the days the boiler or process heater was operating.

\* \* \* \* \*

(d) \* \* \*

(3) A copy of all calculations and supporting documentation of maximum chlorine fuel input, using Equation 7 of § 63.7530, that were done to demonstrate continuous compliance with the HCl emission limit, for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of HCl emission rates, using Equation 16 of § 63.7530, that were done to demonstrate compliance with the HCl emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum chlorine fuel input or HCl emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate chlorine fuel input, or HCl emission rate, for each boiler and process heater.

(4) A copy of all calculations and supporting documentation of maximum mercury fuel input, using Equation 8 of § 63.7530, that were done to demonstrate continuous compliance with the mercury emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of mercury emission rates, using Equation 17 of § 63.7530, that were done to demonstrate compliance with the mercury emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum mercury fuel input or mercury emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate mercury fuel input, or mercury emission rates, for each boiler and process heater.

\* \* \* \* \*

(8) A copy of all calculations and supporting documentation of maximum TSM fuel input, using Equation 9 of § 63.7530, that were done to demonstrate continuous compliance with the TSM emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel

analysis, a copy of all calculations and supporting documentation of TSM emission rates, using Equation 18 of § 63.7530, that were done to demonstrate compliance with the TSM emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum TSM fuel input or TSM emission rates. You can use the results from one fuel analysis for multiple boilers and process heaters provided they are all burning the same fuel type. However, you must calculate TSM fuel input, or TSM emission rates, for each boiler and process heater.

\* \* \* \* \*

(11) For each startup period, for units selecting paragraph (2) of the definition of "startup" in § 63.7575 you must maintain records of the time that clean fuel combustion begins; the time when you start feeding fuels that are not clean fuels; the time when useful thermal energy is first supplied; and the time when the PM controls are engaged.

(12) If you choose to rely on paragraph (2) of the definition of "startup" in § 63.7575, for each startup period, you must maintain records of the hourly steam temperature, hourly steam pressure, hourly steam flow, hourly flue gas temperature, and all hourly average CMS data (e.g., CEMS, PM CPMS, COMS, ESP total secondary electric power input, scrubber pressure drop, scrubber liquid flow rate) collected during each startup period to confirm that the control devices are engaged. In addition, if compliance with the PM emission limit is demonstrated using a PM control device, you must maintain records as specified in paragraphs (d)(12)(i) through (iii) of this section.

(i) For a boiler or process heater with an electrostatic precipitator, record the number of fields in service, as well as each field's secondary voltage and secondary current during each hour of startup.

(ii) For a boiler or process heater with a fabric filter, record the number of compartments in service, as well as the differential pressure across the baghouse during each hour of startup.

(iii) For a boiler or process heater with a wet scrubber needed for filterable PM control, record the scrubber's liquid flow rate and the pressure drop during each hour of startup.

(13) If you choose to use paragraph (2) of the definition of "startup" in § 63.7575 and you find that you are unable to safely engage and operate your PM control(s) within 1 hour of first firing of non-clean fuels, you may choose to rely on paragraph (1) of

definition of “startup” in § 63.7575 or you may submit to the delegated permitting authority a request for a variance with the PM controls requirement, as described below.

(i) The request shall provide evidence of a documented manufacturer-identified safety issue.

(ii) The request shall provide information to document that the PM control device is adequately designed and sized to meet the applicable PM emission limit.

(iii) In addition, the request shall contain documentation that:

(A) The unit is using clean fuels to the maximum extent possible to bring the unit and PM control device up to the temperature necessary to alleviate or prevent the identified safety issues prior to the combustion of primary fuel;

(B) The unit has explicitly followed the manufacturer’s procedures to alleviate or prevent the identified safety issue; and

(C) Identifies with specificity the details of the manufacturer’s statement of concern.

(iv) You must comply with all other work practice requirements, including but not limited to data collection, recordkeeping, and reporting requirements.

\* \* \* \* \*

■ 19. Section 63.7570 is amended by revising paragraph (b) to read as follows:

**§ 63.7570 Who implements and enforces this subpart?**

\* \* \* \* \*

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities listed in paragraphs (b)(1) through (4) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency, however, the EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the emission limits and work practice standards in § 63.7500(a) and (b) under § 63.6(g), except as specified in § 63.7555(d)(13).

(2) Approval of major change to test methods in Table 5 to this subpart under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, and alternative analytical methods requested under § 63.7521(b)(2).

(3) Approval of major change to monitoring under § 63.8(f) and as defined in § 63.90, and approval of alternative operating parameters under §§ 63.7500(a)(2) and 63.7522(g)(2).

(4) Approval of major change to recordkeeping and reporting under § 63.10(e) and as defined in § 63.90.

- 20. Section 63.7575 is amended by:
  - a. Revising the definition for “30-day rolling average.”
  - b. Removing the definition for “Affirmative defense.”
  - c. Adding in alphabetical order a definition for “Clean dry biomass.”
  - d. Revising the definition for “Energy assessment.”
  - e. Adding in alphabetical order a definition for “Fossil fuel.”
  - f. Revising the definitions for “Hybrid suspension grate boiler,” “Limited-use boiler or process heater,” “Liquid fuel,” “Load fraction,” “Minimum sorbent injection rate,” “Operating day,” and “Oxygen trim system.”
  - g. Adding in alphabetical order a definition for “Rolling average”.
  - h. Revising the definitions for “Shutdown,” “Startup,” “Steam output,” and “Temporary boiler.”
  - i. Adding in alphabetical order a definition for “Useful thermal energy.”

The revisions and additions read as follows:

**§ 63.7575 What definitions apply to this subpart?**

\* \* \* \* \*

*30-day rolling average* means the arithmetic mean of the previous 720 hours of valid CO CEMS data. The 720 hours should be consecutive, but not necessarily continuous if operations were intermittent. For parameters other than CO, 30-day rolling average means either the arithmetic mean of all valid hours of data from 30 successive operating days or the arithmetic mean of the previous 720 hours of valid operating data. Valid data excludes hours during startup and shutdown, data collected during periods when the monitoring system is out of control as specified in your site-specific monitoring plan, while conducting repairs associated with periods when the monitoring system is out of control, or while conducting required monitoring system quality assurance or quality control activities, and periods when this unit is not operating.

\* \* \* \* \*

*Clean dry biomass* means any biomass-based solid fuel that have not been painted, pigment-stained, or pressure treated, does not contain contaminants at concentrations not normally associated with virgin biomass materials and has a moisture content of less than 20 percent and is not a solid waste.

\* \* \* \* \*

*Energy assessment* means the following for the emission units covered by this subpart:

(1) The energy assessment for facilities with affected boilers and process heaters with a combined heat input capacity of less than 0.3 trillion Btu (TBtu) per year will be 8 on-site technical labor hours in length maximum, but may be longer at the discretion of the owner or operator of the affected source. The boiler system(s), process heater(s), and any on-site energy use system(s) accounting for at least 50 percent of the affected boiler(s) energy (e.g., steam, hot water, process heat, or electricity) production, as applicable, will be evaluated to identify energy savings opportunities, within the limit of performing an 8-hour on-site energy assessment.

(2) The energy assessment for facilities with affected boilers and process heaters with a combined heat input capacity of 0.3 to 1.0 TBtu/year will be 24 on-site technical labor hours in length maximum, but may be longer at the discretion of the owner or operator of the affected source. The boiler system(s), process heater(s), and any on-site energy use system(s) accounting for at least 33 percent of the energy (e.g., steam, hot water, process heat, or electricity) production, as applicable, will be evaluated to identify energy savings opportunities, within the limit of performing a 24-hour on-site energy assessment.

(3) The energy assessment for facilities with affected boilers and process heaters with a combined heat input capacity greater than 1.0 TBtu/year will be up to 24 on-site technical labor hours in length for the first TBtu/yr plus 8 on-site technical labor hours for every additional 1.0 TBtu/yr not to exceed 160 on-site technical hours, but may be longer at the discretion of the owner or operator of the affected source. The boiler system(s), process heater(s), and any on-site energy use system(s) accounting for at least 20 percent of the energy (e.g., steam, process heat, hot water, or electricity) production, as applicable, will be evaluated to identify energy savings opportunities.

(4) The on-site energy use systems serving as the basis for the percent of affected boiler(s) and process heater(s) energy production in paragraphs (1), (2), and (3) of this definition may be segmented by production area or energy use area as most logical and applicable to the specific facility being assessed (e.g., product X manufacturing area; product Y drying area; Building Z).

\* \* \* \* \*

*Fossil fuel* means natural gas, oil, coal, and any form of solid, liquid, or gaseous fuel derived from such material.

\* \* \* \* \*

*Hybrid suspension grate boiler* means a boiler designed with air distributors to spread the fuel material over the entire width and depth of the boiler combustion zone. The biomass fuel combusted in these units exceeds a moisture content of 40 percent on an as-fired annual heat input basis as demonstrated by monthly fuel analysis. The drying and much of the combustion of the fuel takes place in suspension, and the combustion is completed on the grate or floor of the boiler. Fluidized bed, dutch oven, and pile burner designs are not part of the hybrid suspension grate boiler design category.

\* \* \* \* \*

*Limited-use boiler or process heater* means any boiler or process heater that burns any amount of solid, liquid, or gaseous fuels and has a federally enforceable annual capacity factor of no more than 10 percent.

*Liquid fuel* includes, but is not limited to, light liquid, heavy liquid, any form of liquid fuel derived from petroleum, used oil, liquid biofuels, biodiesel, and vegetable oil.

*Load fraction* means the actual heat input of a boiler or process heater divided by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (*e.g.*, for 50 percent load the load fraction is 0.5). For boilers and process heaters that co-fire natural gas or refinery gas with a solid or liquid fuel, the load fraction is determined by the actual heat input of the solid or liquid fuel divided by heat input of the solid or liquid fuel fired during the performance test (*e.g.*, if the performance test was conducted at 100 percent solid fuel firing, for 100 percent load firing 50 percent solid fuel and 50 percent natural gas the load fraction is 0.5).

\* \* \* \* \*

*Minimum sorbent injection rate* means:

(1) The load fraction multiplied by the lowest hourly average sorbent injection rate for each sorbent measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits; or

(2) For fluidized bed combustion not using an acid gas wet scrubber or dry sorbent injection control technology to comply with the HCl emission limit, the lowest average ratio of sorbent to sulfur

measured during the most recent performance test.

\* \* \* \* \*

*Operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the boiler or process heater unit. It is not necessary for fuel to be combusted for the entire 24-hour period. For calculating rolling average emissions, an operating day does not include the hours of operation during startup or shutdown.

\* \* \* \* \*

*Oxygen trim system* means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating load range. A typical system consists of a flue gas oxygen and/or CO monitor that automatically provides a feedback signal to the combustion air controller or draft controller.

\* \* \* \* \*

*Rolling average* means the average of all data collected during the applicable averaging period. For demonstration of compliance with a CO CEMS-based emission limit based on CO concentration a 30-day (10-day) rolling average is comprised of the average of all the hourly average concentrations over the previous 720 (240) operating hours calculated each operating day. To demonstrate compliance on a 30-day rolling average basis for parameters other than CO, you must indicate the basis of the 30-day rolling average period you are using for compliance, as discussed in § 63.7545(e)(2)(iii). If you indicate the 30 operating day basis, you must calculate a new average value each operating day and shall include the measured hourly values for the preceding 30 operating days. If you select the 720 operating hours basis, you must average of all the hourly average concentrations over the previous 720 operating hours calculated each operating day.

*Shutdown* means the period in which cessation of operation of a boiler or process heater is initiated for any purpose. Shutdown begins when the boiler or process heater no longer supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes and/or generates electricity or when no fuel is being fed to the boiler or process heater, whichever is earlier. Shutdown ends when the boiler or process heater no longer supplies useful thermal energy (such as steam or heat) for heating, cooling, or process purposes and/or generates electricity, and no fuel is

being combusted in the boiler or process heater.

\* \* \* \* \*

*Startup* means:

(1) Either the first-ever firing of fuel in a boiler or process heater for the purpose of supplying useful thermal energy for heating and/or producing electricity, or for any other purpose, or the firing of fuel in a boiler after a shutdown event for any purpose. Startup ends when any of the useful thermal energy from the boiler or process heater is supplied for heating, and/or producing electricity, or for any other purpose, or

(2) The period in which operation of a boiler or process heater is initiated for any purpose. Startup begins with either the first-ever firing of fuel in a boiler or process heater for the purpose of supplying useful thermal energy (such as steam or heat) for heating, cooling or process purposes, or producing electricity, or the firing of fuel in a boiler or process heater for any purpose after a shutdown event. Startup ends four hours after when the boiler or process heater supplies useful thermal energy (such as heat or steam) for heating, cooling, or process purposes, or generates electricity, whichever is earlier.

*Steam output* means:

(1) For a boiler that produces steam for process or heating only (no power generation), the energy content in terms of MMBtu of the boiler steam output,

(2) For a boiler that cogenerates process steam and electricity (also known as combined heat and power), the total energy output, which is the sum of the energy content of the steam exiting the turbine and sent to process in MMBtu and the energy of the electricity generated converted to MMBtu at a rate of 10,000 Btu per kilowatt-hour generated (10 MMBtu per megawatt-hour), and

(3) For a boiler that generates only electricity, the alternate output-based emission limits would be the appropriate emission limit from Table 1 or 2 of this subpart in units of pounds per million Btu heat input (lb per MWh).

(4) For a boiler that performs multiple functions and produces steam to be used for any combination of paragraphs (1), (2), and (3) of this definition that includes electricity generation of paragraph (3) of this definition, the total energy output, in terms of MMBtu of steam output, is the sum of the energy content of steam sent directly to the process and/or used for heating (S<sub>1</sub>), the energy content of turbine steam sent to process plus energy in electricity

according to paragraph (2) of this definition ( $S_2$ ), and the energy content of electricity generated by a electricity only turbine as paragraph (3) of this

definition ( $MW_{(3)}$ ) and would be calculated using Equation 21 of this section. In the case of boilers supplying steam to one or more common heaters,

$S_1$ ,  $S_2$ , and  $MW_{(3)}$  for each boiler would be calculated based on the its (steam energy) contribution (fraction of total steam energy) to the common heater.

$$SO_M = S_1 + S_2 + (MW_{(3)} \times CFn) \quad (\text{Eq. 21})$$

Where:

$SO_M$  = Total steam output for multi-function boiler, MMBtu

$S_1$  = Energy content of steam sent directly to the process and/or used for heating, MMBtu

$S_2$  = Energy content of turbine steam sent to the process plus energy in electricity according to (2) above, MMBtu

$MW_{(3)}$  = Electricity generated according to paragraph (3) of this definition, MWh

$CFn$  = Conversion factor for the appropriate subcategory for converting electricity generated according to paragraph (3) of this definition to equivalent steam energy, MMBtu/MWh

$CFn$  for emission limits for boilers in the unit designed to burn solid fuel subcategory = 10.8

$CFn$  PM and CO emission limits for boilers in one of the subcategories of units designed to burn coal = 11.7

$CFn$  PM and CO emission limits for boilers in one of the subcategories of units designed to burn biomass = 12.1

$CFn$  for emission limits for boilers in one of the subcategories of units designed to burn liquid fuel = 11.2

$CFn$  for emission limits for boilers in the unit designed to burn gas 2 (other) subcategory = 6.2

\* \* \* \* \*

*Temporary boiler* means any gaseous or liquid fuel boiler or process heater

that is designed to, and is capable of, being carried or moved from one location to another by means of, for example, wheels, skids, carrying handles, dollies, trailers, or platforms. A boiler or process heater is not a temporary boiler or process heater if any one of the following conditions exists:

(1) The equipment is attached to a foundation.

(2) The boiler or process heater or a replacement remains at a location within the facility and performs the same or similar function for more than 12 consecutive months, unless the regulatory agency approves an extension. An extension may be granted by the regulating agency upon petition by the owner or operator of a unit specifying the basis for such a request. Any temporary boiler or process heater that replaces a temporary boiler or process heater at a location and performs the same or similar function will be included in calculating the consecutive time period.

(3) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least 2 years, and operates at that facility for at least 3 months each year.

(4) The equipment is moved from one location to another within the facility but continues to perform the same or similar function and serve the same electricity, process heat, steam, and/or hot water system in an attempt to circumvent the residence time requirements of this definition.

\* \* \* \* \*

*Useful thermal energy* means energy (*i.e.*, steam, hot water, or process heat) that meets the minimum operating temperature, flow, and/or pressure required by any energy use system that uses energy provided by the affected boiler or process heater.

\* \* \* \* \*

■ 21. Table 1 to subpart DDDDD of part 63 is amended by:

■ a. Revising rows “3.a”, “4.a”, “5.a”, “6.a”, “7.a”, “9.a”, “10.a”, “11.a”, and “13.a”.

■ b. Revising footnote “c”; and

■ c. Adding footnote “d”.

The revisions and addition read as follows:

As stated in § 63.7500, you must comply with the following applicable emission limits:

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
	* * *	* * *	* * *	
3. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. Carbon monoxide (CO) (or CEMS).	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (320 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	0.11 lb per MMBtu of steam output or 1.4 lb per MWh; 3-run average.	1 hr minimum sampling time.
4. Stokers/others designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (340 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	0.12 lb per MMBtu of steam output or 1.4 lb per MWh; 3-run average.	1 hr minimum sampling time.



TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
5. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (230 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	0.11 lb per MMBtu of steam output or 1.4 lb per MWh; 3-run average.	1 hr minimum sampling time.
6. Fluidized bed units with an integrated heat exchanger designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	140 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (150 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	1.2E-01 lb per MMBtu of steam output or 1.5 lb per MWh; 3-run average.	1 hr minimum sampling time.
7. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS) .....	620 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (390 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	5.8E-01 lb per MMBtu of steam output or 6.8 lb per MWh; 3-run average.	1 hr minimum sampling time.
9. Fluidized bed units designed to burn biomass/bio-based solids.	* a. CO (or CEMS) .....	* 230 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (310 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	* 2.2E-01 lb per MMBtu of steam output or 2.6 lb per MWh; 3-run average.	1 hr minimum sampling time.
10. Suspension burners designed to burn biomass/bio-based solids.	* a. CO (or CEMS) .....	* 2,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (2,000 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 10-day rolling average).	* 1.9 lb per MMBtu of steam output or 27 lb per MWh; 3-run average.	1 hr minimum sampling time.
11. Dutch Ovens/Pile burners designed to burn biomass/bio-based solids.	* a. CO (or CEMS) .....	* 330 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (520 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 10-day rolling average).	* 3.5E-01 lb per MMBtu of steam output or 3.6 lb per MWh; 3-run average.	1 hr minimum sampling time.
13. Hybrid suspension grate boiler designed to burn biomass/bio-based solids.	* a. CO (or CEMS) .....	* 1,100 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (900 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>d</sup> 30-day rolling average).	* 1.4 lb per MMBtu of steam output or 12 lb per MWh; 3-run average.	1 hr minimum sampling time.

TABLE 1 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS—Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this sub-category . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	Or the emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
--	------------------------------------	---	--	---

<sup>c</sup>If your affected source is a new or reconstructed affected source that commenced construction or reconstruction after June 4, 2010, and before April 1, 2013, you may comply with the emission limits in Tables 11, 12 or 13 to this subpart until January 31, 2016. On and after January 31, 2016, you must comply with the emission limits in Table 1 to this subpart.

<sup>d</sup>An owner or operator may request an alternative test method under § 63.7 of this chapter, in order that compliance with the carbon monoxide emissions limit be determined using carbon dioxide as a diluent correction in place of oxygen at 3%. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3% oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.

- 22. Table 2 to subpart DDDDD of part 63 is amended by revising the rows “3.a”, “4.a”, “5.a”, “6.a”, “7.a”, “9.a”, “10.a”, “11.a”, “13.a”, “14.b”, and “16.b” and adding footnote “c” to read as follows: As stated in § 63.7500, you must comply with the following applicable emission limits:

TABLE 2 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this sub-category . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
3. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (320 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	0.11 lb per MMBtu of steam output or 1.4 lb per MWh; 3-run average.	1 hr minimum sampling time.
4. Stokers/others designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	160 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (340 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	0.14 lb per MMBtu of steam output or 1.7 lb per MWh; 3-run average.	1 hr minimum sampling time.
5. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (230 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	0.12 lb per MMBtu of steam output or 1.4 lb per MWh; 3-run average.	1 hr minimum sampling time.
6. Fluidized bed units with an integrated heat exchanger designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	140 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (150 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1.3E-01 lb per MMBtu of steam output or 1.5 lb per MWh; 3-run average.	1 hr minimum sampling time.

TABLE 2 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS—  
Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
7. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS) .....	1,500 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (720 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1.4 lb per MMBtu of steam output or 17 lb per MWh; 3-run average.	1 hr minimum sampling time.
*	*	*	*	*
9. Fluidized bed units designed to burn biomass/bio-based solid.	a. CO (or CEMS) .....	470 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (310 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	4.6E–01 lb per MMBtu of steam output or 5.2 lb per MWh; 3-run average.	1 hr minimum sampling time.
*	*	*	*	*
10. Suspension burners designed to burn biomass/bio-based solid.	a. CO (or CEMS) .....	2,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (2,000 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1.9 lb per MMBtu of steam output or 27 lb per MWh; 3-run average.	1 hr minimum sampling time.
*	*	*	*	*
11. Dutch Ovens/Pile burners designed to burn biomass/bio-based solid.	a. CO (or CEMS) .....	770 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (520 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	8.4E–01 lb per MMBtu of steam output or 8.4 lb per MWh; 3-run average.	1 hr minimum sampling time.
*	*	*	*	*
13. Hybrid suspension grate units designed to burn biomass/bio-based solid.	a. CO (or CEMS) .....	3,500 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (900 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	3.5 lb per MMBtu of steam output or 39 lb per MWh; 3-run average.	1 hr minimum sampling time.
*	*	*	*	*
14. Units designed to burn liquid fuel.	b. Mercury .....	2.0E–06 <sup>a</sup> lb per MMBtu of heat input.	2.5E–06 <sup>a</sup> lb per MMBtu of steam output or 2.8E–05 lb per MWh.	For M29, collect a minimum of 3 dscm per run; for M30A or M30B collect a minimum sample as specified in the method, for ASTM D6784, <sup>b</sup> collect a minimum of 2 dscm.

TABLE 2 TO SUBPART DDDDD OF PART 63—EMISSION LIMITS FOR EXISTING BOILERS AND PROCESS HEATERS—  
Continued

[Units with heat input capacity of 10 million Btu per hour or greater]

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during startup and shutdown . . .	The emissions must not exceed the following alternative output-based limits, except during startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
* 16. Units designed to burn light liquid fuel.	* b. Filterable PM (or TSM)	* 7.9E-03 <sup>a</sup> lb per MMBtu of heat input; or (6.2E-05 lb per MMBtu of heat input).	* 9.6E-03 <sup>a</sup> lb per MMBtu of steam output or 1.1E-01 <sup>a</sup> lb per MWh; or (7.5E-05 lb per MMBtu of steam output or 8.6E-04 lb per MWh).	* Collect a minimum of 3 dscm per run.
*	*	*	*	*

<sup>c</sup> An owner or operator may request an alternative test method under § 63.7 of this chapter, in order that compliance with the carbon monoxide emissions limit be determined using carbon dioxide as a diluent correction in place of oxygen at 3%. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3% oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.

■ 23. Table 3 to subpart DDDDD of part 63 is amended by revising the entries for “4,” “5,” and “6” and adding footnote “a” to read as follows: As stated in § 63.7500, you must comply with the following applicable work practice standards:

TABLE 3 TO SUBPART DDDDD OF PART 63—WORK PRACTICE STANDARDS

If your unit is . . .	You must meet the following . . .
* 4. An existing boiler or process heater located at a major source facility, not including limited use units.	* Must have a one-time energy assessment performed by a qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table, satisfies the energy assessment requirement. A facility that operated under an energy management program developed according to the ENERGY STAR guidelines for energy management or compatible with ISO 50001 for at least one year between January 1, 2008 and the compliance date specified in § 63.7495 that includes the affected units also satisfies the energy assessment requirement. The energy assessment must include the following with extent of the evaluation for items a. to e. appropriate for the on-site technical hours listed in § 63.7575: a. A visual inspection of the boiler or process heater system. b. An evaluation of operating characteristics of the boiler or process heater systems, specifications of energy using systems, operating and maintenance procedures, and unusual operating constraints. c. An inventory of major energy use systems consuming energy from affected boilers and process heaters and which are under the control of the boiler/process heater owner/operator. d. A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage. e. A review of the facility’s energy management program and provide recommendations for improvements consistent with the definition of energy management program, if identified. f. A list of cost-effective energy conservation measures that are within the facility’s control. g. A list of the energy savings potential of the energy conservation measures identified. h. A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments.

TABLE 3 TO SUBPART DDDDD OF PART 63—WORK PRACTICE STANDARDS—Continued

If your unit is . . .	You must meet the following . . .
5. An existing or new boiler or process heater subject to emission limits in Table 1 or 2 or 11 through 13 to this subpart during startup.	<p>a. You must operate all CMS during startup.</p> <p>b. For startup of a boiler or process heater, you must use one or a combination of the following clean fuels: Natural gas, synthetic natural gas, propane, other Gas 1 fuels, distillate oil, syngas, ultra-low sulfur diesel, fuel oil-soaked rags, kerosene, hydrogen, paper, cardboard, refinery gas, liquefied petroleum gas, clean dry biomass, and any fuels meeting the appropriate HCl, mercury and TSM emission standards by fuel analysis.</p> <p>c. You have the option of complying using either of the following work practice standards.</p> <p>(1) If you choose to comply using definition (1) of “startup” in §63.7575, once you start firing fuels that are not clean fuels, you must vent emissions to the main stack(s) and engage all of the applicable control devices except limestone injection in fluidized bed combustion (FBC) boilers, dry scrubber, fabric filter, and selective catalytic reduction (SCR). You must start your limestone injection in FBC boilers, dry scrubber, fabric filter, and SCR systems as expeditiously as possible. Startup ends when steam or heat is supplied for any purpose, OR</p> <p>(2) If you choose to comply using definition (2) of “startup” in §63.7575, once you start to feed fuels that are not clean fuels, you must vent emissions to the main stack(s) and engage all of the applicable control devices so as to comply with the emission limits within 4 hours of start of supplying useful thermal energy. You must engage and operate PM control within one hour of first feeding fuels that are not clean fuels<sup>a</sup>. You must start all applicable control devices as expeditiously as possible, but, in any case, when necessary to comply with other standards applicable to the source by a permit limit or a rule other than this subpart that require operation of the control devices. You must develop and implement a written startup and shutdown plan, as specified in §63.7505(e).</p> <p>d. You must comply with all applicable emission limits at all times except during startup and shutdown periods at which time you must meet this work practice. You must collect monitoring data during periods of startup, as specified in §63.7535(b). You must keep records during periods of startup. You must provide reports concerning activities and periods of startup, as specified in §63.7555.</p>
6. An existing or new boiler or process heater subject to emission limits in Tables 1 or 2 or 11 through 13 to this subpart during shutdown.	<p>You must operate all CMS during shutdown.</p> <p>While firing fuels that are not clean fuels during shutdown, you must vent emissions to the main stack(s) and operate all applicable control devices, except limestone injection in FBC boilers, dry scrubber, fabric filter, and SCR but, in any case, when necessary to comply with other standards applicable to the source that require operation of the control device.</p> <p>If, in addition to the fuel used prior to initiation of shutdown, another fuel must be used to support the shutdown process, that additional fuel must be one or a combination of the following clean fuels: Natural gas, synthetic natural gas, propane, other Gas 1 fuels, distillate oil, syngas, ultra-low sulfur diesel, refinery gas, and liquefied petroleum gas.</p> <p>You must comply with all applicable emissions limits at all times except for startup or shutdown periods conforming with this work practice. You must collect monitoring data during periods of shutdown, as specified in §63.7535(b). You must keep records during periods of shutdown. You must provide reports concerning activities and periods of shutdown, as specified in §63.7555.</p>

<sup>a</sup> As specified in §63.7555(d)(13), the source may request an alternative timeframe with the PM controls requirement to the permitting authority (state, local, or tribal agency) that has been delegated authority for this subpart by EPA. The source must provide evidence that (1) it is unable to safely engage and operate the PM control(s) to meet the “fuel firing + 1 hour” requirement and (2) the PM control device is appropriately designed and sized to meet the filterable PM emission limit. It is acknowledged that there may be another control device that has been installed other than ESP that provides additional PM control (e.g., scrubber).

■ 24. Table 4 to subpart DDDDD of part 63 is revised to read as follows: As stated in § 63.7500, you must comply with the applicable operating limits:

TABLE 4 TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS

When complying with a Table 1, 2, 11, 12, or 13 numerical emission limit using . . .	You must meet these operating limits . . .
1. Wet PM scrubber control on a boiler or process heater not using a PM CPMS.	Maintain the 30-day rolling average pressure drop and the 30-day rolling average liquid flow rate at or above the lowest one-hour average pressure drop and the lowest one-hour average liquid flow rate, respectively, measured during the performance test demonstrating compliance with the PM emission limitation according to §63.7530(b) and Table 7 to this subpart.

TABLE 4 TO SUBPART DDDDD OF PART 63—OPERATING LIMITS FOR BOILERS AND PROCESS HEATERS—Continued

When complying with a Table 1, 2, 11, 12, or 13 numerical emission limit using . . .	You must meet these operating limits . . .
2. Wet acid gas (HCl) scrubber <sup>a</sup> control on a boiler or process heater not using a HCl CEMS.	Maintain the 30-day rolling average effluent pH at or above the lowest one-hour average pH and the 30-day rolling average liquid flow rate at or above the lowest one-hour average liquid flow rate measured during the performance test demonstrating compliance with the HCl emission limitation according to §63.7530(b) and Table 7 to this subpart.
3. Fabric filter control on a boiler or process heater not using a PM CPMS.	a. Maintain opacity to less than or equal to 10 percent opacity or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation (daily block average); or b. Install and operate a bag leak detection system according to §63.7525 and operate the fabric filter such that the bag leak detection system alert is not activated more than 5 percent of the operating time during each 6-month period.
4. Electrostatic precipitator control on a boiler or process heater not using a PM CPMS.	a. This option is for boilers and process heaters that operate dry control systems ( <i>i.e.</i> , an ESP without a wet scrubber). Existing and new boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation (daily block average). b. This option is only for boilers and process heaters not subject to PM CPMS or continuous compliance with an opacity limit ( <i>i.e.</i> , dry ESP). Maintain the 30-day rolling average total secondary electric power input of the electrostatic precipitator at or above the operating limits established during the performance test according to §63.7530(b) and Table 7 to this subpart.
5. Dry scrubber or carbon injection control on a boiler or process heater not using a mercury CEMS.	Maintain the minimum sorbent or carbon injection rate as defined in §63.7575 of this subpart.
6. Any other add-on air pollution control type on a boiler or process heater not using a PM CPMS.	This option is for boilers and process heaters that operate dry control systems. Existing and new boilers and process heaters must maintain opacity to less than or equal to 10 percent opacity or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation (daily block average).
7. Performance testing	For boilers and process heaters that demonstrate compliance with a performance test, maintain the 30-day rolling average operating load of each unit such that it does not exceed 110 percent of the highest hourly average operating load recorded during the performance test.
8. Oxygen analyzer system	For boilers and process heaters subject to a CO emission limit that demonstrate compliance with an O <sub>2</sub> analyzer system as specified in §63.7525(a), maintain the 30-day rolling average oxygen content at or above the lowest hourly average oxygen concentration measured during the CO performance test, as specified in Table 8. This requirement does not apply to units that install an oxygen trim system since these units will set the trim system to the level specified in §63.7525(a).
9. SO <sub>2</sub> CEMS	For boilers or process heaters subject to an HCl emission limit that demonstrate compliance with an SO <sub>2</sub> CEMS, maintain the 30-day rolling average SO <sub>2</sub> emission rate at or below the highest hourly average SO <sub>2</sub> concentration measured during the HCl performance test, as specified in Table 8.

<sup>a</sup>A wet acid gas scrubber is a control device that removes acid gases by contacting the combustion gas with an alkaline slurry or solution. Alkaline reagents include, but not limited to, lime, limestone and sodium.

■ 25. Table 5 to subpart DDDDD of part 63 is amended by revising the heading to the third column and adding footnote “a” to read as follows:

As stated in § 63.7520, you must comply with the following requirements for performance testing for existing, new or reconstructed affected sources:

TABLE 5 TO SUBPART DDDDD OF PART 63—PERFORMANCE TESTING REQUIREMENTS

To conduct a performance test for the following pollutant . . .	You must . . .	Using, as appropriate . . .
*	*	*

<sup>a</sup>Incorporated by reference, see §63.14.

■ 26. Table 6 to subpart DDDDD of part 63 is revised to read as follows:

As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources. However, equivalent methods (as defined in §63.7575) may be used in lieu of the prescribed methods at the discretion of the source owner or operator:

TABLE 6 TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .
1. Mercury .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples. d. Determine heat content of the fuel type. e. Determine moisture content of the fuel type. f. Measure mercury concentration in fuel sample. g. Convert concentration into units of pounds of mercury per MMBtu of heat content.	Procedure in §63.7521(c) or ASTM D5192, <sup>a</sup> or ASTM D7430, <sup>a</sup> or ASTM D6883, <sup>a</sup> or ASTM D2234/D2234M <sup>a</sup> (for coal) or ASTM D6323 <sup>a</sup> (for solid), or ASTM D4177 <sup>a</sup> (for liquid), or ASTM D4057 <sup>a</sup> (for liquid), or equivalent. Procedure in §63.7521(d) or equivalent. EPA SW-846-3050B <sup>a</sup> (for solid samples), ASTM D2013/D2013M <sup>a</sup> (for coal), ASTM D5198 <sup>a</sup> (for biomass), or EPA 3050 <sup>a</sup> (for solid fuel), or EPA 821-R-01-013 <sup>a</sup> (for liquid or solid), or equivalent. ASTM D5865 <sup>a</sup> (for coal) or ASTM E711 <sup>a</sup> (for biomass), or ASTM D5864 <sup>a</sup> for liquids and other solids, or ASTM D240 <sup>a</sup> or equivalent. ASTM D3173, <sup>a</sup> ASTM E871, <sup>a</sup> or ASTM D5864, <sup>a</sup> or ASTM D240, or ASTM D95 <sup>a</sup> (for liquid fuels), or ASTM D4006 <sup>a</sup> (for liquid fuels), or equivalent. ASTM D6722 <sup>a</sup> (for coal), EPA SW-846-7471B <sup>a</sup> or EPA 1631 or EPA 1631E (for solid samples), or EPA SW-846-7470A <sup>a</sup> (for liquid samples), or EPA 821-R-01-013 (for liquid or solid), or equivalent. For fuel mixtures use Equation 8 in §63.7530.
2. HCl .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples. d. Determine heat content of the fuel type. e. Determine moisture content of the fuel type. f. Measure chlorine concentration in fuel sample. g. Convert concentrations into units of pounds of HCl per MMBtu of heat content.	Procedure in §63.7521(c) or ASTM D5192, <sup>a</sup> or ASTM D7430, <sup>a</sup> or ASTM D6883, <sup>a</sup> or ASTM D2234/D2234M <sup>a</sup> (for coal) or ASTM D6323 <sup>a</sup> (for coal or biomass), ASTM D4177 <sup>a</sup> (for liquid fuels) or ASTM D4057 <sup>a</sup> (for liquid fuels), or equivalent. Procedure in §63.7521(d) or equivalent. EPA SW-846-3050B <sup>a</sup> (for solid samples), ASTM D2013/D2013M <sup>a</sup> (for coal), or ASTM D5198 <sup>a</sup> (for biomass), or EPA 3050 <sup>a</sup> or equivalent. ASTM D5865 <sup>a</sup> (for coal) or ASTM E711 <sup>a</sup> (for biomass), ASTM D5864, ASTM D240 <sup>a</sup> or equivalent. ASTM D3173 <sup>a</sup> or ASTM E871, <sup>a</sup> or D5864, <sup>a</sup> or ASTM D240, <sup>a</sup> or ASTM D95 <sup>a</sup> (for liquid fuels), or ASTM D4006 <sup>a</sup> (for liquid fuels), or equivalent. EPA SW-846-9250, <sup>a</sup> ASTM D6721, <sup>a</sup> ASTM D4208 <sup>a</sup> (for coal), or EPA SW-846-5050 <sup>a</sup> or ASTM E776 <sup>a</sup> (for solid fuel), or EPA SW-846-9056 <sup>a</sup> or SW-846-9076 <sup>a</sup> (for solids or liquids) or equivalent. For fuel mixtures use Equation 7 in §63.7530 and convert from chlorine to HCl by multiplying by 1.028.
3. Mercury Fuel Specification for other gas 1 fuels.	a. Measure mercury concentration in the fuel sample and convert to units of micrograms per cubic meter, or b. Measure mercury concentration in the exhaust gas when firing only the other gas 1 fuel is fired in the boiler or process heater.	Method 30B (M30B) at 40 CFR part 60, appendix A-8 of this chapter or ASTM D5954, <sup>a</sup> ASTM D6350, <sup>a</sup> ISO 6978-1:2003(E), <sup>a</sup> or ISO 6978-2:2003(E), <sup>a</sup> or EPA-1631 <sup>a</sup> or equivalent. Method 29, 30A, or 30B (M29, M30A, or M30B) at 40 CFR part 60, appendix A-8 of this chapter or Method 101A or Method 102 at 40 CFR part 61, appendix B of this chapter, or ASTM Method D6784 <sup>a</sup> or equivalent.
4. TSM .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples. d. Determine heat content of the fuel type. e. Determine moisture content of the fuel type. f. Measure TSM concentration in fuel sample. g. Convert concentrations into units of pounds of TSM per MMBtu of heat content.	Procedure in §63.7521(c) or ASTM D5192, <sup>a</sup> or ASTM D7430, <sup>a</sup> or ASTM D6883, <sup>a</sup> or ASTM D2234/D2234M <sup>a</sup> (for coal) or ASTM D6323 <sup>a</sup> (for coal or biomass), or ASTM D4177, <sup>a</sup> (for liquid fuels) or ASTM D4057 <sup>a</sup> (for liquid fuels), or equivalent. Procedure in §63.7521(d) or equivalent. EPA SW-846-3050B <sup>a</sup> (for solid samples), ASTM D2013/D2013M <sup>a</sup> (for coal), ASTM D5198 <sup>a</sup> or TAPPI T266 <sup>a</sup> (for biomass), or EPA 3050 <sup>a</sup> or equivalent. ASTM D5865 <sup>a</sup> (for coal) or ASTM E711 <sup>a</sup> (for biomass), or ASTM D5864 <sup>a</sup> for liquids and other solids, or ASTM D240 <sup>a</sup> or equivalent. ASTM D3173 <sup>a</sup> or ASTM E871, <sup>a</sup> or D5864, or ASTM D240, <sup>a</sup> or ASTM D95 <sup>a</sup> (for liquid fuels), or ASTM D4006 <sup>a</sup> (for liquid fuels), or ASTM D4177 <sup>a</sup> (for liquid fuels) or ASTM D4057 <sup>a</sup> (for liquid fuels), or equivalent. ASTM D3683, <sup>a</sup> or ASTM D4606, <sup>a</sup> or ASTM D6357 <sup>a</sup> or EPA 200.8 <sup>a</sup> or EPA SW-846-6020, <sup>a</sup> or EPA SW-846-6020A, <sup>a</sup> or EPA SW-846-6010C, <sup>a</sup> EPA 7060 <sup>a</sup> or EPA 7060A <sup>a</sup> (for arsenic only), or EPA SW-846-7740 <sup>a</sup> (for selenium only). For fuel mixtures use Equation 9 in §63.7530.

<sup>a</sup>Incorporated by reference, see §63.14.

■ 27. Table 7 to subpart DDDDD of part 63 is revised to read as follows:

As stated in § 63.7520, you must comply with the following requirements for establishing operating limits:

TABLE 7 TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS <sup>a b</sup>

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
1. PM, TSM, or mercury ....	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum scrubber pressure drop and minimum flow rate operating limit according to § 63.7530(b).	(1) Data from the scrubber pressure drop and liquid flow rate monitors and the PM, TSM, or mercury performance test.	(a) You must collect scrubber pressure drop and liquid flow rate data every 15 minutes during the entire period of the performance tests. (b) Determine the lowest hourly average scrubber pressure drop and liquid flow rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.
	b. Electrostatic precipitator operating parameters (option only for units that operate wet scrubbers).	i. Establish a site-specific minimum total secondary electric power input according to § 63.7530(b).	(1) Data from the voltage and secondary amperage monitors during the PM or mercury performance test.	(a) You must collect secondary voltage and secondary amperage for each ESP cell and calculate total secondary electric power input data every 15 minutes during the entire period of the performance tests. (b) Determine the average total secondary electric power input by computing the hourly averages using all of the 15-minute readings taken during each performance test.
	c. Opacity .....	i. Establish a site-specific maximum opacity level.	(1) Data from the opacity monitoring system during the PM performance test.	(a) You must collect opacity readings every 15 minutes during the entire period of the performance tests. (b) Determine the average hourly opacity reading for each performance test run by computing the hourly averages using all of the 15-minute readings taken during each performance test run. (c) Determine the highest hourly average opacity reading measured during the test run demonstrating compliance with the PM (or TSM) emission limitation.
2. HCl .....	a. Wet scrubber operating parameters.	i. Establish site-specific minimum effluent pH and flow rate operating limits according to § 63.7530(b).	(1) Data from the pH and liquid flow-rate monitors and the HCl performance test.	(a) You must collect pH and liquid flow-rate data every 15 minutes during the entire period of the performance tests. (b) Determine the hourly average pH and liquid flow rate by computing the hourly averages using all of the 15-minute readings taken during each performance test.



TABLE 7 TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS <sup>a b</sup>—Continued

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
	b. Dry scrubber operating parameters.	i. Establish a site-specific minimum sorbent injection rate operating limit according to § 63.7530(b). If different acid gas sorbents are used during the HCl performance test, the average value for each sorbent becomes the site-specific operating limit for that sorbent.	(1) Data from the sorbent injection rate monitors and HCl or mercury performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the performance tests. (b) Determine the hourly average sorbent injection rate by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the lowest hourly average of the three test run averages established during the performance test as your operating limit. When your unit operates at lower loads, multiply your sorbent injection rate by the load fraction, as defined in § 63.7575, to determine the required injection rate.
	c. Alternative Maximum SO <sub>2</sub> emission rate.	i. Establish a site-specific maximum SO <sub>2</sub> emission rate operating limit according to § 63.7530(b).	(1) Data from SO <sub>2</sub> CEMS and the HCl performance test.	(a) You must collect the SO <sub>2</sub> emissions data according to § 63.7525(m) during the most recent HCl performance tests. (b) The maximum SO <sub>2</sub> emission rate is equal to the highest hourly average SO <sub>2</sub> emission rate measured during the most recent HCl performance tests.
3. Mercury .....	a. Activated carbon injection.	i. Establish a site-specific minimum activated carbon injection rate operating limit according to § 63.7530(b).	(1) Data from the activated carbon rate monitors and mercury performance test.	(a) You must collect activated carbon injection rate data every 15 minutes during the entire period of the performance tests. (b) Determine the hourly average activated carbon injection rate by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the lowest hourly average established during the performance test as your operating limit. When your unit operates at lower loads, multiply your activated carbon injection rate by the load fraction, as defined in § 63.7575, to determine the required injection rate.

TABLE 7 TO SUBPART DDDDD OF PART 63—ESTABLISHING OPERATING LIMITS <sup>a b</sup>—Continued

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
4. Carbon monoxide for which compliance is demonstrated by a performance test.	a. Oxygen .....	i. Establish a unit-specific limit for minimum oxygen level according to § 63.7530(b).	(1) Data from the oxygen analyzer system specified in § 63.7525(a).	(a) You must collect oxygen data every 15 minutes during the entire period of the performance tests. (b) Determine the hourly average oxygen concentration by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the lowest hourly average established during the performance test as your minimum operating limit.
5. Any pollutant for which compliance is demonstrated by a performance test.	a. Boiler or process heater operating load.	i. Establish a unit specific limit for maximum operating load according to § 63.7520(c).	(1) Data from the operating load monitors or from steam generation monitors.	(a) You must collect operating load or steam generation data every 15 minutes during the entire period of the performance test. (b) Determine the average operating load by computing the hourly averages using all of the 15-minute readings taken during each performance test. (c) Determine the highest hourly average of the three test run averages during the performance test, and multiply this by 1.1 (110 percent) as your operating limit.

<sup>a</sup> Operating limits must be confirmed or reestablished during performance tests.

<sup>b</sup> If you conduct multiple performance tests, you must set the minimum liquid flow rate and pressure drop operating limits at the higher of the minimum values established during the performance tests. For a minimum oxygen level, if you conduct multiple performance tests, you must set the minimum oxygen level at the lower of the minimum values established during the performance tests.

■ 28. Table 8 to subpart DDDDD of part 63 is amended by:

■ a. Revising the entries for rows “1.c” and “3.”

■ b. Adding row “8.d”.

■ c. Revising the entries for rows “9.a,” “9.c,” “10,” and “11.c.”

The revisions and addition read as follows:

As stated in § 63.7540, you must show continuous compliance with the emission limitations for each boiler or process heater according to the following:

TABLE 8 TO SUBPART DDDDD OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
1. Opacity .....	c. Maintaining daily block average opacity to less than or equal to 10 percent or the highest hourly average opacity reading measured during the performance test run demonstrating compliance with the PM (or TSM) emission limitation.
3. Fabric Filter Bag Leak Detection Operation.	Installing and operating a bag leak detection system according to § 63.7525 and operating the fabric filter such that the requirements in § 63.7540(a)(7) are met.
8. Emission limits using fuel analysis.	d. Calculate the HCl, mercury, and/or TSM emission rate from the boiler or process heater in units of lb/MMBtu using Equation 15 and Equations 17, 18, and/or 19 in § 63.7530.

TABLE 8 TO SUBPART DDDDD OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE—Continued

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
9. Oxygen content .....	a. Continuously monitor the oxygen content using an oxygen analyzer system according to § 63.7525(a). This requirement does not apply to units that install an oxygen trim system since these units will set the trim system to the level specified in § 63.7525(a)(7).
11. SO <sub>2</sub> emissions using SO <sub>2</sub> CEMS.	c. Maintain the 30-day rolling average oxygen content at or above the lowest hourly average oxygen level measured during the CO performance test.
10. Boiler or process heater operating load.	a. Collecting operating load data or steam generation data every 15 minutes. b. Reducing the data to 30-day rolling averages; and c. Maintaining the 30-day rolling average operating load such that it does not exceed 110 percent of the highest hourly average operating load recorded during the performance test according to § 63.7520(c).
	c. Maintaining the 30-day rolling average SO <sub>2</sub> CEMS emission rate to a level at or below the highest hourly SO <sub>2</sub> rate measured during the HCl performance test according to § 63.7530.

■ 29. Table 9 to subpart DDDDD of part 63 is amended by revising the entries for “1.b” and “1.c” to read as follows: As stated in § 63.7550, you must comply with the following requirements for reports:

TABLE 9 TO SUBPART DDDDD OF PART 63—REPORTING REQUIREMENTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report .....	b. If there are no deviations from any emission limitation (emission limit and operating limit) that applies to you and there are no deviations from the requirements for work practice standards for periods of startup and shutdown in Table 3 to this subpart that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period. If there were no periods during which the CMSs, including continuous emissions monitoring system, continuous opacity monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMSs were out-of-control during the reporting period; and c. If you have a deviation from any emission limitation (emission limit and operating limit) where you are not using a CMS to comply with that emission limit or operating limit, or a deviation from a work practice standard for periods of startup and shutdown, during the reporting period, the report must contain the information in § 63.7550(d); and	.....

■ 30. Table 10 to subpart DDDDD of part 63 is amended by revising the rows associated with “§ 63.6(g)” and “§ 63.6(h)(2) to (h)(9)” to read as follows:  
As stated in § 63.7565, you must comply with the applicable General Provisions according to the following:

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

Citation	Subject	Applies to subpart DDDDD
* § 63.6(g) .....	* Use of alternative stand- ards.	* Yes, except § 63.7555(d)(13) specifies the procedure for application and approval of an alternative timeframe with the PM controls requirement in the startup work practice (2).
* § 63.6(h)(2) to (h)(9) .....	* Determining compliance with opacity emission standards.	* No. Subpart DDDDD specifies opacity as an operating limit not an emission stand- ard.
* .....	* .....	* .....

■ 31. Table 11 to subpart DDDDD of part 63 is revised to read as follows:

TABLE 11 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER JUNE 4, 2010, AND BEFORE MAY 20, 2011

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
1. Units in all subcategories designed to burn solid fuel.	a. HCl .....	0.022 lb per MMBtu of heat input.	For M26A, collect a minimum of 1 dscm per run; for M26 collect a minimum of 120 liters per run.
2. Units in all subcategories designed to burn solid fuel that combust at least 10 percent biomass/bio-based solids on an annual heat input basis and less than 10 percent coal/solid fossil fuels on an annual heat input basis.	a. Mercury .....	8.0E–07 <sup>a</sup> lb per MMBtu of heat input.	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 4 dscm.
3. Units in all subcategories designed to burn solid fuel that combust at least 10 percent coal/solid fossil fuels on an annual heat input basis and less than 10 percent biomass/bio-based solids on an annual heat input basis.	a. Mercury .....	2.0E–06 lb per MMBtu of heat input.	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 4 dscm.
4. Units design to burn coal/solid fossil fuel.	a. Filterable PM (or TSM)	1.1E–03 lb per MMBtu of heat input; or (2.3E–05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
5. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. Carbon monoxide (CO) (or CEMS).	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (320 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
6. Stokers designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (340 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.

TABLE 11 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER JUNE 4, 2010, AND BEFORE MAY 20, 2011—Continued

If your boiler or process heater is in this subcategory . . . .	For the following pollutants . . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . . .	Using this specified sampling volume or test run duration . . . .
7. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (230 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
8. Fluidized bed units with an integrated heat exchanger designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	140 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (150 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
9. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS) .....	620 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (390 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
10. Stokers/sloped grate/others designed to burn kiln-dried biomass fuel.	b. Filterable PM (or TSM)	3.0E-02 lb per MMBtu of heat input; or (2.6E-05 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
	a. CO .....	560 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	3.0E-02 lb per MMBtu of heat input; or (4.0E-03 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
11. Fluidized bed units designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	230 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (310 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	9.8E-03 lb per MMBtu of heat input; or (8.3E-05 <sup>a</sup> lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
	12. Suspension burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	2,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (2,000 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).
	b. Filterable PM (or TSM)	3.0E-02 lb per MMBtu of heat input; or (6.5E-03 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.

TABLE 11 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER JUNE 4, 2010, AND BEFORE MAY 20, 2011—Continued

If your boiler or process heater is in this subcategory . . . .	For the following pollutants . . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . . .	Using this specified sampling volume or test run duration . . . .
13. Dutch Ovens/Pile burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	1,010 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (520 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	8.0E–03 lb per MMBtu of heat input; or (3.9E–05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
14. Fuel cell units designed to burn biomass/bio-based solids.	a. CO .....	910 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	2.0E–02 lb per MMBtu of heat input; or (2.9E–05 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
15. Hybrid suspension grate boiler designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	1,100 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (900 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	2.6E–02 lb per MMBtu of heat input; or (4.4E–04 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
16. Units designed to burn liquid fuel.	a. HCl .....	4.4E–04 lb per MMBtu of heat input.	For M26A: Collect a minimum of 2 dscm per run; for M26, collect a minimum of 240 liters per run.
	b. Mercury .....	4.8E–07 <sup>a</sup> lb per MMBtu of heat input.	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 4 dscm.
17. Units designed to burn heavy liquid fuel.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	1.3E–02 lb per MMBtu of heat input; or (7.5E–05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
18. Units designed to burn light liquid fuel.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	2.0E–03 <sup>a</sup> lb per MMBtu of heat input; or (2.9E–05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
19. Units designed to burn liquid fuel that are non-continental units.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average based on stack test.	1 hr minimum sampling time.
	b. Filterable PM (or TSM)	2.3E–02 lb per MMBtu of heat input; or (8.6E–04 lb per MMBtu of heat input).	Collect a minimum of 4 dscm per run.

TABLE 11 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER JUNE 4, 2010, AND BEFORE MAY 20, 2011—Continued

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
20. Units designed to burn gas 2 (other) gases.	a. CO . . . . .	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. HCl . . . . .	1.7E–03 lb per MMBtu of heat input.	For M26A, Collect a minimum of 2 dscm per run; for M26, collect a minimum of 240 liters per run.
	c. Mercury . . . . .	7.9E–06 lb per MMBtu of heat input.	For M29, collect a minimum of 3 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 3 dscm.
	d. Filterable PM (or TSM)	6.7E–03 lb per MMBtu of heat input; or (2.1E–04 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.

<sup>a</sup> If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to §63.7515 if all of the other provision of §63.7515 are met. For all other pollutants that do not contain a footnote “a”, your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or below 75 percent of this limit in order to qualify for skip testing.

<sup>b</sup> Incorporated by reference, see §63.14.

<sup>c</sup> An owner or operator may request an alternative test method under §63.7 of this chapter, in order that compliance with the carbon monoxide emissions limit be determined using carbon dioxide as a diluent correction in place of oxygen at 3%. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3% oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.

■ 32. Table 12 to subpart DDDDD of part 63 is revised to read as follows:

TABLE 12 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER MAY 20, 2011, AND BEFORE DECEMBER 23, 2011

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
1. Units in all subcategories designed to burn solid fuel.	a. HCl . . . . .	0.022 lb per MMBtu of heat input . . . . .	For M26A, collect a minimum of 1 dscm per run; for M26 collect a minimum of 120 liters per run.
	b. Mercury . . . . .	3.5E–06 <sup>a</sup> lb per MMBtu of heat input . . . . .	For M29, collect a minimum of 3 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 3 dscm.
2. Units design to burn coal/solid fossil fuel.	a. Filterable PM (or TSM).	1.1E–03 lb per MMBtu of heat input; or (2.3E–05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
3. Pulverized coal boilers designed to burn coal/solid fossil fuel.	a. Carbon monoxide (CO) (or CEMS).	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (320 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
4. Stokers designed to burn coal/solid fossil fuel.	a. CO (or CEMS) . . . . .	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (340 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
5. Fluidized bed units designed to burn coal/solid fossil fuel.	a. CO (or CEMS) . . . . .	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (230 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.

TABLE 12 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER MAY 20, 2011, AND BEFORE DECEMBER 23, 2011—Continued

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
6. Fluidized bed units with an integrated heat exchanger designed to burn coal/solid fossil fuel.	a. CO (or CEMS) .....	140 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (150 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
7. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS) .....	620 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (390 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	3.0E-02 lb per MMBtu of heat input; or (2.6E-05 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
8. Stokers/sloped grate/others designed to burn kiln-dried biomass fuel.	a. CO .....	460 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	3.0E-02 lb per MMBtu of heat input; or (4.0E-03 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
9. Fluidized bed units designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	260 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (310 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	9.8E-03 lb per MMBtu of heat input; or (8.3E-05 <sup>a</sup> lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
10. Suspension burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	2,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (2,000 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	3.0E-02 lb per MMBtu of heat input; or (6.5E-03 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
11. Dutch Ovens/Pile burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	470 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (520 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	3.2E-03 lb per MMBtu of heat input; or (3.9E-05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
12. Fuel cell units designed to burn biomass/bio-based solids.	a. CO .....	910 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	2.0E-02 lb per MMBtu of heat input; or (2.9E-05 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
13. Hybrid suspension grate boiler designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	1,500 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (900 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	2.6E-02 lb per MMBtu of heat input; or (4.4E-04 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.
14. Units designed to burn liquid fuel.	a. HCl .....	4.4E-04 lb per MMBtu of heat input .....	For M26A: Collect a minimum of 2 dscm per run; for M26, collect a minimum of 240 liters per run.
	b. Mercury .....	4.8E-07 <sup>a</sup> lb per MMBtu of heat input .....	For M29, collect a minimum of 4 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 4 dscm.
15. Units designed to burn heavy liquid fuel.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	1.3E-02 lb per MMBtu of heat input; or (7.5E-05 lb per MMBtu of heat input).	Collect a minimum of 2 dscm per run.
16. Units designed to burn light liquid fuel.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. Filterable PM (or TSM).	1.3E-03 <sup>a</sup> lb per MMBtu of heat input; or (2.9E-05 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.



TABLE 12 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER MAY 20, 2011, AND BEFORE DECEMBER 23, 2011—Continued

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
17. Units designed to burn liquid fuel that are non-continental units.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average based on stack test.	1 hr minimum sampling time.
18. Units designed to burn gas 2 (other) gases.	b. Filterable PM (or TSM).	2.3E-02 lb per MMBtu of heat input; or (8.6E-04 lb per MMBtu of heat input).	Collect a minimum of 4 dscm per run.
	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average.	1 hr minimum sampling time.
	b. HCl .....	1.7E-03 lb per MMBtu of heat input .....	For M26A, Collect a minimum of 2 dscm per run; for M26, collect a minimum of 240 liters per run.
	c. Mercury .....	7.9E-06 lb per MMBtu of heat input .....	For M29, collect a minimum of 3 dscm per run; for M30A or M30B, collect a minimum sample as specified in the method; for ASTM D6784 <sup>b</sup> collect a minimum of 3 dscm.
	d. Filterable PM (or TSM).	6.7E-03 lb per MMBtu of heat input; or (2.1E-04 lb per MMBtu of heat input).	Collect a minimum of 3 dscm per run.

<sup>a</sup>If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to § 63.7515 if all of the other provision of § 63.7515 are met. For all other pollutants that do not contain a footnote “a”, your performance tests for this pollutant for at least 2 consecutive years must show that your emissions are at or below 75 percent of this limit in order to qualify for skip testing.

<sup>b</sup>Incorporated by reference, see § 63.14.

<sup>c</sup>An owner or operator may request an alternative test method under § 63.7 of this chapter, in order that compliance with the carbon monoxide emissions limit be determined using carbon dioxide as a diluent correction in place of oxygen at 3%. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3% oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.

- 33. Table 13 to subpart DDDDD of part 63 is amended by:
- a. Revising the heading of the table.
- b. Revising rows “2.a”, “3.a”, “4.a”, “5.a”, “6.a”, “8.a”, “9.a”, “10.a”, “12.a”, “14.a”, “15.a”, and “16.a”.
- c. Adding footnote “c”.  
The revisions and addition read as follows:

TABLE 13 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER DECEMBER 23, 2011, AND BEFORE APRIL 1, 2013

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
* 2. Pulverized coal boilers designed to burn coal/solid fossil fuel.	* a. Carbon monoxide (CO) (or CEMS).	* 130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (320 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	* 1 hr minimum sampling time.
* 3. Stokers designed to burn coal/solid fossil fuel.	* a. CO (or CEMS) .....	* 130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (340 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	* 1 hr minimum sampling time.
* 4. Fluidized bed units designed to burn coal/solid fossil fuel.	* a. CO (or CEMS) .....	* 130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (230 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	* 1 hr minimum sampling time.
* 5. Fluidized bed units with an integrated heat exchanger designed to burn coal/solid fossil fuel.	* a. CO (or CEMS) .....	* 140 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (150 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	* 1 hr minimum sampling time.

TABLE 13 TO SUBPART DDDDD OF PART 63—ALTERNATIVE EMISSION LIMITS FOR NEW OR RECONSTRUCTED BOILERS AND PROCESS HEATERS THAT COMMENCED CONSTRUCTION OR RECONSTRUCTION AFTER DECEMBER 23, 2011, AND BEFORE APRIL 1, 2013—Continued

If your boiler or process heater is in this subcategory . . .	For the following pollutants . . .	The emissions must not exceed the following emission limits, except during periods of startup and shutdown . . .	Using this specified sampling volume or test run duration . . .
6. Stokers/sloped grate/others designed to burn wet biomass fuel.	a. CO (or CEMS) .....	620 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (410 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
8. Fluidized bed units designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	230 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (310 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
9. Suspension burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	2,400 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (2,000 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
10. Dutch Ovens/Pile burners designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	810 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (520 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
12. Hybrid suspension grate boiler designed to burn biomass/bio-based solids.	a. CO (or CEMS) .....	1,500 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (900 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 30-day rolling average).	1 hr minimum sampling time.
14. Units designed to burn heavy liquid fuel.	a. CO (or CEMS) .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average; or (18 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 10-day rolling average).	1 hr minimum sampling time.
15. Units designed to burn light liquid fuel.	a. CO (or CEMS) .....	130 <sup>a</sup> ppm by volume on a dry basis corrected to 3 percent oxygen; or (60 ppm by volume on a dry basis corrected to 3 percent oxygen, <sup>c</sup> 1-day block average).	1 hr minimum sampling time.
16. Units designed to burn liquid fuel that are non-continental units.	a. CO .....	130 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-run average based on stack test; or (91 ppm by volume on a dry basis corrected to 3 percent oxygen, 3-hour rolling average).	1 hr minimum sampling time.

<sup>c</sup>An owner or operator may request an alternative test method under § 63.7 of this chapter, in order that compliance with the carbon monoxide emissions limit be determined using carbon dioxide as a diluent correction in place of oxygen at 3%. EPA Method 19 F-factors and EPA Method 19 equations must be used to generate the appropriate CO<sub>2</sub> correction percentage for the fuel type burned in the unit, and must also take into account that the 3% oxygen correction is to be done on a dry basis. The alternative test method request must account for any CO<sub>2</sub> being added to, or removed from, the emissions gas stream as a result of limestone injection, scrubber media, etc.



# FEDERAL REGISTER

---

Vol. 80

Friday,

No. 224

November 20, 2015

---

Part III

Environmental Protection Agency

---

40 CFR Part 50

Treatment of Data Influenced by Exceptional Events; Proposed Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 50

[EPA-HQ-OAR-2013-0572, EPA-HQ-OAR-2015-0229; FRL-9935-73-OAR]

RIN 2060-AS02

### Treatment of Data Influenced by Exceptional Events

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of availability of related draft guidance; notice of hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to certain sections within the regulations that govern the exclusion of event-affected air quality data from regulatory decisions. The EPA is also providing a notice of availability of a draft version of the non-binding guidance document titled *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*.

**DATES:** *Comments.* Written comments on this proposal and draft guidance must be received by January 19, 2016.

*Public hearing:* The EPA will hold a public hearing on this proposal on Tuesday, December 8, 2015, in Phoenix, Arizona. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and public hearing.

**ADDRESSES:** Submit your comments on the EPA's proposed revisions to 40 CFR part 50, identified by Docket ID No. EPA-HQ-OAR-2013-0572, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on

making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Submit your comments on the EPA's *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, identified by Docket ID No. EPA-HQ-OAR-2015-0229, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Public hearing:* A public hearing will be held on Tuesday, December 8, 2015, in room 3175 in the Arizona Department of Environmental Quality main office building located at 1110 W. Washington Street, Phoenix, Arizona 85007. The public hearing will convene at 10 a.m. and continue until the earlier of 6 p.m. or 1 hour after the last registered speaker has spoken. We have scheduled a lunch break from 12:30 p.m. until 2 p.m. People interested in presenting oral testimony should contact Ms. Pamela Long, Air Quality Planning and Standards (C504-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, email address [long.pam@epa.gov](mailto:long.pam@epa.gov), at least 2 days in advance of the public hearing (*see DATES*). People interested in attending the public hearing should also call Ms. Long to verify the time, date and location of the hearing.

**FOR FURTHER INFORMATION CONTACT:** For additional information regarding this proposed rule, please contact: Beth W. Palma, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04,

Research Triangle Park, NC 27711, telephone (919) 541-5432, email at [palma.elizabeth@epa.gov](mailto:palma.elizabeth@epa.gov). For additional information regarding the *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, please contact Melinda Beaver, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04, Research Triangle Park, NC 27711, telephone (919) 541-1062, email at [beaver.melinda@epa.gov](mailto:beaver.melinda@epa.gov). For information on the public hearing or to register to speak at the hearing, contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, Mail Code C504-01, Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, email at [long.pam@epa.gov](mailto:long.pam@epa.gov) (preferred method for registering).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this action apply to me?

Entities potentially directly affected by this proposal and the draft guidance document include all state air agencies and any local air quality agency to whom a state has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis. Tribal air agencies operating ambient air quality monitors that produce regulatory data may also be directly affected. Entities potentially affected indirectly by this proposal and the draft guidance document include federal land managers (FLMs) of Class I areas, other federal agencies and other entities that operate ambient air quality monitors and submit collected data to the EPA's Air Quality System (AQS) database.

##### B. What should I consider as I prepare my comments for the EPA?

1. *Docket.* The EPA has established one docket for the proposed revisions to the 2007 Exceptional Events Rule and another docket for the draft guidance document. All documents in these dockets are listed on the <http://www.regulations.gov> Web site in the respective docket. The rulemaking docket is Docket ID No. EPA-HQ-OAR-2013-0572. The separate docket established for the *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* is Docket No. EPA-HQ-OAR-2015-0229. The EPA will not respond to comments relating to the guidance document as

part of this rulemaking, but will consider these comments in the development of the final guidance document. If comments on the draft guidance document are submitted to the rulemaking docket, the EPA will respond only to the portion of such comments that are relevant to the rulemaking. The EPA also relies on the documents in Docket ID No. EPA-HQ-OAR-2011-0887, the docket established for the July 2012 notice of availability for the Draft Exceptional Events Implementation Guidance, and incorporates this docket into the record for this action. However, no new comments may be directed to Docket ID No. EPA-HQ-OAR-2011-0887 and the EPA will not respond to comments that have already been submitted to this docket unless they are resubmitted to Docket ID No. EPA-HQ-OAR-2013-0572. Although listed in the indices to the rulemaking docket and the guidance docket associated with this action (*i.e.*, Docket ID No. EPA-HQ-OAR-2013-0572 and Docket No. EPA-HQ-OAR-2015-0229), some information is not publicly available, (*e.g.*, CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will not be placed on the Internet but may be viewed, with prior arrangement, at the EPA Docket Center. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue 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 Air and Radiation Docket and Information Center is (202) 566-1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: <http://www.epa.gov/epahome/dockets.htm>.

2. *Submitting CBI.* Do not submit this information to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

3. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking and/or draft guidance document by docket number and other identifying information (subject heading, **Federal Register** date, page number and guidance document title, if applicable).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number in the guidance.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the identified comment period deadline.

*C. Where can I get a copy of these documents and other related information?*

In addition to being available in the docket, an electronic copy of this notice and the draft guidance will be posted at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.

*D. What should I know about the public hearing?*

The EPA intends to hold a public hearing on Tuesday, December 8, 2015, in room 3175 in the Arizona Department of Environmental Quality main office building located at 1110 W. Washington Street, Phoenix, Arizona 85007. If you would like to attend or speak at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, Mail Code C504-01, Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, email at [long.pam@epa.gov](mailto:long.pam@epa.gov) (preferred method for

registering) at least 2 days in advance of the public hearing (*see DATES*).

Interested parties may submit oral and/or written comments. Interested parties do not need to attend the public hearing to submit written comments. Additional details concerning any public hearing for this proposed rule will be posted on the EPA's Web site for this rulemaking at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.

The public hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed revisions to the 2007 Exceptional Events Rule. The EPA will make every effort to accommodate all speakers who arrive and register. Individuals planning to attend the hearing will be required to sign in, and may be required to show valid picture identification to the security staff to gain access to the meeting room. In addition, no weapons will be allowed in the facility. Any weapons brought to the site will be stored in a locker at the facility. No large signs will be allowed in the building, and cameras may only be used outside of the building. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters must submit written comments on the proposed rule and/or draft guidance by January 19, 2016. Commenters should notify Ms. Long if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email or CD) or in hard copy form. The hearing schedule, including the list of speakers, will be posted on the EPA's Web site at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to

run either ahead of schedule or behind schedule.

#### *E. How is this document organized?*

The information presented in this document is organized as follows:

#### I. General Information

- A. Does this action apply to me?
- B. What should I consider as I prepare my comments for the EPA?
- C. Where can I get a copy of these documents and other related information?
- D. What should I know about the public hearing?
- E. How is this document organized?

#### II. Glossary of Terms and Acronyms

#### III. Executive Summary

#### IV. Background for Proposal

- A. Purpose of and Statutory Authority for This Regulatory Action
- B. The 2007 Exceptional Events Rule
- C. Early Experience in Implementing the 2007 Exceptional Events Rule
- D. The EPA's Interim Exceptional Events Implementation Guidance
- E. More Recent Implementation Experience Including EPA-Recommended Best Practices for the Development of Exceptional Events Demonstrations

#### V. Proposed Rule Revisions

- A. To whom and to what pollutants does the Exceptional Events Rule apply?
  1. Current Situation
  2. Proposed Changes
- B. What is an exceptional event?
  1. Current Situation
  2. Proposed Changes
- C. What types of ambient concentration data and data uses may be affected by the Exceptional Events Rule?
  1. Current Situation
  2. Proposed Changes
- D. What is a natural event?
  1. Current Situation
  2. Proposed Changes
- E. Technical Criteria for the Exclusion of Data Affected by Events
  1. Human Activity Unlikely To Recur at a Particular Location or a Natural Event
  2. Not Reasonably Controllable or Preventable
  3. Clear Causal Relationship Supported by a Comparison to Historical Concentration Data
- F. Treatment of Certain Events Under the Exceptional Events Rule
  1. Exceedances Due to Transported Pollution
  2. Wildland Fires
  3. Stratospheric Ozone Intrusions
  4. High Wind Dust Events
- G. Other Aspects of Flagging Exceptional Events-Influenced Data and Demonstration Submittal and Review
  1. Who may submit a demonstration and request for data exclusion?
  2. Aggregation of Events for NAAQS With Periods Longer Than 24 Hours and Demonstrations With Respect to Multiple NAAQS for the Same Pollutant
  3. Exclusion of Entire 24-Hour Value Versus Partial Adjustment of the 24-Hour Value for Particulate Matter
  4. Flagging of Data

5. Initial Notification of Potential Exceptional Event
  6. Submission of Demonstrations
  7. Timing of the EPA's Review of Submitted Demonstrations
  8. Dispute Resolution Mechanisms
- #### VI. Mitigation
- A. Current Situation
  - B. Proposed Changes
    1. Defining Historically Documented or Known Seasonal Events
    2. Mitigation Plan Components
    3. Options for Implementing Mitigation Plans

- #### VII. Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events That May Influence Ozone Concentrations
- A. What is this draft guidance about and why is it needed?
  - B. What scenarios are addressed in the draft guidance?

#### VIII. Environmental Justice Considerations

#### IX. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

#### X. Statutory Authority

### II. Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

- AQCR Air Quality Control Region  
 AQS Air Quality System  
 Be Beryllium  
 BACM Best available control measures  
 BLM Bureau of Land Management  
 BMP Best management practice(s)  
 BSMP Basic smoke management practices  
 CAA Clean Air Act  
 CASTNET Clean Air Status and Trends Network  
 CBI Confidential business information  
 CFR Code of Federal Regulations  
 CO Carbon monoxide  
 EPA Environmental Protection Agency  
 FLM Federal land manager responsible for management of a federally owned area that has been designated a Class I area as codified in 40 CFR part 81, subpart D  
 FR Federal Register  
 IPV Isentropic potential vorticity  
 Lidar A remote sensing technology that measures distance by illuminating a target

- with a laser and analyzing the reflected light  
 µg/m<sup>3</sup> Micrograms per cubic meter  
 mph Miles per hour  
 NAAQS National ambient air quality standard or standards  
 NAM North American Mesoscale Forecast System  
 NASA National Aeronautics and Space Administration  
 NEPA National Environmental Policy Act  
 NO<sub>2</sub> Nitrogen dioxide  
 NOAA National Oceanic and Atmospheric Administration  
 NOV Notice of violation  
 NOx Nitrogen oxides  
 NPS National Park Service  
 NSR New source review  
 NRCS Natural Resources Conservation Service  
 NRDC Natural Resources Defense Council  
 NWCG National Wildfire Coordinating Group  
 NWS National Weather Service  
 OAQPS Office of Air Quality Planning and Standards, U.S. EPA  
 OMB Office of Management and Budget  
 Pb Lead  
 PM Particulate matter  
 PM<sub>10</sub> Particulate matter with a nominal mean aerodynamic diameter less than or equal to 10 micrometers  
 PM<sub>2.5</sub> Particulate matter with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers  
 ppb Parts per billion  
 PSD Prevention of significant deterioration  
 PT Potential temperature  
 RACM Reasonably available control measures  
 RAQMS Real-time Air Quality Modeling System  
 RUC Rapid Update Cycle  
 SIP State implementation plan  
 SMP Smoke management program  
 SO<sub>2</sub> Sulfur dioxide  
 TAR Tribal Authority Rule  
 TIP Tribal implementation plan  
 UMRA Unfunded Mandates Reform Act  
 USDA U.S. Department of Agriculture  
 USFS U.S. Forest Service  
 VOC Volatile organic compound or compounds

### III. Executive Summary

This section summarizes the purpose of this regulatory action, the major provisions of this action, and the development of associated guidance.

#### *Purpose of This Regulatory Action*

Recognizing that it may not be appropriate for the EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in the air quality data system (AQS) in the EPA's regulatory determinations, in 2005 Congress provided the statutory authority for the exclusion of data in specific situations by adding section 319(b) to the Clean Air Act (CAA). The EPA promulgated the 2007 Exceptional Events Rule (March 22, 2007, 72 FR 13560) to

implement this 2005 amendment of the CAA. The purpose of this action is to propose revisions to the 2007 Exceptional Events Rule to address certain substantive issues raised by state, local and tribal co-regulators and other stakeholders since promulgation of the rule and to increase the administrative efficiency of the Exceptional Events Rule criteria and process. The EPA intends to promulgate these rule revisions in advance of the date by which states, and any tribes that wish to do so, are required to submit their initial designation recommendations for the revised 2015 ozone NAAQS (expected in October of 2016). In addition, the EPA intends to address a 2008 D.C. Circuit Court decision in which the court found that certain preamble language was “legally null” because there was no associated implementing rule language.

Interpreting and implementing the 2007 Exceptional Events Rule has been challenging in certain respects both for the air agencies developing exceptional events demonstrations and for the EPA Regional offices reviewing and acting on these demonstrations. Since 2007, air agencies have submitted exceptional event demonstrations for a variety of pollutant and event combinations ranging from volcanic activity influencing sulfur dioxide (SO<sub>2</sub>) and particulate matter (PM) concentrations to stratospheric ozone intrusions. Air agencies preparing demonstrations have expressed specific concerns and identified challenges associated with preparing analyses to satisfy the “but for” rule criterion, determining what controls constitute reasonable controls particularly for natural sources and for interstate and international transport and identifying how much documentation to include in a demonstration.

As a result of both our experiences and feedback related to implementing the 2007 Exceptional Events Rule received from state, local and tribal co-regulators and other stakeholders via letters and numerous conference calls and meetings, the EPA developed and released Interim Exceptional Events Implementation Guidance in May of 2013. This guidance has addressed some of the concerns and challenges raised by interested parties, has helped reduce the burden of preparing demonstrations and has reduced the time needed for review. However, the EPA acknowledged that additional changes could only be accomplished through a notice-and-comment rulemaking. Therefore, when the EPA released the Interim Exceptional Events Implementation Guidance in May of 2013, we

simultaneously announced our intent to pursue revisions to the Exceptional Events Rule. These changes are reflected in this proposed action.

Concurrent with preparing this proposed action, the EPA held conference calls with some air agencies to discuss more recent implementation experiences and to better understand currently employed exceptional events implementation processes and practices. As a result of these discussions, the EPA developed a list of best practices for communication and collaboration between the EPA and air agencies. Agencies using these approaches have developed a common understanding of expectations, terminology and interpretation of the EPA’s regulations and policy, which, in turn, helps focus efforts, optimize resources and save time during the demonstration development and review process.

Based on our experiences and the input we have received from our collaborations with interested parties (including state, local and tribal air agencies) following the promulgation of the 2007 Exceptional Events Rule and since the development of the Interim Exceptional Events Implementation Guidance and based on the previous legal challenge, we have determined those aspects of the 2007 Exceptional Events Rule that most need to be addressed in this proposed action.

#### *Summary of Major Provisions*

For the first time, the EPA proposes to interpret CAA section 319(b) as applying to only a specific set of regulatory actions (e.g., designations) because we believe that the criteria and process steps specified in the CAA were not clearly intended by Congress to apply to all types of regulatory actions and in some cases certain of the criteria and steps are not appropriate. We address this concept in this document in general terms, but we also intend to develop a separate guidance document to provide guidance on when data can be excluded and when they cannot for other specific types of regulatory actions.

The EPA proposes to return to the core statutory elements and implicit concepts of CAA section 319(b): The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event was not reasonably controllable or preventable and the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. Within each of these elements, we are proposing clarifications regarding the

desired analyses to include in exceptional events demonstrations and we discuss the applicability of these clarifications to certain event types or categories. As part of this return to the core statutory elements, we are proposing to remove from the Exceptional Events Rule a paragraph containing what is commonly referred to as the “but for” criterion.

The EPA is proposing to incorporate the statutory “affects air quality” criterion and the regulatory “historical fluctuations” criterion within the “clear causal relationship” element. We believe that if an air agency demonstrates that an event has a clear causal relationship to an exceedance or violation of a NAAQS, then the event has certainly affected air quality and that a submitting air agency does not need to address “affects air quality” as a distinct component. As we indicated in the Interim Exceptional Events Implementation Guidance (see section IV.D), we believe that a comparison of the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times is extremely useful evidence in an exceptional events demonstration, particularly as part of showing a clear causal relationship, and we propose to continue requiring this type of comparison. This proposed action details the minimum set of statistical analyses that the EPA expects to see in demonstrations.

With respect to the “not reasonably controllable or preventable” criterion, many states have requested that the EPA automatically consider an event to be reasonably controlled if the EPA has approved a state implementation plan (SIP) that contains controls for anthropogenic sources that contribute to the event that are also specific to the pollutant of concern in the exceptional events demonstration. In response, the EPA proposes that enforceable control measures implemented in accordance with an attainment or maintenance SIP, approved by the EPA within 5 years of the date of a demonstration submittal, that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to event-related emissions. Also for this criterion, the EPA clarifies that air agencies generally have no obligation to specifically address controls if the event was natural or if it was due to emissions originating outside their jurisdictional (i.e., state or tribal) border(s).

With respect to the “human activity that is unlikely to recur at a particular

location or was a natural event” criterion, we propose a general approach to determining whether the recurrence frequency of an event is “unlikely to recur at a particular location” and an approach applicable to prescribed fire on wildland only. We also clarify that natural events can recur, sometimes frequently, and reiterate our belief that we generally consider human activity to have played little or no direct role in causing emissions if anthropogenic emission sources that contribute to the event emissions are reasonably controlled at the time of the event.

Air agencies must address all of the core statutory elements and implicit concepts of CAA section 319(b) within an exceptional events demonstration. In this proposed action, the EPA clarifies the content and organization of exceptional events submittals to include the core statutory elements, but we also propose that states be required to include a conceptual model, or narrative, describing the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance at the affected monitor(s) and documentation that the air agency conducted a public comment process. We are proposing to require an initial notification by the state to the EPA of a potential exceptional event as a preliminary step before submitting a demonstration, to ensure the submitting air agency and the reviewing EPA Regional office share a common understanding regarding the potential event and are in communication regarding the timeline for the demonstration to be submitted and to be reviewed by the Regional office.

Because affected air agencies have provided feedback regarding the difficulty associated with meeting the current regulatory timelines associated with data flagging, initial event descriptions and demonstration submittals, the EPA proposes to remove the specific deadlines that apply in situations other than initial area designations following promulgation of a new or revised NAAQS. Also associated with demonstration timing, the EPA proposes to officially terminate review of demonstrations that, due to the passage of time, will have no further regulatory significance specifically for the five types of regulatory actions identified in section V.C. of this preamble.

Since promulgation of the 2007 Exceptional Events Rule, stakeholders have raised numerous questions about fire-related components that were discussed, but not fully defined or

clarified in the preamble to the 2007 Exceptional Events Rule. This proposed action addresses fire-related definitions, provides more clarity regarding expectations for smoke management programs (SMPs) and basic smoke management practices (BSMP), and proposes limited scenarios under which FLMs and other federal agencies may prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA.

#### *Associated Guidance Documents*

In addition to proposing revisions to the 2007 Exceptional Events Rule, this proposed action simultaneously provides a notice of availability of a draft non-binding guidance document titled, *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, which applies the proposed Exceptional Events Rule revisions to wildfire/ozone events. This guidance document is intended to further address specific stakeholder questions regarding the Exceptional Events Rule and further increase the efficiency of rule implementation. In addition, the EPA is currently developing a guidance document titled, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS*, which will apply to the exclusion of certain data for certain applications using a process and criteria outside of the Exceptional Events Rule. The EPA intends to make this guidance document available shortly after proposing revisions to the Exceptional Events Rule. The EPA expects to finalize these guidance documents concurrently with promulgating revisions to the Exceptional Events Rule.

#### **IV. Background for Proposal**

##### *A. Purpose of and Statutory Authority for This Regulatory Action*

Part of the EPA’s mission is to preserve and improve, when needed, the quality of our nation’s ambient air to protect human health and the environment. As part of accomplishing this, the EPA develops the national ambient air quality standards (NAAQS) for criteria pollutants and oversees the states’ programs to improve air quality in areas where the current air quality is unacceptable and to prevent deterioration in areas where the air quality meets or exceeds the NAAQS. The EPA then evaluates the status of the ambient air as compared to these

NAAQS by using data collected in the national ambient air quality monitoring network established under the authority of section 319(a) of the CAA.

Recognizing that it may not be appropriate for the EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in AQS in our regulatory determinations, in 2005 Congress provided the statutory authority for the exclusion of data in specific situations by adding section 319(b) to the CAA in 2005. The EPA promulgated the 2007 Exceptional Events Rule (March 22, 2007, 72 FR 13560) to implement this 2005 amendment of the CAA. The purpose of this action is to propose revisions to the 2007 Exceptional Events Rule to address certain issues raised by stakeholders since promulgation of the rule and to increase the administrative efficiency of the Exceptional Events Rule criteria and process.

In addition to proposing revisions to the 2007 Exceptional Events Rule, we are simultaneously providing a notice of availability of a draft non-binding guidance document titled, *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, which applies the proposed Exceptional Events Rule revisions to wildfire/ozone events. We seek comment on whether the concepts in this guidance document should be finalized as rule text. We are also currently developing a second guidance document titled, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS*, which will apply to the exclusion of certain data for certain applications using a process and criteria outside of the Exceptional Events Rule. Both of these draft guidance documents are intended to further address specific stakeholder concerns regarding the Exceptional Events Rule and further increase the efficiency of rule implementation.

##### *B. The 2007 Exceptional Events Rule*

The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (sections 50.1, 50.14 and 51.930). These regulatory sections contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA’s approval of the exclusion of event-affected air quality data from the data set used for regulatory decisions,



and requirements for air agencies<sup>1</sup> to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS.<sup>2</sup> The 2007 Exceptional Events Rule superseded the EPA's previous natural events guidance and those sections of an earlier guidance document that addressed the treatment of data affected by exceptional events.<sup>3</sup>

In general, the exceptional events regulatory process consists of the following steps. First, an air agency

<sup>1</sup> References to "air agencies" are meant to include state, local and tribal air agencies responsible for implementing the Exceptional Events Rule. The regulatory text in the 2007 Exceptional Events Rule often uses "State" to apply to "air agencies." In the context of flagging data and preparing and submitting demonstrations, the role of and options available to air agencies would also apply to federal land managers of Class I areas and other federal agencies managing federal land.

<sup>2</sup> Per the definition at 40 CFR 50.1(l), an exceedance with respect to a national ambient air quality standard means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard. Violations of a standard are standard-specific and are determined by applying the standard-specific procedures for air quality data handling identified in the appendices to 40 CFR part 50. For example, per the requirements in 40 CFR part 50, appendix N, an exceedance of the 2006 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup> occurs when the 24-hour concentration is above 35 µg/m<sup>3</sup> on a single day. A violation of the 2006 24-hour PM<sub>2.5</sub> NAAQS occurs when the 3-year average of the annual 98th percentile 24-hour concentrations is above 35 µg/m<sup>3</sup>.

<sup>3</sup> Previous guidance and policy documents that either implied or stated the need for special treatment of data affected by an exceptional event include:

i) *Guideline for the Interpretation of Air Quality Standards*, U.S. EPA, OAQPS No. 1.2-008, Revised February 1977. Available at <http://nepis.epa.gov/Exe/ZyNET.exe/2000YFDB.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1976+Thru+1980&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C76thru80%5CTxt%5C00000007%5C2000YFDB.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>.

ii) *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* (the Exceptional Events Policy), U.S. EPA, OAQPS, EPA-450/4-86-007, July 1986.

iii) *Areas Affected by PM-10 Natural Events* (the PM<sub>10</sub> Natural Events Policy), memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to EPA Regional Offices, May 30, 1996. Available at <http://www.epa.gov/ttn/caaa/t1/memoranda/nepol.pdf>.

iv) *Interim Air Quality Policy on Wildland and Prescribed Fires*. U.S. EPA. April 23, 1998. Available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/firefnl.pdf>.

v) *Guideline on Data Handling Conventions for the PM NAAQS*. U.S. EPA, OAQPS, EPA-454/R-98-017, December 1998.

identifies a potential event-related exceedance or violation. After noting these data in AQS, the air agency prepares a draft demonstration package to support the exclusion of the identified event-related data and provides an opportunity for public comment. The air agency submits the draft demonstration and any received public comments to its EPA Regional office, which then reviews the submittal and concurs, nonconcurr or defers a decision related to the air agency's request to exclude data that have been affected by exceptional events. If the EPA agrees with the air agency's request, the data are excluded. If the EPA does not agree with the air agency claim, or if the EPA decides to defer a decision on the submittal, the data are used in regulatory determinations.

The 2007 Exceptional Events Rule was challenged in 2008. In *NRDC v. EPA*, 559 F.3d 561 (D.C. Cir. 2009), the Natural Resources Defense Council (NRDC) brought a petition for review challenging the EPA's definition of a natural event and seeking to vacate several statements in the preamble to the final 2007 Exceptional Events Rule concerning the types of events that could qualify as being eligible for exclusion under the rule provisions. In particular, NRDC objected to treating "events in which human activities play 'little' causal role" as natural events. Regarding the definition of a natural event, the D.C. Circuit Court determined that NRDC did not identify its objection during the rulemaking process and, therefore, did not have standing under CAA section 307 to challenge the definition.

NRDC also challenged the preamble language addressing high wind events. In its decision, the D.C. Circuit stated,

In one section of the preamble, EPA refers to its "final rule concerning high wind events," which "states that ambient particulate concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events" when certain conditions apply. . . . There is no such final rule. The final rule does not mention high wind events or anything about "ambient particulate matter concentrations." EPA calls this a drafting error. In light of the error, the high wind events section of the preamble is a legal nullity.

The EPA believes it is clear that the "high wind events section of the preamble" to which the court referred is the entire section titled, "*B. High Wind Events*" beginning at 72 FR 13576. Accordingly, since 2007, the EPA has not relied solely on this section of the preamble when implementing the 2007 Exceptional Events Rule. The EPA

maintains that certain of the preamble passages determined to be "legally null" are in fact appropriate interpretations of the Exceptional Events Rule and are consistent with the CAA. For clarity and regulatory certainty, the EPA is proposing in rule text form some of the interpretative positions originally stated in the High Wind Events section of the preamble to the 2007 Exceptional Events Rule.

Within each topical area of this notice, the EPA has provided more detailed background information on specific aspects of the 2007 Exceptional Events Rule and its implementation to allow readers to consider the proposed changes in the context of the current situation.

### *C. Early Experience in Implementing the 2007 Exceptional Events Rule*

Interpreting and implementing the 2007 Exceptional Events Rule has been a challenging process both for the air agencies developing exceptional events demonstrations and for the EPA Regional offices reviewing and acting on these demonstrations. Shortly after the EPA promulgated the rule in 2007, air agencies asked the EPA to clarify key rule provisions and expectations for these demonstrations. Air agencies also asked for demonstration templates and/or examples of acceptable demonstrations for various event and pollutant combinations. Although the EPA provided some of this information via the exceptional events Web site at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>, air agencies noted that, in their view, the information provided was insufficient and sought additional guidance to facilitate consistency among the EPA Regional offices in interpreting and implementing the 2007 Exceptional Events Rule. In the years since rule promulgation, air agencies continued to express concern, through various mechanisms including formal letters, informal emails, interaction at various meetings and Congressional testimony, about the consistent application of the 2007 Exceptional Events Rule and the resources expended to prepare exceptional events demonstrations.

The EPA has also faced challenges in reviewing submitted demonstrations. Because exceptional events are fact-specific and thus unique and varied, providing templates or general guidance was, and still is, challenging. The EPA also acknowledges that the final rule and preamble language for the 2007 Exceptional Events Rule provided room for interpretation, making it difficult for air agencies and the EPA to determine

how much evidence or technical analysis for demonstrations is needed. We do, however, think that providing additional recommendations on appropriate documentation would be helpful. Throughout this proposal, for example in section V.E, Technical Criteria for the Exclusion of Data Affected by Events, and in section V.F, Treatment of Certain Events Under the Exceptional Events Rule, we provide recommendations for language and analyses to include in demonstration packages. Additional detail regarding specific recommendations is available in the EPA's guidance documents and on the EPA's exceptional events Web site, which the EPA will update to incorporate the finalized rule changes concurrently with or shortly after promulgating the final rule. The EPA will also continue to maintain and update the exceptional events submissions table on its Web site with examples of approved submissions. These examples may help air agencies develop demonstration packages; however, they may not contain the minimum level of data or case-specific analyses necessary for all exceptional events demonstrations of the same event type. In addition, commenters on this notice may wish to provide suggestions on the appropriate documentation for specific types of exceptional events demonstrations.

#### *D. The EPA's Interim Exceptional Events Implementation Guidance*

As a result of stakeholder-identified concerns and the EPA's own experience related to implementing the 2007 Exceptional Events Rule, in 2010 the EPA began developing additional implementation guidance. In May of 2011, the EPA released the Draft Exceptional Events Implementation Guidance: *The Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, the *Draft Exceptional Events Rule Frequently Asked Questions* document and the *Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule*. The EPA provided these draft guidance documents to interested air agencies, FLMs, other federal agencies and other parties upon request, for preliminary review to solicit comment and help ensure that the EPA's final guidance provided an efficient and effective process to make determinations regarding air quality data affected by exceptional events. The EPA also placed additional examples of

approved demonstrations on the EPA's Web site.

The EPA incorporated the commenters' feedback, as appropriate, into revised draft guidance documents, which were made available for broad public review in a July 6, 2012, **Federal Register** Notice of Availability (77 FR 39959) and in the associated docket (Docket ID No. EPA-HQ-OAR-2011-0887).<sup>4</sup> This docket includes a summary of the comment and response process from the 2011 preliminary review of the draft guidance documents. In addition to identifying specific comments on the draft guidance documents, this summary clearly identifies that implementation challenges originated shortly after the EPA promulgated the 2007 Exceptional Events Rule.<sup>5</sup> In May 2013, after a round of review and comment by the general public, the EPA finalized the Interim Exceptional Events Implementation Guidance and made these documents publicly available on the exceptional events Web site at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.<sup>6</sup>

With the release of the Interim Exceptional Events Implementation Guidance, the EPA simultaneously acknowledged the need to consider additional changes that could only be accomplished through a notice-and-comment rulemaking to revise the 2007 Exceptional Events Rule. To inform the development of proposed rule revisions, the EPA hosted exceptional events listening sessions in August and November of 2013 for interested air agencies, FLMs, other federal agencies, regional planning organizations, non-governmental organizations and other members of the public. The EPA has considered feedback from these listening sessions and the previous public comments on the Interim Exceptional Events Implementation Guidance in the development of these

proposed revisions to the 2007 Exceptional Events Rule.

#### *E. More Recent Implementation Experience Including EPA-Recommended Best Practices for the Development of Exceptional Events Demonstrations*

Because of the passage of time since the 2013 exceptional events listening sessions, the EPA's Office of Air Quality Planning and Standards (OAQPS) held conference calls with some air agencies and the EPA Regional offices between September 2014 and March 2015 to ask whether any new implementation concerns had arisen and to better understand currently employed exceptional events implementation processes and practices.

As a result of these discussions, the EPA developed a list of best practices for communication and collaboration between the EPA and air agencies. These best practices include having discussions before, during and after the development and submission of exceptional events demonstration packages. Specifically, these best practices recommend that the EPA Regional offices and their air agencies discuss, on a mutually agreed upon frequency, those demonstrations that the agencies have developed and submitted for the EPA's action. These regular discussions should focus on whether the demonstrations have regulatory significance (e.g., significance for any of the five types of regulatory actions identified in section V.C.) and, if not, whether the EPA can provide general technical or policy feedback that the air agency can include in future demonstrations. Prior to an air agency's development of future demonstrations, the air agency and the EPA should identify the relevant days and monitors of focus, the regulatory significance of these monitor days, the analyses of particular interest for a specific event and pollutant combination and the anticipated timeframe for demonstration submission and response. Discussions should continue while the air agency is developing the demonstration and after the agency submits the demonstration and while the EPA is reviewing the demonstration, to ensure both the air agency and the EPA are aware of status, direction and progress. Finally, after the EPA has acted on the demonstration, the reviewing EPA Regional office and the air agency should discuss elements of the process that should continue and those that should be improved, should understand the information in the demonstration that was useful versus the information that was extraneous and should discuss the possibility of

<sup>4</sup> The EPA established Docket ID No. EPA-HQ-OAR-2011-0887 for the July 2012 notice of availability for the Draft Exceptional Events Implementation Guidance and has incorporated this docket into the record for this action.

<sup>5</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, U.S. EPA, June 2012. Available in Docket No. EPA-HQ-OAR-2011-0887.

<sup>6</sup> The Interim Exceptional Events Implementation Guidance includes: *The Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, the *Interim Exceptional Events Rule Frequently Asked Questions* (the Interim Q&A document), and the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (the Interim High Winds Guidance document).

developing a demonstration template(s) for future events of the same type(s).

Agencies using this communications approach have developed a common understanding of expectations, terminology and interpretation of the EPA's regulations and policy, which, in turn, helps focus efforts, optimize resources and save time during the demonstration development and review process. A summary of this "best practices" approach to implementation is available at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.

## V. Proposed Rule Revisions

### A. To whom and to what pollutants does the Exceptional Events Rule apply?

#### 1. Current Situation

Under the CAA, states are primarily responsible for the administration of air quality management programs within their borders, which includes monitoring and analyzing ambient air quality, submitting monitoring data to the EPA, which are then stored in the EPA's AQS database, and identifying measurements that may warrant special treatment under the Exceptional Events Rule. The 2007 Exceptional Events Rule applies to all state air agencies and to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis.

Additionally, the 2007 Exceptional Events Rule applies to some tribal air quality agencies who have been granted treatment as a state for section 319 of the CAA. Section 301(d) of the CAA authorizes the EPA to recognize tribal authority, allowing eligible, federally-recognized tribal governments to implement provisions of the CAA. Pursuant to section 301(d)(2), the EPA promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999 (63 FR 7254, codified at 40 CFR part 49). That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from the EPA a determination of eligibility to implement the provisions of the CAA. In cases where a tribal air quality agency is eligible to implement CAA section 319 and has installed and operates an air quality monitoring network that produces regulatory data that is affected by emissions from exceptional events, the criteria and procedures identified in

these proposed rule revisions may be used to exclude data for purposes of regulatory decisions. Some tribes may implement only portions of the relevant air quality monitoring program and may choose not to address all of the procedures and requirements associated with excluding data that have been influenced by exceptional events (e.g., a particular tribe may operate a monitoring network for purposes of gathering and identifying data appropriate for informational or educational purposes, but may choose not to implement relevant programs for the purpose of mitigating the effects of exceptional events). Where a tribal air quality agency is not eligible to implement CAA section 319 but operates an air quality monitoring network that produces regulatory data that is affected by emissions from exceptional events, the tribal air quality agency should consult with the EPA Regional office prior to addressing the procedures and requirements associated with excluding data that have been influenced by exceptional events.<sup>7</sup> In all cases, the EPA will continue to work with tribes in implementing any promulgated rule revisions.

While air agencies are responsible for administering air quality management programs within their borders, FLMs of Class I areas, other federal agencies and/or other entities (e.g., industrial facilities pursuant to permit conditions) may also operate ambient air quality monitors that meet all requirements of 40 CFR parts 50 and 58.<sup>8</sup> The FLMs, other federal agencies and other entities operating these regulatory monitors may submit collected data to the EPA's AQS database.<sup>9</sup> These concentration measurements can be affected by exceptional events. The AQS software allows only the entity operating a monitor (and the EPA data system

manager) to apply exceptional events flags to data from that monitor. Although FLMs and other entities can apply exceptional events flags to data from monitors they operate, the Exceptional Events Rule at 40 CFR 50.14(b)(1) states that the EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to the EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS. The language, "where a State demonstrates" has resulted in an interpretation that only states can initiate the exceptional events process and submit demonstrations. Some stakeholders have asked the EPA to identify the process that the state air agency should follow if the state air agency does not have AQS access rights to place exceptional events flags on event-affected data from monitoring stations located within the state but not operated by the state. The EPA addressed this issue generally in Question 23 of the Interim Q&A document by indicating that air agencies should consult with their EPA Regional office early in the development of an exceptional event demonstration package if they believe that monitors on federally-owned and managed land (e.g., national parks within the state) have been affected by an event. In these instances, the EPA has assisted in facilitating cross-agency coordination regarding the flagging of data, where needed.

The 2007 Exceptional Events Rule applies to all criteria pollutant NAAQS.<sup>10</sup> This is appropriate given the language in CAA section 319(b)(3)(B)(iv), which applies to exceedances or violations of "the national ambient air quality standards." The EPA regulations for the interpretation of ambient data with respect to the NAAQS that were in place prior to the 2007 Exceptional Events Rule and that have not been revised do not contain provisions allowing for the special handling of air quality data affected by exceptional events or do so without explicit reference to the Exceptional Events Rule as governing such exclusion. One NAAQS without a specific provision for handling event-

<sup>7</sup> As of the signature date of this action, only one tribe is eligible to implement all portions of CAA section 319 under the TAR. Several other tribes, however, operate air quality monitoring networks that produce regulatory data that could be affected by emissions from exceptional events.

<sup>8</sup> The Ambient Air Quality Surveillance provisions in 40 CFR part 58 include, among other elements, the requirements for monitoring data certification and data submittal and archive in AQS. 40 CFR 58.3 provides that these data reporting requirements specifically apply to state air pollution control agencies and any local air pollution control agency to which the state has delegated authority to operate a portion of the state's monitoring network.

<sup>9</sup> For a description of one network of monitoring sites operated by federal agencies, see the 2014 CASTNET (Clean Air Status and Trends Network) Annual Network Plan, available at [http://epa.gov/castnet/javaweb/ozone/CASTNET\\_Plan\\_2014\\_Final.pdf](http://epa.gov/castnet/javaweb/ozone/CASTNET_Plan_2014_Final.pdf), which applies to National Park Service (NPS) and Bureau of Land Management (BLM) site managers operating CASTNET monitors.

<sup>10</sup> There are NAAQS for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particle pollution and sulfur dioxide (SO<sub>2</sub>). This applicability includes the primary and secondary NAAQS. At present, most of the secondary NAAQS are identical to the primary NAAQS for the same pollutant, so there is no distinction in how the Exceptional Events Rule applies. To date, the EPA has not encountered an exceptional event situation with respect to a non-identical secondary NAAQS.

affected data is 40 CFR part 50, appendix K for PM with a nominal mean aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>). Nevertheless, the EPA has enabled in AQS the capability to flag all criteria pollutant data, including the option for the EPA's concurrence, as the EPA maintains that the monitored concentrations of all NAAQS pollutants have the potential to be elevated by one or more event types and the Exceptional Events Rule should govern the process of data exclusion for certain types of regulatory actions (see section V.C).

## 2. Proposed Changes

As noted above, because FLMs and other federal agencies may operate regulatory monitors and submit collected data to the EPA's AQS database and emissions from exceptional events could affect these same monitors, the EPA proposes to allow FLMs and other federal agencies to prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA. The EPA believes that the CAA language at section 319(b)(3)(B)(i), which states that "the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies" provides authority for FLMs to initiate and submit such demonstration packages and data exclusion requests. Further, the EPA believes this is appropriate because, in many cases, the lands managed and/or owned by federal entities are not entirely within the jurisdictional boundary of a single state or local government. Also, as we discuss in more detail in section V.F.2, federal entities may either initiate prescribed fires or fight wildfires on lands managed and/or owned by federal entities. The EPA could determine both of types of fires to be exceptional events. The EPA expects that allowing FLMs and other federal agencies to submit exclusion requests directly will expedite the exceptional events demonstration development and submittal process. The EPA solicits comment on this proposed addition to the rule text, which appears at the end of this document. Based on comments received, the EPA may retain, modify or not include this provision in the final promulgated rule. This provision would apply only to FLMs and other federal agencies that either operate a monitor that has been affected by an event or that manage land on which an exceptional event originates. The provision would allow such FLMs and other federal agencies to provide demonstrations directly to the EPA only

after a discussion with the state in which the monitor is operated. Alternatively, this discussion might result in an agreement that the federal agency flag the data in AQS at the air agency's request and then provide a draft demonstration document to the appropriate state air agency for adoption and submission by the air agency to the EPA, as is currently allowed. Regardless of who ultimately submits the demonstration, the EPA encourages collaboration between the FLMs and other federal agencies and the appropriate state air agency during the event identification and demonstration development process. If the provision for direct submission to the EPA is included in the final action, demonstrations prepared by FLMs or other federal agencies would be required to meet all provisions in the Exceptional Events Rule, including the requirement for a public comment period on a prepared demonstration<sup>11</sup> and the requirements related to schedules and procedures for demonstration package submittal (see sections V.G.4, V.G.5 and V.G.6) that apply to state agencies that operate monitors.

### B. What is an exceptional event?

#### 1. Current Situation

The existing definition of an exceptional event at 40 CFR 50.1(j) repeats the CAA definition, which provides that an exceptional event is one that affects air quality, is not reasonably controllable or preventable, is caused by human activity that is unlikely to recur at a particular location or is a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Also, CAA section 319(b)(3)(B)(ii) requires that a clear causal relationship must exist between the measured exceedances of a NAAQS and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location. In addition to these defining elements, the 2007 Exceptional Events Rule at 40 CFR 50.14(c)(3)(iv) requires that the demonstration provide evidence that "the event is associated with a

measured concentration in excess of normal historical fluctuations, including background" and evidence that "there would have been no exceedance or violation but for the event."

Both the statutory and regulatory definitions of an exceptional event include the provision that the event affected air quality. Many types of events affect air quality by causing emissions or increasing otherwise occurring emissions. Stratospheric ozone intrusions, one type of event, differ from most other event types in that they transport ozone already formed in the stratosphere to a surface monitor. High temperatures, air stagnations and meteorological inversions can increase the level of air pollution formed from a given amount of emissions. However, both the statutory and regulatory definitions of an exceptional event specifically exclude stagnation of air masses, meteorological inversions and meteorological events involving high temperatures or lack of precipitation, as well as air pollution relating to source noncompliance.

While the CAA definition of an exceptional event excludes "a meteorological event involving high temperatures or lack of precipitation," high temperatures and drought conditions can contribute to exceedances and violations caused by other exceptional events such as high wind dust events. If an air agency submits evidence showing that a severe drought that resulted in arid conditions (e.g., lower than typical soil moisture content, decreased vegetation) was combined with an event, such as a high wind event, that falls within the CAA definition of an exceptional event and has affected air quality data, these data could be considered eligible for exclusion under the provisions of the Exceptional Events Rule. Under this scenario, the EPA would consider the high wind event as the critical exceptional event. The high wind event would need to meet the provisions of the Exceptional Events Rule, including assessing whether the event is a natural event or an event due to human activity unlikely to recur at a particular location. As another example, if a wildfire exacerbated by drought conditions causes ozone exceedances, then the EPA can consider the ozone exceedances for exclusion under the Exceptional Events Rule because wildfires, unlike lack of precipitation itself, are not excluded from the CAA definition of an exceptional event. However, high temperatures alone that result in elevated ozone concentrations would not be eligible for exclusion under the

<sup>11</sup> A public comment opportunity is important prior to submission to the EPA because under the Exceptional Events Rule the EPA is not required to provide a public comment opportunity prior to concurring with an air agency's request to exclude data. The EPA generally provides a public comment opportunity before we use air quality data, with or without such exclusions, in a final regulatory action. States typically provide an opportunity for public comment by posting draft demonstrations on a Web site. Federal agencies could do the same.

Exceptional Events Rule. Elevated temperatures and inversions can affect ambient air quality apart from any interactions with emissions, but such conditions alone are not exceptional events by the very clear provisions of the CAA. The EPA believes that Congress intended air agencies to compensate for the effects of high temperature and inversions on concentrations formed from anthropogenic emissions through the development of SIPs.

To summarize, the 2007 Exceptional Events Rule specifies six elements that air agencies must address when requesting that the EPA exclude event-related concentrations from regulatory determinations:

- The event affected air quality.
- The event was not reasonably controllable or preventable.
- The event was a human activity that is unlikely to recur at a particular location, or was a natural event.
- There exists a clear causal relationship between the specific event and the monitored exceedance.
- The event is associated with a measured concentration in excess of normal historical fluctuations including background.
- There would have been no exceedance or violation but for the event.

Section 50.14(b)(3) clearly makes the first three of these elements preconditions for the EPA to approve an air agency's request to exclude data. However, the last three of these elements are listed only in § 50.14(c)(iv), which provides that the state "shall provide evidence" that they are true. Since promulgation of the 2007 Exceptional Events Rule, the EPA has treated all six elements as conditions that air agencies must address in a demonstration prior to the EPA's concurring with an air agency's request to exclude data. In the Interim Exceptional Events Implementation Guidance, the EPA stated that for the fifth of these elements (*e.g.*, the "historical fluctuations" element), there is no bright line that defines when a concentration is "in excess of historical fluctuations." With respect to the sixth element, referred to as the "but for" criterion, although the EPA has, in some cases, expected demonstrations to contain a quantitative estimate of the concentration increment caused by the event, more frequently the EPA has considered the "but for" criterion to be satisfied by a more qualitative showing that the measured concentration was much greater than the non-exceedance concentration that would have normally been expected on the day in question.

In addition to considering whether or not an event is "exceptional" under the Exceptional Events Rule, an air agency and the EPA must also decide whether an "event" has occurred. An event, or anomaly, is a deviation from normal or expected conditions that contributes to air pollution. In some cases, air agencies or other observers can clearly see this "deviation," for example unusually high wind speeds transporting dust, fires generating PM or ozone precursors or volcanoes venting plumes of SO<sub>2</sub>, PM and PM precursors.<sup>12</sup> In other cases, such as with stratospheric ozone intrusions, the physical effects of the event may not be visible and the occurrence of an event can only be inferred from seeing the effect on monitored air quality of emissions associated with the event. As described in section V.E.3, comparing the ambient pollutant concentrations in question to the historical distribution of concentrations of the same pollutant can help an air agency determine whether a deviation from normal concentrations occurred. However, such comparisons must consider that multiple factors often contribute to high pollutant concentrations. Some events, such as stratospheric ozone intrusions and high wind dust events, may last only a few hours at any one location. Still other events, such as volcanic activity, may occur and affect pollutant concentrations for a sustained period of time (*e.g.*, multiple days). Some events may create pollutant-increasing conditions that persist after the original event process has ceased, for example high winds or volcanic eruptions that leave deposits of dust on roadways.

## 2. Proposed Changes

The EPA is proposing the following generally applicable changes to the 2007 Exceptional Events Rule with respect to clarifying what constitutes an exceptional event:

- Revising the definition of exceptional event by including the concept of considering the combined effects of an event and the resulting emissions.
- Removing the "but for" element.
- Moving the "clear causal relationship" element into the list of criteria that explicitly must be met for data to be excluded.

<sup>12</sup> The EPA considers on-going emissions from volcanic activity to be "events" even if they occur every day over a long period. The EPA considers this approach to be consistent with Congressional intent, but that extending the same treatment to air pollution due to every day biological processes or lightning would not be consistent with that intent.

- Subsuming the "affects air quality" element into the "clear causal relationship" element.

- Removing the term "historical fluctuations" and replacing it with text referring to a comparison to historical concentrations, identifying the types of analyses that are necessary in a demonstration to address the comparison of the event-affected concentration to historical concentrations and clarifying that an air agency does not need to prove a specific "in excess of" fact.

Making these changes would result in returning to the following three core statutory elements of CAA section 319(b) that air agencies must meet when requesting that the EPA exclude event-related concentrations from regulatory determinations:

- The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation.
- The event was not reasonably controllable or preventable.
- The event was a human activity that is unlikely to recur at a particular location or was a natural event.

The implicit intent of CAA section 319(b) is that when the above conditions are met, the data should be excluded from regulatory decisions so as not to drive SIPs to include unreasonable or additional measures to address the effects of certain events.

### a. Definition of an Event

While an event may have a physical component that is purely natural in origin, for example high wind speeds, human activity either prior to or simultaneous with the event may influence air quality during the event. In implementing the 2007 Exceptional Events Rule, the EPA's approach in determining whether an exceptional event that affected a monitored concentration was natural or due to human activity (an important distinction, as discussed in section V.D) has been to consider both whether the initiating physical event was natural or the result of human activity and whether human activity had any role in strengthening the emissions generation process. In contrast, some parties have argued that only the naturalness of the initiating physical event should be considered. To clarify that an event is not a "natural event" merely because natural processes initiated the emissions generation process, the EPA proposes to revise the regulatory definition of exceptional event to say that both the naturally occurring physical event and its associated resulting emissions are to

be considered when applying the definitions and criteria for exclusion provided in the Exceptional Events Rule. For example, an exceptional event might consist of a high wind and the subsequently entrained PM that is transported to a monitoring site or a wildfire that generates ozone or ozone precursors, which are transported to a monitoring site. The EPA would not consider the physical event (e.g., in the previous example, the high wind or the wildfire) to be an exceptional event unless the resulting emissions (e.g., the PM or ozone) reached and elevated the concentration at a monitoring location or locations.

#### b. “But For” Element

The EPA proposes to rely more directly upon the statutory requirement at CAA section 319(b)(3)(B)(ii) by removing the regulatory requirement at 40 CFR 50.14(c)(3)(iv)(D) that “there would have been no exceedance or violation but for the event” (i.e., the “but for” criterion). In promulgating the 2007 Exceptional Events Rule, the EPA derived the “but for” criterion from the language at section 319(b)(3)(B)(ii), which requires “a clear causal relationship. . . between the measured exceedances. . . and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.”<sup>13</sup> The EPA combined this language with the requirement that there be “criteria and procedures for the Governor of a State to petition the Administrator to exclude . . . data that is *directly due* to the exceptional events.”<sup>14</sup> Under the EPA’s interpretation of CAA section 319(b) at the time, these words suggested that a “but for” causation standard for exceptional events was appropriate.

Air agencies have expressed concern that the EPA has, in many cases, historically interpreted the “but for” criterion as implying the need for a strict quantitative analysis to show a single value, or at least an explicitly bounded plausible range,<sup>15</sup> of the estimated air quality impact from the event. While a single event can in some cases clearly be shown to be a “but for”

cause of a NAAQS exceedance or violation in the sense that without the event, the exceedance or violation would not have occurred, it is more often the case that the impact of emissions from events and other sources cannot be separately quantified and distinguished, and the “but for” role of a single source or event is difficult to determine with certainty. Even when the effects of events are quantifiable with a sufficient degree of confidence, air agencies have reported expending significant resources to quantify them. The EPA was aware of these concerns in 2007 as a result of public comment on the proposed rule and attempted to alleviate them by stating in the preamble to the 2007 Exceptional Events Rule that an air agency’s “but for” analysis does not necessarily need to be precise and that the EPA would use a holistic “weight of evidence” approach in analyzing submitted demonstration packages.<sup>16</sup> Without clear examples of what the EPA would accept as satisfying a weight of evidence approach, some air agencies began using burdensome approaches to provide quantitative “but for” analyses in their exceptional events demonstrations. The reviewing EPA Regional offices use similarly resource-intensive approaches to validate these quantitative analyses as they review demonstrations. In some cases, the detailed quantitative approaches have not produced results any better than what could have been achieved with less burdensome measures. Therefore, the EPA is proposing to remove the “but for” regulatory language and focus on the “clear causal relationship” statutory criterion applied to the specific case, using a weight of evidence approach.<sup>17</sup>

In so doing, we propose that in their submittals, air agencies demonstrate by the weight of evidence in the record that the event caused the specific air pollution concentration at issue.<sup>18</sup> Depending on the event characteristics and the case-by-case nature of the evaluation, an air agency may or may not need to provide quantitative analyses or estimates to support the

weight of evidence approach. The EPA will discuss with an air agency the appropriate approach for a given event demonstration during conversations preceding the submittal of a demonstration. For example, when a concentration during an event is higher than any concentration previously observed in the same area and time of year, the air agency will generally not need to quantify the event impact to reach the conclusion that the event “caused” the concentration at issue. However, in cases where the concentrations on non-event days during the same season come close to or exceed the applicable NAAQS, thus providing evidence that non-event pollution sources may produce exceedances of the NAAQS, the EPA would expect an air agency’s clear causal relationship showing to include a quantitative estimate (or range of estimates) of the specific event’s impact on air pollution concentrations, even if uncertain, as a part of a weight of evidence showing alongside other qualitative evidence. Section V.E.3 of this proposal clarifies the EPA’s expectations regarding analyses associated with the “clear causal” criterion.

#### c. Clear Causal Relationship Element

The EPA is proposing to modify the regulatory language in section 50.14(c)(iv) to more clearly indicate, consistent with the CAA directive, the requirement to “demonstrate” versus to merely “provide evidence” that a clear causal relationship must exist between the specific event and the monitored exceedance. The EPA will evaluate this criterion on a weight of evidence basis.

#### d. Affects Air Quality Element

As explained above, the EPA has treated the “affects air quality” element as a distinct criterion that air agencies must meet for data to be excluded, and has expected exceptional events demonstrations to conclude that the “affects air quality” condition has been satisfied. However, after carefully considering Congress’ intent and air agencies’ and the EPA’s experience in implementing the 2007 Exceptional Events Rule, we propose to integrate the phrase “affected air quality” into the clear causal relationship criterion. We believe that separately requiring an air agency to provide evidence to support a conclusion that an event “affects air quality” is unnecessary if we finalize this proposal to require a mandatory clear causal relationship showing. If an air agency demonstrates that an event has a clear causal relationship to an exceedance or violation of a NAAQS,

<sup>16</sup> 72 FR 13570 (March 22, 2007).

<sup>17</sup> The term “weight of evidence” means that the EPA will consider all relevant evidence and qualitatively “weigh” this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, its persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event.

<sup>18</sup> This approach is consistent with language in the preamble to the 2007 Exceptional Events Rule that states, “The final rule permits a case-by-case evaluation, without prescribed threshold criteria, to demonstrate that an event affected air quality.” 72 FR 13569 (March 22, 2007).

<sup>13</sup> The EPA believes that the terminology “specific air pollution concentration” refers to the identified exceedance or violation rather than a specific increment in the measured concentration, which implies quantitative source attribution and a supporting quantitative analysis.

<sup>14</sup> CAA section 319(b)(3)(B)(iv) (emphasis added).

<sup>15</sup> The EPA stated in the preamble to the 2007 Exceptional Events Rule that a “weight of evidence demonstration can present a range of possible concentrations, which is not as technically demanding as justifying a specific adjustment to a measured value.” 72 FR 13570 (March 22, 2007).

then the event has certainly affected air quality. This proposed approach will reduce the time required to prepare demonstrations, reduce their length, result in more understandable demonstrations for the public during the notice-and-comment process, and simplify and expedite the EPA's review process.

#### e. Historical Fluctuations Element

As we indicated in the Interim Exceptional Events Implementation Guidance, we believe that a comparison of the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times is extremely useful evidence in an exceptional events demonstration. The EPA considers these comparisons as part of the evidence available for determining whether an air agency has satisfied the statutory and regulatory "clear causal relationship" criterion. Because preparing this type of comparison is within the ability and resources of every air agency, the EPA proposes to continue to require this type of comparison in every demonstration. However, the EPA is proposing to reword the requirement to prevent misinterpretation that this comparison must show that the concentration in question was "in excess of normal historical fluctuations, including background." This phrase is not clear and has caused confusion and regulatory uncertainty. For example, "fluctuations in concentrations" can convey either day-to-day or hour-to-hour differences in monitored concentrations. These concentration differentials cannot usefully be compared to an absolute concentration (*i.e.*, monitored concentration at a given point in time) because many absolute concentrations will be larger than the differences between concentrations. The phrase "in excess" might be interpreted to mean that the concentration at issue must be higher than all historical concentrations, but the EPA maintains that Congress did not intend this, nor would such an interpretation be reasonable. Concentrations that are exceedances of a standard but are not higher than all concentrations recorded at a particular monitor may be causally connected to an event of the type that Congress clearly identified for treatment as an exceptional event. Finally, the language "including background" is confusing. In many cases, the monitor or monitors intended to represent "background" concentrations are separated from the event-influenced monitoring site by some distance such that the event-influenced monitor and the "background" monitor reflect a

different mixture of emissions sources, which could lead to misinterpretation. Regardless, the EPA sees no clear reason why such "background" concentrations are relevant for analyses associated with provisions in the Exceptional Events Rule.

The change that the EPA is proposing to the text of the 2007 Exceptional Events Rule would require demonstrations to include a comparative analysis of the concentration data alleged to have been affected by an event and data at other times, and would specify certain aspects of the analysis. The change would also make clear that there is no specific "in excess of" relationship between the event-affected data and other data that must be proven, for example that the event-affected data be above a certain percentile point in the annual distribution of data. Section V.E.3 of this proposal contains additional detail regarding the minimum set of statistical analyses that the EPA expects to see in demonstrations.

#### C. What types of ambient concentration data and data uses may be affected by the Exceptional Events Rule?

The CAA language at section 319(b)(3)(B)(iv) requires the Administrator to promulgate regulations that provide that there are criteria and procedures for the governor of a state to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in *determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards*. The implementing language in the 2007 Exceptional Events Rule states at 40 CFR 50.14(a)(1) that air agencies may request that the EPA exclude data showing exceedances or violations of the NAAQS that are directly due to an exceptional event from use in determinations without naming those determinations in that paragraph. The rule at 40 CFR 50.14(b)(1) states that the EPA shall exclude data from use in determinations of exceedances and NAAQS violations where an air agency demonstrates to the EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS. Thus, both the statutory language and the 2007 Exceptional Events Rule use the phrase "in determinations of exceedances and NAAQS violations" with no further explanation.

In this section, we consider the specific types of determinations by the Administrator that should be governed by CAA section 319(b). This issue was

not specifically addressed in the rulemaking that promulgated the 2007 Exceptional Events Rule and consequently has caused some confusion and regulatory uncertainty.

#### 1. Current Situation

The EPA believes that Congress clearly intended the CAA language in section 319(b) to apply to exclusions of ambient data from determinations of whether a NAAQS exceedance or violation occurred at an ambient monitoring site at a particular time in the past. We characterize these exceedances or violations as occurring in the "past" because the process of determining whether an actual exceedance or violation occurred involves reviewing the ambient air monitoring data collected at monitoring sites over some historical timeframe. For example, on December 14, 2012, the EPA promulgated a revised primary annual PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup>, which is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 µg/m<sup>3</sup>.<sup>19</sup> The EPA Administrator made initial area designation decisions for the revised NAAQS in December 2014 based on air quality monitoring data for the most recent period 3-year period, which was 2011 through 2013.<sup>20</sup> Historical, or "past," data were reviewed and assessed to determine whether an exceedance or violation had occurred that would influence a current or future regulatory determination. Determinations of "past" exceedances or violations are key to the EPA's actions to designate or redesignate an area, to initially classify an area for a NAAQS (where classifications apply), to determine if a nonattainment area has attained the NAAQS for which it has previously been designated nonattainment, to determine whether a nonattainment area is eligible for an attainment date extension (where applicable) and, in some cases, to find that a SIP is inadequate and to issue a SIP call. No affected stakeholders with whom the EPA has interacted since 2007 have disputed this interpretation or approach.

It is not as clear whether CAA section 319(b) also means that data should be excluded from determinations of whether a NAAQS exceedance or violation will or is likely to occur in the future. Predictions of future NAAQS violation(s) generally involve reviewing the historical ambient concentration data that are the evident focus of CAA section 319(b), estimating expected

<sup>19</sup> 78 FR 3086 (January 15, 2013).

<sup>20</sup> 80 FR 2206 (January 15, 2015).

future emissions, and then using both of these data sets as inputs to an air quality modeling tool or other analytical approach that extrapolates these data to predict a future outcome. While science supports and the EPA relies on predictions of future NAAQS violations in several parts of the clean air program, such as in the EPA's approval of attainment demonstrations in SIPs, in prevention of significant deterioration (PSD) air permitting programs and in actions to reclassify a moderate PM<sub>10</sub> or PM<sub>2.5</sub> nonattainment area to serious,<sup>21</sup> the fact that these predicted future values rely only in part on historical monitoring data implies that a different standard for data exclusion may be appropriate.

Another interpretation question is whether and under what conditions event-affected data should be excluded from determinations that are based wholly or in part on monitoring data but formally are not determinations of exceedances or violations of the NAAQS. For example, under 40 CFR part 51, subpart H, Prevention of Air Pollution Emergency Episodes, the required content of a state's emergency plan depends on whether the state has experienced air pollution that exceeds a specified threshold level that is well above any NAAQS. Also, under the EPA's guidance, the eligibility of an area for a simplified maintenance plan for PM<sub>10</sub> depends on the difference between the better-than-the-NAAQS air quality in an area and the NAAQS.

To date, the EPA has not issued guidance that explicitly and comprehensively identifies the types of data exclusion that are authorized and required by CAA section 319(b) or that may be otherwise appropriate and permissible. In the 2013 Interim Q&A document, the EPA provided only limited clarification regarding the meaning of "exclude data."<sup>22</sup> Question 14a of the Interim Q&A document notes that when the EPA concurs based on the weight of evidence that an air agency has successfully made the demonstrations referred to in 40 CFR 50.14(a)(2) and (b)(1), then the EPA generally excludes the affected data from the following types of calculations and activities:

- The EPA's AQS does not count these days as exceedances when generating user reports, and does not

include them in design values estimates,<sup>23</sup> unless the AQS user specifically indicates that they should be included, which may be appropriate for non-regulatory applications of interest to the user.<sup>24</sup>

- The EPA accepts the exclusion of these data for the purposes of selecting appropriate background concentrations for PSD air quality analyses<sup>25</sup> and for transportation conformity hot spot analyses.<sup>26</sup>

- The EPA accepts the exclusion of these data for the purposes of selecting appropriate ambient data for projecting future year concentrations as part of a modeled attainment demonstration.

- The data continue to be publicly available, but the EPA's publications and public information statements on the status of air quality in the affected area generally do not reflect these data in any summary statistic of potential regulatory application, unless such inclusion is specifically noted.<sup>27</sup>

Thus, the EPA has maintained that once data are excluded under the Exceptional Events Rule, these same data should be excluded from the above-identified calculations and activities. The EPA has not clearly addressed whether approval for exclusion under the Exceptional Events Rule means that the data may or must be excluded for the purpose of other types of actions that use monitoring data but are not included in the list above. The EPA has also not clearly addressed whether data

<sup>23</sup> The EPA uses design values in many regulatory decisions, including, but not limited to, when designating areas as attainment, nonattainment or unclassifiable for a NAAQS and when determining whether a nonattainment area has attained or is still violating a NAAQS. A design value is a statistic that describes the air quality status of a given location relative to the level of a particular NAAQS. Design values are computed according to the procedures defined in 40 CFR part 50 and published annually by EPA's Office of Air Quality Planning and Standards. Design values are available at <http://www.epa.gov/airtrends/values.html>.

<sup>24</sup> In some cases where the EPA has revised a NAAQS by strengthening it, the default AQS query will exclude data for the more recent, revised NAAQS, but may include concurred data for the historical NAAQS.

<sup>25</sup> If the EPA is the permitting authority, the EPA will propose permits on this basis. If the EPA is commenting on another permitting authority's proposed action, the EPA's comments will be consistent with the determinations in this guidance document and any applicable New Source Review (NSR) permitting and/or modeling guidance.

<sup>26</sup> Transportation conformity hot spot analysis is applicable only to PM<sub>10</sub> and PM<sub>2.5</sub>. "Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas," EPA-420-B-10-040, U.S. EPA Office of Transportation and Air Quality, December 2010, page 98.

<sup>27</sup> These data may be included in statistics intended to describe current status and trends in actual air quality in the area for public information purposes including reporting of the Air Quality Index.

that have *not* been approved for exclusion under the Exceptional Events Rule can nevertheless under some other principle or interpretation be excluded from any of the various types of calculations and activities.

The current situation is further complicated by the fact that the conditions for data exclusion in CAA section 319(b) and the Exceptional Events Rule, while logical when applied to determinations of NAAQS exceedances or violations occurring in the past, may not be logical when applied to predictions of future exceedances or violations. The EPA recognizes, and acknowledged in Question 13 of the Interim Q&A document, that an event may have made a past air concentration significantly higher than it would have been in the absence of the event contribution, and thus elevated an exceedance for a NAAQS pollutant to an even greater degree of exceedance. This same event-influenced concentration may not be eligible for exclusion under the 2007 Exceptional Events Rule because the "but for" criterion is not satisfied because either (1) there would have been a 3-year violation with or without the event or (2) there would not have been a violation either with or without the event. The 2007 Exceptional Events Rule does not explicitly authorize the exclusion of data associated with such an event because the event fails to meet the clear causal relationship criterion and "but for" criterion. Retaining the event-influenced data could, however, have regulatory implications that seem contrary to the purpose of CAA section 319(b). For example, retaining such data in the calculation of the historical design value for a nonattainment area can make it seem that the area needs more emissions reduction to attain the NAAQS than is actually the case, and could lead to the EPA's disapproval of an attainment demonstration that is in fact adequate, and thus require the state to adopt additional emission controls.<sup>28</sup>

As another example, events can make past air concentrations higher without causing an actual NAAQS exceedance or violation. However, retaining such data in the calculation of background concentrations used in air quality analysis for a PSD permit may suggest that there will be a NAAQS violation after construction of a new source and

<sup>28</sup> The attainment demonstration would be adequate in the sense that if a similar event does not occur during the period on which actual attainment will be based, there would be no monitored NAAQS violation, and if a similar event were to occur during that period the event-affected data could be excluded and thus there would be no "official" violation.

<sup>21</sup> Projection of future NAAQS exceedances or violations do not necessarily play a role in reclassification of an ozone nonattainment area to a higher classification level.

<sup>22</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf).



thus could prevent the permitting authority from issuing the permit.<sup>29</sup>

## 2. Proposed Changes

To remove the ambiguities described in the preceding section and to provide greater regulatory certainty, the EPA proposes in regulatory language to interpret the CAA section 319(b) phrase “determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards” to encompass determinations of current<sup>30</sup> or historical NAAQS exceedances/violations or non-exceedances/non-violations and determinations of the air quality “design value” at particular receptor sites when made as part of the basis for any of the following five types of regulatory actions:

- An action to designate or redesignate an area as attainment, unclassifiable/attainment, nonattainment or unclassifiable for a particular NAAQS. Such designations rely on a violation at a monitoring site in or near the area being designated.
- The assignment or re-assignment of a classification category (marginal, moderate, serious, etc.) to a nonattainment area to the extent this is based on a comparison of its “design value” to the established framework for such classifications.
- A determination regarding whether a nonattainment area has actually attained a NAAQS by its CAA deadline.
- A determination that an area has had only one exceedance in the year prior to its deadline and thus qualifies for a 1-year attainment date extension, if applicable.
- A finding of SIP inadequacy leading to a SIP call to the extent the finding hinges on a determination that the area is violating a NAAQS.

For these types of actions, the EPA proposes to interpret the CAA to require that data be excluded only if the requirements of section 319(b) and the Exceptional Events Rule are satisfied. In addition, we propose that when one of these determinations is based on a combination of monitoring data and air quality modeling, the criterion requiring that there be a clear causal relationship between the event and a NAAQS exceedance or violation will apply to the combined estimate of air pollution levels rather than directly to the

monitored background air quality data. That is, the event would not be required to have caused an actual exceedance or violation at the background ambient monitoring site, but rather to have made the critical difference in the combined estimate of air pollution levels (background plus source impact) resulting in a NAAQS exceedance or violation, because the event increased the background levels that are added to the air quality modeling output.

When the EPA designates or redesignates areas as attainment or nonattainment for the NAAQS; initially classifies ozone nonattainment areas as marginal, moderate, serious, severe or extreme; grants a request for a 1-year NAAQS attainment date extension where applicable; or determines whether areas designated nonattainment for the NAAQS have attained the respective NAAQS by the applicable attainment date, it does so based on monitoring data (where available) or modeling of actual air quality, or a combination thereof, as the evidence of the occurrence or non-occurrence of a NAAQS exceedance or violation and, in the case of classification actions, the degree of violation.<sup>31</sup> In the case of reclassifying an ozone nonattainment area to a higher classification, the new classification is based on the design value either at the time of the determination of attainment by the attainment deadline under CAA section 181(b)(2), or at the time of the EPA’s grant of a voluntary request for reclassification from a state under CAA section 181(b)(3).<sup>32</sup> This proposal, if finalized, would in effect apply the exceptional events process in the same way across these related types of determinations and across the NAAQS, which we believe is an appropriate interpretation of the CAA 319(b) phrase “determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards.” For these types of determinations, the EPA proposes to exclude event-affected data only if an air agency satisfies the procedural (*e.g.*, event identification, opportunity for public comment, demonstration submission) and substantive (*i.e.*, clear causal relationship, not reasonably controllable or preventable, and human

activity not likely to recur or natural event) requirements of the exceptional events process. As indicated previously, the EPA has maintained to this point that once data are excluded under the Exceptional Events Rule, these same data also should be excluded from (i) design value estimates and AQS user reports (unless the AQS user specifically indicates that they should be included), (ii) selecting appropriate background concentrations for PSD air quality analyses and transportation conformity hot spot analyses, and (iii) selecting appropriate ambient data for projecting future year concentrations as part of a modeled attainment demonstration. As described below, we intend that EPA approval for exclusion of data under the Exceptional Events Rule continue to mean that the same data may be excluded for the three applications listed in the previous sentence, but that there should be other pathways for exclusion for the second and third of these applications (and others) as well.

This action proposes to require that data exclusion associated with the five actions in the above bulleted list (*i.e.*, initial area designations, classifications, attainment determinations, determinations regarding requests for attainment date extensions and findings of SIP inadequacy leading to a SIP call) must follow the provisions in the Exceptional Events Rule. It does not, however, mean that the EPA would never exclude or agree to exclude event-affected data from other types of regulatory determinations. For example, while the EPA would exclude concurred-upon event-affected data from the five types of regulatory actions discussed in V.C.1, the EPA would *not* exclude these same data when setting priority classifications for emergency plans under 40 CFR 51.150 as the EPA believes that implementing the CAA principle at section 319(b)(3)(A) that “protection of public health is the highest priority” may necessitate that an air agency address in its emergency plan the appropriate planned response for any elevated concentration known to be possible because it has already been observed, although the appropriate type of response may depend on the cause(s) of the elevated concentration. The concept that the EPA does not consider CAA section 319(b) and the revised Exceptional Events Rule to be the necessary or sole governing authorities for *all* data exclusions will be discussed further in upcoming, new draft guidance on excluding (or in some cases not excluding) data, independent of the Exceptional Events Rule, from several

<sup>29</sup> If a similar event were to occur after completion of construction, the event-affected data could be excluded and thus there would be no “official” violation.

<sup>30</sup> The term “current” denotes the determination at issue in the current analysis. In actual practice, such determinations are based on historical data and thus reflect a past actual condition.

<sup>31</sup> The EPA’s initial area designations process also makes use of other information relevant to the CAA criteria for designations, such as pollution contributions between nearby areas.

<sup>32</sup> Reclassification of PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment areas, by contrast, do not exclusively rely on area design values (and thus, past monitored violations) but can also result from the Administrator’s determination that an area cannot practically attain a standard by the attainment date. See CAA section 188(b)(1).

types of determinations and regulatory actions. The EPA is currently developing a supplementary guidance document, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS*, which will describe the appropriate additional pathways that we intend to make available for data exclusion for some monitoring data applications (e.g., predicting future attainment that is the basis for approval of an attainment demonstration in the SIP for a nonattainment area, preparing required air quality analyses in an application for a PSD permit or preparing required air quality analysis for the purposes of transportation conformity). The EPA intends to post the draft guidance on the exceptional events Web site at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events> and expects to finalize the document when we finalize these rule revisions. We intend that this guidance will recommend exclusion of data for PSD, transportation conformity and certain other applications in any situation in which exclusion has already been approved under the Exceptional Events Rule, as well as in applications in which the facts would support exclusion under the criteria of the Exceptional Events Rule even if an EPA determination has not yet been made under the Exceptional Events Rule and in some other situations that we will describe in the guidance.

#### D. What is a natural event?

##### 1. Current Situation

The CAA definition at section 319(b)(1)(iii) specifies that an exceptional event “is an event caused by human activity that is unlikely to recur at a particular location or a natural event.” Thus, the statute limits the expected occurrence frequency of an event caused by human activity as “unlikely to recur” but does not limit the occurrence frequency of a natural event. Natural events may recur, even frequently.<sup>33</sup> Air agencies can request, and the EPA can agree, to exclude data affected by a natural event if an air agency’s demonstration meets the other requirements of the Exceptional Events Rule. Thus, considering whether an

event was a natural event or was caused by human activity is important to the content within and to the approval of a demonstration.

As previously discussed, to be considered an exceptional event, an event, whether natural or anthropogenic in origin, must affect air quality at the affected monitor. 40 CFR 50.1(k) defines a natural event as one in which human activity plays little or no direct causal role in the generation of emissions. In some cases, such as stratospheric ozone intrusions or volcanic eruptions, the EPA recognizes that human activity plays no role in the magnitude of emissions or level of air pollution that occurs. In other cases, past or current human activity does influence the magnitude of emissions and hence the level of air pollution. For example, in high wind dust events, the pollution from the event may originate from a mixture of natural lands (e.g., undisturbed soil), soil that has been disturbed by human activity and has been made more prone to wind-generated dust emissions (e.g., recent construction activity), and materials accumulated and stored by human activity (e.g., sand and gravel facilities).

The EPA generally considers human activity to have played little or no *direct* role in causing emissions if anthropogenic emission sources that contribute to the event emissions are reasonably controlled at the time of the event, regardless of the magnitude of emissions generated by these reasonably controlled anthropogenic sources and regardless of the relative contribution of these emissions and emissions arising from natural sources in which human activity has no role.<sup>34 35</sup> Thus, the event could be considered a natural event. In

<sup>34</sup> For example, if an area affected by a high wind dust event has adequate rules or ordinances for sources of windblown dust (e.g., rules that establish restrictions for operating vehicles on unpaved property, rules that control windblown dust emissions associated with lands disturbed by construction, earthwork and land development) and the air agency can provide evidence of implementation and enforcement, then the EPA would generally consider human activity to have played little or no direct causal role in causing the event-related emissions.

<sup>35</sup> The EPA considers wildfires to be natural events even though some wildfires are initiated by human actions and to some degree the frequency and scale of wildfires may be influenced by prior land management practices. The EPA believes this interpretation best implements the Congressional intent and is a more appropriate approach than expecting air agencies to determine the initial cause of each wildfire of interest and classifying it as natural or anthropogenic based on that cause. In addition, land owners and managers and government public safety agencies are strongly motivated to reduce the frequency and severity of human-caused wildfires and the EPA believes they can be presumed to make reasonable efforts to avoid them.

such cases, the EPA applies the reasonable interpretation that the anthropogenic source had “little” direct causal role. If anthropogenic emission sources that contribute to the event emissions can be reasonably controllable but reasonable controls were not implemented at the time of the event, then the event would *not* be considered a natural event. The EPA explained this concept in the preamble to the 2007 Exceptional Events Rule.<sup>36</sup> However, the rule text did not reflect the identified concept. This has resulted in some regulatory uncertainty as to whether the EPA’s interpretation of the CAA and the 2007 Exceptional Events Rule as described here is appropriate.

##### 2. Proposed Changes

Based on the discussion above, the EPA proposes to revise the definition of natural event to clarify that anthropogenic emission sources that contribute to the event emissions that are reasonably controlled do not play a “direct role” in causing emissions. Thus, an event with a mix of natural emissions and reasonably controlled human-affected emission sources may be considered a natural event. However, an event resulting from *only* reasonably controlled human affected emissions may not be considered a natural event. This proposal is consistent with statements made in the preamble to the 2007 Exceptional Events Rule, and including it in the rule text provides more regulatory certainty to all parties.

When addressing the not reasonably controllable or preventable criterion for this same event type consisting of a mix of natural emissions and human-affected emission sources (e.g., a high wind event affecting both open desert areas and urbanized lands), air agencies must assess reasonable controls for both the contributing natural and anthropogenic sources. While air agencies must “assess” reasonable controls for most types of contributing natural sources because this statutory factor applies to all events, they do not necessarily need to implement controls for these same sources. Additionally, because the rule revisions propose a categorical presumption of not reasonably controllable for wildfires and large-scale, high-energy and/or sudden high wind dust events, “assessing” these events would involve referencing the appropriate regulatory citation. As we explain in more detail in section V.E.2, for natural sources, we do not think that air agencies need to have implemented any controls for windblown dust from never-disturbed,

<sup>33</sup> See as examples, Hawaii’s exceptional events demonstration for volcanic activity affecting PM<sub>2.5</sub> concentrations in 2011–2012 and California Air Resources Board’s demonstration for wildfire events affecting PM<sub>2.5</sub> concentrations in 2008, both available at <http://www2.epa.gov/air-quality-analysis/exceptional-events-submissions-table>.

<sup>36</sup> 72 FR 13565–13566 (March 22, 2007).

large-scale natural landscapes. Therefore, lack of controls on natural sources that contribute to event-related emissions would not disqualify the event from being considered as an exceptional event. When assessing the contribution from anthropogenic sources, similar to the analyses involved in determining whether these same sources play a “direct role” in causing event-related emissions, the air agency should identify the contributing anthropogenic sources, explain why the controls specified in rules or ordinances are reasonable, and provide evidence of implementation and enforcement. Also as explained in section V.E.2, in our view an event is “not reasonably controllable” if an exceedance or violation occurs even when reasonable controls were actually in place and any further control would have been beyond what was reasonable. The EPA intends to consider these aspects when applying the concept of “reasonable controls” on anthropogenic sources to determine whether the event can be considered a natural event and to evaluate the not reasonably controllable or preventable criterion.

With respect to determining whether anthropogenic emission sources that contribute to the event emissions were reasonably controlled at the time of the event, the EPA also proposes to revise the definition of a natural event to indicate that the reasonableness of available controls should be assessed as of the date of the event. The EPA does not believe that information related to the cost and effectiveness of control measures, or related to the frequency of events, that became available to the air agency after the date of the event should affect the assessment of whether anthropogenic sources were reasonably controlled and thus the identification of an event as natural or caused by human activity.

When addressing this criterion as part of an exceptional events demonstration, the EPA recommends that the submitting air agency clearly identify whether the event is natural or was a human activity that is unlikely to recur at a particular location. If purely natural (e.g., lightning-ignited wildfire, volcanic or seismic activity, stratospheric ozone intrusion), the EPA recommends that the submitting air agency identify the purely natural status in the “human activity/natural event” section of its demonstration; provide the type/source of event, the resulting emissions, and the documented frequency of the event; and affirmatively state that in characterizing the event, the submitting air agency has satisfied the human activity/natural event criterion.

#### *E. Technical Criteria for the Exclusion of Data Affected by Events*

As described in section V.B, the EPA proposes to return to the core statutory elements and implicit concepts of CAA section 319(b): That the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event was not reasonably controllable or preventable, and the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. All exceptional events demonstrations, regardless of event type or relevant NAAQS, must address each of these technical criteria. This section describes the EPA’s proposals for rule revisions and guidance regarding each of these technical criteria. Section V.G discusses additional process-related components of exceptional events demonstration packages.

##### 1. Human Activity Unlikely To Recur at a Particular Location or a Natural Event

The concept of recurrence applies to human activity; the statements in this section are not relevant for natural events. Section V.D includes a detailed discussion of a “natural event.”

###### a. Current Situation

According to both the regulatory and statutory definitions, an exceptional event must be “an event caused by human activity that is unlikely to recur at a particular location or a natural event” (emphasis added). For clarity, in this section, the EPA focuses on the language “unlikely to recur at a particular location.”

The “unlikely to recur at a particular location” requirement of CAA section 319(b) does not define “unlikely to recur.” Thus, this language requires interpretation on a case-by-case or event type-by-event type basis. The term “unlikely” implies consideration of the expected future frequency of events similar to the event that has already happened, but does not convey any particular benchmark for what frequency should be low enough to be considered “unlikely.” Also, the term “at a particular location” requires interpretation, as it could refer to the exact area or only to the general area of the event, to the location of the ambient monitoring station or stations that were affected by the event or to the combination of both.

The EPA’s 1986 *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* stated that events can be considered exceptional if they are not expected to

“recur routinely at a given location.”<sup>37</sup> This document did not further define or give specific examples of “routinely.”

The preamble to the 2007 Exceptional Events Rule did not provide specific guidance on the unlikely to recur criterion, except to say that recurrence is event-specific and should be assessed on a case-by-case basis and that in the particular case of prescribed fires a comparison to the natural fire return interval is a relevant consideration for this criterion.

The CAA section 319(b) and the 2007 Exceptional Events Rule do not specifically address temporary, but multi-day or multi-year activities, such as construction projects. However, Question 16 in the Interim Q&A document noted that the 2007 Exceptional Events Rule does not explicitly place a limit on the duration of a single event and that a submitting agency could make a showing that a prolonged activity (e.g., a multi-year road construction project) is a single event that is not likely to recur at the location in question. The Interim High Winds Guidance document addressed recurrence for high wind events, as summarized in section V.F.4 of this document. Other than this, the Interim Exceptional Events Implementation Guidance did not provide any specific guidance on the unlikely to recur criterion.

###### b. Proposed Changes

While we believe that it is appropriate to consider recurrence to be event-specific and for the unlikely to recur criterion to be assessed on a case-by-case basis, we also believe that this proposed action presents an opportunity to clarify certain points. This section provides general clarifications with respect to the meaning of “unlikely to recur.” Section V.F.2 addresses this criterion for wildland fires (specifically prescribed fires on wildland) and section V.F.4 specifically addresses this criterion for high wind dust events. Also, under CAA section 319(b) and the 2007 Exceptional Events Rule, air pollution related to source noncompliance is not an exceptional event regardless of its frequency.

The EPA proposes, as guidance, to recommend the following boundaries on the interpretation of the unlikely to recur criterion. If an event type has not previously occurred within a given air

<sup>37</sup> *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* (the Exceptional Events Policy), U.S. EPA, OAQPS, EPA-450/4-86-007, July 1986.

quality control region (AQCR)<sup>38</sup> in the 3 years preceding the submittal of an exceptional events demonstration, the EPA will consider this to be a “first” event and will generally consider it to be unlikely to recur in the same location. Similarly, a “second” event within the 3 years preceding the submittal of an exceptional events demonstration would also generally be considered unlikely to recur in the same location. If there have been two prior events of a similar type within a 3-year period in an AQCR, that would generally indicate the third event, for which the demonstration is being prepared (or would be prepared), does not satisfy the “human activity that is unlikely to recur at a particular location” criterion and, thus, would not qualify as an exceptional event. The terms “first” and “second” events refer to events that affect the same AQCR, even if they have not affected the same monitor.<sup>39</sup> This proposed guidance is consistent with the approach taken to recurrence in our Interim High Winds Guidance document in which we identified non-recurring events as being less than one event per year in a given area.<sup>40</sup> In the Interim High Winds Guidance, we did not define area other than to differentiate areas by attainment status or jurisdiction (*i.e.*, intrastate versus interstate or international).

The EPA solicits comment on this proposed guidance regarding recurrence at a particular location, specifically the use of an AQCR to define the bounds for an area subject to event recurrence given that some AQCRs may be quite large. The EPA also solicits comments on whether this benchmark of three events in 3 years should be incorporated into the rule text, rather than being provided only as guidance.

The EPA proposes, as guidance, that to satisfy the documentation requirements for the “human activity that is unlikely to recur at a particular location” criterion, the submitting air agency should document and discuss, in a distinct “human activity/natural

event” section of the demonstration, the type/source of event (*e.g.*, a particular type of chemical spill or other industrial accident or a fire in a particular type of structure), the resulting emissions and the documented frequency of the event in the prior 3 years. The demonstration should affirmatively state that in characterizing the event, the submitting air agency has satisfied the “human activity unlikely to recur at a particular location or a natural event” criterion.

## 2. Not Reasonably Controllable or Preventable

The CAA section 319(b) does not restrict the not reasonably controllable or preventable criterion to apply only to events caused by human activity. It also applies to natural events. Accordingly, the Exceptional Events Rule applies this criterion to all types of events. This section discusses the criterion in general terms. We discuss the criterion’s applicability to fire events on wildland in section V.F.2 and to high wind dust events in section V.F.4.

### a. Current Situation

As noted in section V.B of this document, the definition of an exceptional event at 40 CFR 50.1(j) repeats the CAA definition and includes the requirement at section 319(b)(1)(A)(ii) that an exceptional event, whether natural or caused by human activity, is one that “is not reasonably controllable or preventable.” Neither the rule text of the 2007 Exceptional Events Rule nor the preamble to the final rule provided additional clarification regarding this statutory element. Rather, the preamble to the final rule stated, “[w]e are not finalizing more detailed requirements for determining when an event is ‘not reasonably controllable or preventable’ because we believe that such determinations will necessarily be dependent on specific facts and circumstances that cannot be prescribed by rule.”<sup>41</sup> While we maintain that determining whether or not an event is not reasonably controllable or preventable is event-specific and necessarily requires judgment by the air agency and the EPA, we also believe that some concepts regarding this criterion are broadly applicable.

To begin, the statutory requirement that an exceptional event is one that “is not reasonably controllable or preventable” contains two factors: Prevention and control. Within the context of the Exceptional Events Rule, we intend that “prevent” means to stop or avert the event, and “control” means

to reduce the magnitude and impact of event-related emissions. We interpret CAA section 319(b) to mean that to qualify as an exceptional event, the event cannot be reasonably preventable and cannot be reasonably controllable, rather than that only one of the two elements must be satisfied. It would be contrary to the emphasis of section 319(b) on protection of public health if there were no requirement for reasonable control for an event merely because the event could not be reasonably prevented from happening. It is possible for an event to not be reasonably preventable, but to be reasonably controllable.<sup>42</sup> In this case, if emissions were reasonably controlled, then the event could be considered for concurrence as an exceptional event. It is also possible that an event be neither preventable nor its air quality impacts to be controllable to any degree, such as potential increases in SO<sub>2</sub> concentrations associated with volcanic eruptions.

The EPA considers the statutory requirement that an exceptional event be “not reasonably preventable” to mean that if a set of prevention measures *should reasonably have been in place* for anthropogenically-influenced emission sources that contribute to the event emissions, then those measures *must* have been in place for the event to qualify as an exceptional event under the Exceptional Events Rule. Similarly, we consider the statutory requirement that an exceptional event be “not reasonably controllable” to mean that if a set of control measures *should reasonably have been in place* for emission sources that contribute to the event emissions, then those controls *must* have been in place for the event to qualify as an exceptional event under the Exceptional Events Rule. Satisfying the not reasonably controllable element necessitates a showing of reasonable controls. Whether a set of controls constitutes “reasonable controls” is event-, time-, and place-dependent, and involves judgment by the air agency when preparing the demonstration and by the EPA when reviewing the demonstration.<sup>43</sup> We stated in the

<sup>38</sup> Air Quality Control Regions are defined in 40 CFR part 81, subpart B, Designation of Air Quality Control Regions.

<sup>39</sup> The EPA will consider previously flagged exceedances within AQS with their associated descriptions to be “events” regardless of whether the EPA has received or acted on event demonstrations. The EPA also notes that a single event could influence concentrations on multiple days.

<sup>40</sup> See footnote 27 in table 2 of *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA, May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).

<sup>41</sup> 72 FR 13564 (March 22, 2007).

<sup>42</sup> For example, in section V.F.2, we propose that under certain circumstances a prescribed fire may not be reasonably preventable because of the safety or ecosystem benefits that would be foregone, but emissions and air quality impacts from the fire may be reasonably controllable through the application of basic smoke management practices.

<sup>43</sup> The EPA has many resources to help states identify appropriate control technologies and includes links to some of these sources on the Control Strategies Web site available at [http://www3.epa.gov/airquality/aqportal/management/control\\_strategies.htm](http://www3.epa.gov/airquality/aqportal/management/control_strategies.htm).

Interim Exceptional Events Implementation Guidance, and we reiterate in this action, that it may not be reasonable to apply any prevention or control efforts for some events.

In the course of implementing the 2007 Exceptional Events Rule, both the EPA and air agencies have expressed concern regarding the determination of “reasonable” prevention or control efforts for particular events. When an air agency prepares a demonstration, it attempts to show that whatever efforts were made were all that were reasonable to make. When the EPA reviews a demonstration, we are responsible for determining if the demonstration is credible and convincing. The EPA has been unable to make this determination regarding reasonableness for some demonstrations because the content regarding the use and implementation of control measures is insufficient. Given the elasticity of the concept of “reasonable,” it is not surprising that disagreements have arisen. We have in the past few years, particularly since issuing the Interim Exceptional Events Implementation Guidance, worked with states to reach mutual understandings of what efforts are reasonable and to have those efforts in place before events happen. However, situations will likely occur in the future, as they have in the past, in which an assessment of reasonableness must be made retrospectively, when it is too late for the air agency to have applied greater efforts. The EPA recognizes that our action on the air agency’s demonstration may have important regulatory consequences for the area in question.

The EPA has stated that for all types of events, we consider reasonableness in light of the technical information available to the air agency at the time the event occurred. An air agency “caught by surprise” by an event of a given type (or by an unexpected number of such events in a period over which NAAQS compliance is evaluated, typically 3 years) should not be expected to have implemented the same controls prior to an event as an air agency that has been aware that events of a certain type occur with regularity and cause NAAQS exceedances or violations. The EPA anticipates that nonattainment (or maintenance) areas have technical information needed to understand those measures that constitute reasonable control of anthropogenic sources in their jurisdiction for recurring events of the type(s) that cause or contribute to nonattainment (or that did previously). In contrast, the EPA generally does not expect areas identified as attainment, unclassifiable/attainment or

unclassifiable for a NAAQS to have the same understanding or to have adopted the same level of event-relevant controls as areas that are nonattainment (or maintenance) for the same NAAQS.

Also, if an area has been recently designated to nonattainment but is still developing its SIP and has not yet reached a deadline to implement controls, the EPA expects the level of controls that is appropriate for that planning stage.<sup>44</sup> Regardless of attainment status or natural/anthropogenic source contribution, each demonstration package should address the question of reasonable controls within the not reasonably controllable or preventable portion of the demonstration.

The not reasonably controllable or preventable criterion is a source of particular complexity when an event occurs outside the jurisdiction of the state that is requesting that data be excluded. The area outside a state’s jurisdiction may be in an area of Indian country, in another state, or in a foreign country. For these cases, the air agency requesting data exclusion, and other government authorities in the state, generally do not have regulatory authority over those who might have been able to prevent or control the event. Therefore, the EPA believes that event-related emissions that originate outside of the boundaries of the state within which the concentration at issue was monitored are generally “not reasonably controllable or preventable” even if no party has made any effort to control or prevent them. To date, we have advised air agencies that an exceptional events demonstration for such a case must nevertheless explicitly address the question of reasonable efforts towards prevention and control. For these situations, we have suggested template language to the effect that satisfying the not reasonably controllable or preventable element could consist of an air agency stating that because the event occurred outside of its jurisdiction, the not reasonably controllable or preventable criterion is satisfied.

Because the reasonableness of controls for event-related emissions is case-specific, the EPA has not issued guidance that particular controls are

<sup>44</sup> The CAA provides different timeframes for developing and implementing SIPs depending on the NAAQS and the nonattainment area’s classification (e.g., severity of the nonattainment problem). The EPA recognizes that within the SIP development and implementation process, some measures may be implemented relatively quickly (e.g., transportation conformity, new source review) whereas other programs, such as development or rules for particular source types, can take time and involve state legislative processes.

reasonable or are not reasonable. The Interim High Winds Guidance document indicates sources of information that identify measures that an air agency and the EPA should consider. In that guidance, we said that if the EPA has approved a SIP revision to windblown dust controls within the past 3 years of the event, then an air agency can rely on the SIP-approved controls to satisfy a portion of a “prospective controls analysis.”<sup>45</sup> By this, we meant that we would agree with the air agency that for any high wind dust events in the next 3 years, implementation of the controls in the SIP would be sufficient to establish that those events are not reasonably controllable. In our discussions during the development of these proposed revisions of the Exceptional Events Rule, air agencies have urged us to give more deference to relevant controls in the EPA-approved SIPs. Some air agencies have recommended that we always accept that the controls in the approved SIP are all that should have reasonably been in place at the time of the event (and/or that we accept no controls if there are no controls in the approved SIP). We understand at least some of those recommending this approach to mean it to apply both to nonattainment and maintenance areas that have approved attainment or maintenance plans and to areas whose SIPs have been approved only with respect to less specific infrastructure SIP requirements.

#### b. Proposed Changes

The EPA generally plans to continue its past interpretations with respect to the “not reasonably controllable or preventable” criterion. We propose to codify in regulatory language key aspects of these past interpretations to reduce uncertainty for air agencies and other parties. Specifically, we are proposing changes to the text of the Exceptional Events Rule to indicate that:

- The not reasonably controllable or preventable criterion has two prongs, prevention and control. An air agency must demonstrate that an event was both not reasonably preventable and not reasonably controllable.
- An event is not reasonably preventable if reasonable measures to prevent the event were applied at the time of the event.

<sup>45</sup> *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).

- An event is not reasonably controllable if reasonable measures to control the impact of the event on air quality were applied at the time of the event.

- The reasonableness of measures is case-specific and is to be evaluated in light of information available at the time of the event.

- No case-specific justification is needed to support the “not reasonably controllable or preventable” criterion for emissions-generating activity that occurs outside of the boundaries of the state (or tribal lands) within which the concentration at issue was monitored.<sup>46</sup>

With regard to the last of these proposed rule text changes, the EPA maintains that it is not reasonable to expect the downwind air agency (*i.e.*, the state or tribe submitting the demonstration) to have required or persuaded the upwind foreign country, state or tribe to have implemented controls on sources sufficient to limit event-related air concentrations in the downwind state or tribal lands, nor does the EPA believe that Congress intended to deny the downwind state or tribe relief in the form of data exclusion within the context of the Exceptional Events Rule. Submitting (downwind) air agencies will, however, need to assess potential contribution from local and state-wide sources and submit evidence and statements supporting the other exceptional events criteria (*i.e.*, clear causal relationship and human activity unlikely to recur or a natural event).

In addition to proposing to codify the five current interpretations listed above, with regard to this criterion, we are proposing and requesting comments on changes from our current interpretations and changes in the rule text that are explained below in more detail.

*Natural Events and Natural Sources.* The not reasonably controllable or preventable criterion applies to natural events, including natural sources and any contributing anthropogenic sources and activities.<sup>47</sup> The EPA proposes, as guidance, that to satisfy the not reasonably controllable or preventable

criterion for natural events, air agencies should identify in their demonstration the origin and evolution of the natural event, describe any local efforts to prevent the event and explain how any efforts to limit the duration, intensity or extent (and thus the emissions) from the event were reasonable.

Large-scale natural landscapes, such as deserts, are one type of natural source from which emissions can originate and contribute to event-related emissions. We propose, as guidance for these types of natural sources, that air agencies would not need to have implemented any controls for windblown dust from never-disturbed, large-scale natural landscapes. If such a landscape is the only source of wind-blown dust, the EPA would consider the event in this scenario to be not reasonably controllable or preventable regardless of the past frequency of similar events. Other such cases include volcanic releases of SO<sub>2</sub> and stratospheric ozone intrusions. In these cases, the air agency should affirmatively state that the not reasonably controllable or preventable criterion is satisfied by the fact that the natural event was of a character that could not have been prevented or controlled and that there were no contributions of event-related emissions from anthropogenic sources.

We also propose, as guidance, for events other than high wind dust events and wildfire on wildland (for which the proposed rule revisions take an equivalent approach), to consider the direct effects of remote, large-scale, high-energy and/or sudden natural events to generally be not reasonable to prevent or control.<sup>48</sup> This concept, as it relates specifically to proposed rule changes addressing high wind dust events, is discussed in more detail in section V.F.4. Section V.F.2.c discusses how the same concept relates to proposed rule changes addressing the “not reasonably controllable or preventable” criterion for wildfire on wildland.

There may, however, be natural events or activities associated with the

clean-up following a natural event where some type of control effort would be reasonable. For example, while an initial volcanic dust event may not be controllable or preventable, it may be reasonable to implement a street cleaning program to control the subsequent re-entrainment of dust deposited on roadways after the eruption. Also, air quality impacts during the active period of a weather disaster event generally cannot be prevented or controlled and it would be reasonable for no effort to have been made to do so. However, air agencies should apply reasonable controls, as applicable, in the recovery period after the event (*e.g.*, during the removal or incineration<sup>49</sup> of debris following a hurricane or tornado). There may also be smaller scale natural sources and events for which some control actions would be reasonable. We request comment on additional general and event-specific recommendations that would be consistent with the CAA and the revised Exceptional Events Rule regarding natural events and sources that the EPA could include in guidance to provide more certainty and allow air agencies to efficiently prepare demonstrations.

*The Role of Past Occurrences.* When assessing the controls that *should reasonably have been in place* in light of information available at the time of the event, both the air agency and the EPA should consider the then-known frequency and severity of recurring events of the same type as both characteristics should affect decisions regarding those measures that constitute reasonable controls. A measure may not be reasonable when the event type and severity was known to occur infrequently, but such measures may be reasonable if that event type and severity occurs frequently, because there are greater (more frequent) benefits to balance against the cost of implementation. If the event was the area’s first experienced event of this type, then the submitting air agency would note that fact. The air agency could then rely on measures in the SIP and other controls in place at the time of the event, if any, to satisfy the not reasonably controllable or preventable criterion because, at the time of the event, the air agency did not have a basis for understanding the possible need for better controls for this type of event. If, however, the area has

<sup>46</sup> Under the CAA, the EPA generally considers a state (not including areas of Indian country) to be a single responsible actor. Accordingly, neither the EPA nor the 2007 Exceptional Events Rule provides special considerations for *intrastate* scenarios when an event in one county affects air quality in another county in the same state, assuming that the event occurs on land subject to state authority (versus tribal government authority). The EPA expects controls appropriate for the designation status of the county (or portion of the county) in which the emissions originate.

<sup>47</sup> An event with a significant contribution from anthropogenically-influenced emissions sources that have not themselves been reasonably controlled cannot be considered a natural event subject to this provision.

<sup>48</sup> By “remote” events, we mean events that occur in locations where the application of control measures is either cost-prohibitive or presents unreasonable risks to worker safety because of the distance of the source from logistical staging areas, or absence of roads and/or location on rough or steep terrain. By “large-scale” we mean a regional event that involves a significant expanse of land and/or affects all/most monitors in an area. “High-energy” means an event involving levels of kinetic energy that feasible human efforts cannot absorb or redirect. Example large-scale and/or high-energy events might include seismic events, hurricanes, tornadoes and “haboobs” in the southwest where sustained wind speeds can exceed 40 mph and generate walls of dust several miles wide and more than a mile high.

<sup>49</sup> When addressing reasonable controls for the incineration of debris associated with the recovery period following a natural disaster, air agencies may want to consider, as appropriate, the basic smoke management practices discussed in more detail in section V.F.2.d of this proposal.

previously experienced events of the type that are the focus of the demonstration, then the air agency has a basis for understanding the possible need for better controls.<sup>50</sup>

We note that this consideration of past recurrence when determining what controls would have been sufficient to satisfy the not reasonably controllable or preventable criterion is not the same as the consideration of the likelihood of future recurrence for the purposes of the unlikely to recur criterion. Past experiences are a general guide to future likelihood but the EPA recognizes that future recurrence may follow a different pattern and may necessitate new measures to prevent events of a given type.

*The Role of the EPA-approved SIP as the Benchmark for Reasonable Measures—In General.* As already mentioned, some air agencies have urged us to defer to relevant controls in EPA-approved SIPs as always sufficient to satisfy the not reasonably controllable or preventable criterion. The EPA could conceivably give “deference” to several different types of SIPs. CAA section 110(a)(1) and 110(a)(2) requires every state to develop and submit to the EPA an “infrastructure SIP” for each NAAQS within 3 years of the promulgation of a new or revised NAAQS. Infrastructure SIPs address a number of CAA requirements, including the requirement to contain emission limits to ensure attainment and maintenance of a NAAQS. However, under the EPA’s interpretation of these CAA sections, infrastructure SIPs are not required to include attainment or maintenance demonstrations and are not required to demonstrate that the controls on particular sources are “reasonable.” Thus, in general, EPA-approved infrastructure SIPs do not necessarily constitute a robust assessment of those controls that are reasonable to have in place to address air quality impacts from particular types of events that may become the focus of exceptional events demonstrations.

In contrast, states with areas designated as nonattainment for a NAAQS must prepare attainment plan SIPs, which must include an attainment demonstration and reasonably available control measures (RACM), among other

requirements.<sup>51</sup> Attainment plans for serious PM<sub>10</sub> or PM<sub>2.5</sub> areas must also contain best available control measures (BACM). When a nonattainment area reaches attainment, it may be redesignated to maintenance area status if it has implemented all applicable nonattainment area requirements and obtains the EPA’s approval for a maintenance plan for a 10-year period. Thus, in both maintenance and nonattainment areas with approved attainment plan SIPs, the air agency and the EPA will have considered what controls are necessary and reasonable to provide for attainment, based on information available at the time of plan development and approval.

Taken to its furthest limit, the deference recommended by some air agencies would mean that the EPA would always approve a state air agency assertion that the control measures in a SIP that has received full approval by the EPA as meeting currently applicable requirements related to the event-relevant NAAQS constituted the reasonable set of controls for the event in question and thus the event was not reasonably controllable or preventable. We believe that this degree of deference could, in some cases, result in the approval for data exclusion contrary to CAA requirements. Deference to the measures in an EPA-approved SIP is not always appropriate because EPA approval at some time in the past does not necessarily mean that (1) the control measures in a current SIP address all event-relevant sources of current importance, (2) the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP are the same measures that were known and available at the time of a more recent event, or (3) that conditions in the area have not changed in a way that would affect the approvability of the same SIP if it newly needed the EPA’s approval. However, we believe that it may be consistent with the CAA to revise the Exceptional Events Rule to identify the conditions under which the EPA and air agencies can rely upon measures in an EPA-approved SIP to satisfy the not reasonably controllable or preventable criterion. To clarify these scenarios, the EPA is proposing, and discusses below, various combinations of rule provisions and guidance for areas of different designation status.

The best time for air agency and federal officials to exchange both technical information and views on the

balance between costs and benefits related to the sufficiency of reasonable controls is before an event happens. To avoid the EPA’s retrospective second guessing of an air agency’s consideration of information available to it before an event occurs, we have identified and described below several proposals, which would apply when an affected air agency and the EPA have *not* reached a mutual understanding regarding reasonable controls prior to an event.

*The Role of the EPA-approved SIP in Nonattainment and Maintenance Areas.* To satisfy the not reasonably controllable or preventable criterion for nonattainment or maintenance areas, the EPA proposes to establish by rule a non-rebuttable presumption that, during a 5-year window (or, alternatively another appropriate timeframe) following approval of an attainment plan or maintenance plan SIP during which no subsequent new obligation for the air agency to revise the SIP has arisen, the control measures included in the SIP that are specific to the relevant pollutant, sources and event type are sufficient for purposes of the not reasonably controllable or preventable criterion.<sup>52</sup> The EPA believes that 5 years is an appropriate timeframe upon which to rely for SIP deference for several reasons. As noted earlier, deference to the measures in an EPA-approved SIP is not always appropriate because EPA approval at some time in the past does not necessarily mean that (1) the control measures in a current SIP address all event-relevant sources of current importance, (2) the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP are the same measures that were known and available at the time of a more recent event, or (3) that conditions in the area have not changed in a way that would affect the approvability of the same SIP if it newly needed the EPA’s approval. A 5-year window provides a reasonable timeframe under which to evaluate the above-identified potential changes. Additionally, as we discuss in section V.E.3 of this proposal, we encourage the use of 5 years of data when developing analyses to support the clear causal relationship criterion because we believe that 5 years of ambient air data represent the range of “normal” air quality.

The EPA would evaluate the not reasonably controllable or preventable

<sup>50</sup> Because a state is considered a single responsible entity for purposes of SIP development and implementation, there may be state governmental authorities whose knowledge of the need for an availability of controls at the time of the event is also relevant, particularly for in-state sources outside the geographic area covered by the air agency’s regulatory authority.

<sup>51</sup> Marginal ozone nonattainment areas are exceptions because they are not required to submit attainment demonstrations.

<sup>52</sup> A request for data exclusion must also show that the event was not a result of noncompliance with any existing state or local laws or rules that have not been incorporated into the SIP.

criterion on a case-by-case basis for those demonstrations involving an event affecting a nonattainment or maintenance area with a SIP last approved more than 5 years prior to the submittal of the subject demonstration. Because the issue of deference to a SIP is most often applicable for high wind events, section V.F.4 further illustrates this proposal.

*The Role of the EPA-approved SIP in Attainment, Unclassifiable/Attainment or Unclassifiable Areas.* Attainment, unclassifiable/attainment and unclassifiable areas should have EPA-approved infrastructure SIPs in place that the EPA approved within a few years following the promulgation of a new or revised NAAQS. Infrastructure SIPs for the 1987 PM<sub>10</sub> NAAQS are likely to be many years old, while infrastructure SIPs for ozone, PM<sub>2.5</sub>, 1-hour SO<sub>2</sub> and 1-hour NO<sub>2</sub> have been approved more recently.<sup>53</sup> In addition to the EPA-approved infrastructure SIPs, these areas may have in place other relevant state or local laws and rules, a natural events action plan, an SMP and/or other programs based on voluntary participation.

Because the development and the EPA's review of infrastructure SIPs typically do not involve a robust assessment of needed measures to prevent or control the effects of particular types of events and because even in the absence of a pending SIP call the SIP may not reasonably address events of importance, the EPA does not propose to establish in rule text or in guidance any form of general deference to the SIP in attainment, unclassifiable/attainment or unclassifiable areas. The EPA will review exceptional events demonstrations on a case-by-case basis, applying the Exceptional Events Rule and the EPA's guidance. A case-by-case review may conclude that the measures that were in place under the SIP, a natural events action plan, an SMP or other state or local programs were sufficient or insufficient to satisfy the not reasonably controllable or preventable criterion.

If the air agency has historically documented recurring events, then the EPA would expect the submitting air agency to identify any anthropogenic emission sources that contribute to the event emissions and specifically document the controls that were in place for these sources at the time of the event. It is possible that the air agency may not be able to make a sufficient showing for the not reasonably controllable or preventable criterion if it

has not implemented reasonable controls for anthropogenic sources that contribute to recurring events. In this case, the EPA Regional office may not be able to concur with an air agency's request for data exclusion. If the air agency has no such control plans and has no history of recurring events, then the air agency would note this in the not reasonably controllable or preventable portion of its demonstration and would rely on the fact that at the time of the event, the air agency did not have a basis for understanding the possible need for better reasonable controls.

Note that in section V.G.7 of this proposed action, "Timing of the EPA's Review of Submitted Demonstrations," the EPA proposes to work with air agencies to prioritize exceptional events determinations that affect near-term regulatory decisions. In an attainment, unclassifiable/attainment or unclassifiable areas, the only likely non-discretionary regulatory action would be an initial designation under a new or revised NAAQS. Possible discretionary actions include a redesignation under a long-standing NAAQS or a SIP call. Under its planned prioritization approach, the EPA would not expect to act on demonstrations for events in an attainment, unclassifiable/attainment or unclassifiable areas unless the area could become nonattainment under a new or revised NAAQS, the area is the subject of a planned EPA discretionary redesignation for a long-standing NAAQS where the approval of a demonstration affects the basis for the redesignation, or the area becomes the subject of another EPA discretionary action (e.g., a SIP call at the initiative of the EPA or in response to a petition) that hinges on the approval of a demonstration.

*The Role of Prior Communications with the EPA in Case-Specific Assessments for Not Reasonably Controllable or Preventable.* As already stated, the EPA believes that an air agency must include in its exceptional events demonstration a retrospective assessment of whether an event was not reasonably controllable or preventable. The air agency should base this assessment on information available to relevant authorities (e.g., the air agency submitting the demonstration and potentially other government authorities in the state, for example an upwind air quality control district where the event occurred) that could have implemented measures to prevent or control the event and its effects prior to and during the event. We are proposing to adopt the following approach as guidance to air agencies submitting demonstrations that will be subject to a case-specific

assessment (i.e., in situations other than when deferring to a nonattainment or maintenance plan SIP).

To satisfy the not reasonably controllable or preventable criterion in a case-specific assessment, the EPA proposes to consider communications between the EPA and the air agency when assessing "reasonableness" as part of assessing the technical information available to the air agency at the time the event occurred and what *should reasonably have been in place* at the time of the event for anthropogenic emission sources that contribute to the event emissions. It is not the EPA's intent to retroactively apply its current judgments about the reasonableness of controls for past events. However, it would also be inappropriate for an air agency to fail to respond to the EPA's recommendations prior to an event and then claim later in an event demonstration that it was unaware of a reasonable control issue.

The EPA recognizes that regulations and an area's planning status are often evolving and changing. The EPA may have recently promulgated new or revised federal rules requiring controls on particular sources or promulgated a new or revised nationally applicable standard that will ultimately result in an air agency's adoption of new control measures. The planning process to implement these new standards (e.g., the SIP or maintenance plan approval process) can be lengthy, sometimes spanning several years and involving multiple rounds of formal and informal communications between the affected air agency and the EPA regarding the appropriateness and completeness of planning elements. In some cases, discussion of issues regarding appropriate controls, including what controls would constitute "reasonable" controls for exceptional events purposes, are part of this iterative communications process. The EPA solicits comment on what form of communication (short of a SIP call) would be most effective in conveying the EPA's views to the affected air agency and whether this approach would be most appropriately addressed through guidance or regulatory text.

*Prospective Agreement on Assessments of Not Reasonably Controllable or Preventable.* In the Interim High Winds Guidance, the EPA suggested that an air agency could develop an assessment showing that the controls in place for a particular type of event, or a planned enhancement of those controls, were sufficient to meet the not reasonably controllable or preventable criterion, and then obtain the EPA's review and concurrence with

<sup>53</sup> The NAAQS not mentioned here have rarely presented exceptional events issues.



the assessment prior to more events of that type occurring. This prospective approach would reduce disagreements that might otherwise occur over later retrospective assessments. To date, most air agencies that face recurring event issues have not pursued this option, but the EPA will work with any air agency expressing an interest in pursuing this approach.

*Summary of Requests for Comments Regarding Not Reasonably Controllable or Preventable.* The EPA solicits comment on the following clarifications to the “not reasonably controllable or preventable” criterion:

- The EPA solicits comment on recommending as guidance that when addressing the “not reasonably controllable or preventable” criterion within an exceptional events demonstration, air agencies should: (1) Identify the natural and anthropogenic sources of emissions causing and contributing to the event emissions, including the contribution from local sources, (2) identify the relevant SIP or other enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable.<sup>54</sup> In identifying natural and anthropogenic sources, the air agency should assess both potentially contributing local/in-state and upwind sources. We also request comment on whether we should revise the rule text to require these elements in a demonstration.

- The EPA proposes to codify rule language to specify that no case-specific justification is needed to support the “not reasonably controllable or preventable” criterion for emissions-generating activity that occurs outside of the boundaries of the state (or tribal lands) within which the concentration at issue was monitored.

- The EPA solicits comment on specific guidance or rule requirements regarding what constitutes reasonable control of particular natural events and sources.

- The EPA proposes to codify in rule language that, provided the air agency is

not under an obligation to revise the SIP, the EPA would consider (*i.e.*, give deference to) enforceable control measures implemented in accordance with a state implementation plan, approved by the EPA within 5 years of the date of a demonstration submittal, that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to event-related emissions.

- The EPA proposes to codify in rule language the time period for such deference to be 5 years from the date of the SIP approval measured to the date of an event at issue, but is taking comment on whether and what other timeframes might be appropriate. To the extent an alternative timeframe might be appropriate, comments should explain how it would address the criteria provided above in support of the 5-year timeframe.

- The EPA proposes to consider communications and planning status when assessing the status of reasonable controls and proposes to do this through guidance. The EPA solicits comment on methods to definitively identify the status of communications and planning efforts (*e.g.*, formal correspondence or other documentation, timelines for responding) and whether this approach would be more appropriately addressed through rule language.

### 3. Clear Causal Relationship Supported by a Comparison to Historical Concentration Data

#### a. Current Situation

The CAA at section 319(b)(3)(B)(ii) requires that “a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.” The clear causal relationship criterion establishes causality between the event and a measured exceedance or violation of a NAAQS. As stated in the preamble to the 2007 Exceptional Events Rule, given the directive in CAA section 319(b)(3)(B)(ii), it would be unreasonable to exclude data affected by an exceptional event simply because of a trivial contribution of an event to air quality.<sup>55</sup> The EPA does, however, recognize that distinguishing trivial contributions from more significant contributions to an exceedance may be

difficult. As with the other exceptional events criteria, the EPA has used a weight of evidence approach when reviewing analyses to support a causal relationship between an event and a monitored exceedance.

Showing that an event and elevated pollutant concentrations occurred simultaneously may not establish causality. The clear causal relationship section of an exceptional events demonstration should include analyses showing that the event occurred and that emissions of the pollutant of interest resulting from the event were transported to the monitor(s) recording the elevated concentration measurement(s). The example analyses to support the clear causal relationship criterion, shown in Table 1 and first summarized in the EPA’s Interim Exceptional Events Implementation Guidance, are generally appropriate analyses for most event types.<sup>56</sup> The EPA does not expect air agencies to include all of the evidence and analyses identified in the table below, but rather to use available information to build a weight of evidence showing. The EPA may accept limited analyses (*e.g.*, a comparison to historical concentrations in combination with one or two additional analyses from Table 1) for areas whose monitored ambient air concentrations are generally well below the NAAQS on non-event days. Additional analyses are beneficial if they establish a different facet of the event and/or if they are used in combination with other analyses with limited data. For example, the EPA expects that areas prone to frequent elevated ozone (or other pollutant) concentrations, such as nonattainment areas, to have more sophisticated air quality prediction tools. We would expect these areas could use these tools when supporting an exceptional events demonstration and developing analyses to support a clear causal relationship. Additionally, photochemical or

<sup>56</sup> For purposes of summarizing example clear causal relationship analyses in one place, the EPA has included an entry for the comparison to historical concentrations showing in Table 1. The EPA notes that although the Interim High Winds Guidance and the Interim Q&A document discussed the comparison to historical concentrations showing, neither of these guidance documents presented this showing as part of the clear causal relationship. See specifically *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf) and *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eeer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eeer_qa_doc_5-10-13_r3.pdf).

<sup>54</sup> The EPA generally expects evidence that the controls determined to be reasonable, if any, were effectively implemented and appropriately enforced. This assessment of local sources should include a review and description of any known nearby facility upsets or malfunctions that could have resulted in emissions of the relevant pollutant(s) that influenced the monitored measurements on the day(s) of the claimed events. In the case of a high wind dust event, for example, for the identified potentially contributing local and upwind sources, the analysis should explain how significant dust emissions occurred despite having reasonable controls in place (*e.g.*, that controls were overwhelmed by high wind), if appropriate.

<sup>55</sup> 72 FR 13569 (March 22, 2007).

regression modeling analyses may be beneficial in situations where the causality between the event and a measured exceedance of a NAAQS is not clearly established with evidence and analyses identified in Table 1. For example, if a fire occurs during the normal high ozone season and the ozone

level associated with the fire is in the range of otherwise-occurring ozone levels and/or only slightly above the ozone NAAQS, the causal relationship between the fire and the exceedance or violation may not be clear. In such a situation, modeling may produce a specific estimate of the ozone

contribution from the fire. Air agencies should discuss with their EPA Regional office those types of analyses that may be adequate to satisfy the weight of evidence requirement in individual exceptional events demonstrations.

TABLE 1—EXAMPLE CLEAR CAUSAL RELATIONSHIP EVIDENCE AND ANALYSES

Example of clear causal relationship evidence	Types of analyses/information to support the evidence
Comparison to Historical Concentrations .....	Analyses and statistics showing how the observed event concentration compares to the distribution or time series of historical concentrations of the same pollutant.
Occurrence and geographic extent of the event .....	Special weather statements, advisories, news reports, nearby visibility readings, measurements from regulatory and non-regulatory (e.g., special purpose, emergency) monitoring stations throughout the affected area, satellite imagery.
Transport of emissions related to the event in the direction of the monitor(s) where the measurements were recorded.	Wind direction data showing that emissions from sources identified as part of the “not reasonably controllable or preventable” demonstration were upwind of the monitor(s) in question, satellite imagery, monitoring data showing elevated concentrations of other pollutants expected to be in the event plume.
Spatial relationship between the event, sources, transport of emissions and recorded concentrations.	Map showing likely source area, wind speed/direction and pollutant concentrations for affected area during the time of the event, trajectory analyses.
Temporal relationship between the event and elevated pollutant concentrations at the monitor in question.	Hourly time series showing pollutant concentrations at the monitor in question in combination with wind speed/direction data in the area where the pollutant originated/was entrained or transported.
Chemical composition and/or size distribution (for PM <sub>2.5</sub> to PM <sub>10</sub> ) of measured pollution that links the pollution at the monitor(s) with particular sources or phenomenon.	Chemical speciation data from the monitored exceedance(s) and sources, size distribution data.
Comparison of event-affected day(s) to specific non-event days .....	Comparison of concentration and meteorology to days preceding and following the event, comparison to high concentration days in the same season (if any) without events, comparison to other event days without elevated concentrations (if any), comparison of chemical speciation data.

As explained in additional detail in the EPA’s Interim Exceptional Events Implementation Guidance, what has previously been called the “historical fluctuations” showing (*i.e.*, now referred to as the comparison to historical concentrations) consists of analyses and statistics showing how the observed event-affected concentration compares to the distribution or time series of historical concentrations of the same pollutant.

A demonstration may be less compelling if some evidence is inconsistent with the description of how the event caused the exceedance. For example, if an air agency describes an event as a *regional* dust storm or wildfire, then the EPA anticipates that most or all monitors within the same *regional scale* to be similarly affected by the event. That is, the EPA expects that the demonstration elements and factors (*e.g.*, clear causal relationship, reasonable controls, meteorology, wind speeds) would also support the case for a *regional* event. Comparison of concentrations and conditions at other monitors could thus be very important for the demonstration of a clear causal

relationship. Alternatively, eliminating plausible non-event causes may also support a causal relationship between the event and the elevated concentration.

The EPA has been recommending that the clear causal relationship section of the demonstration should conclude with this type of statement: “On [day/time] an [event type] occurred which generated pollutant X or its precursors resulting in elevated concentrations at [monitoring location(s)]. The monitored [pollutant] concentrations of [ZZ] were [describe the comparison to historical concentrations including the percentile rank over an annual (seasonal) basis]. Meteorological conditions were not consistent with historically high concentrations, etc.” and “Analyses X, Y and Z support Agency A’s position that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation and thus satisfies the clear causal relationship criterion.”

b. Proposed Changes

As previously noted, the EPA is proposing to revise the 2007 Exceptional Events Rule text as follows:

- To move the “clear causal relationship” element into the list of criteria that explicitly must be met for data to be excluded
- To subsume the “affects air quality” element into the “clear causal relationship” element
- To remove the term “historical fluctuations” and replace it with text referring to a comparison to historical concentrations
- To clarify that the comparison to historical concentrations is not a fact that must be proven
- To clearly identify the types of analyses that are necessary and sufficient in a demonstration to address the comparison to historical concentrations
- To remove the “but for” element (as discussed in section V.B.2)

Additionally, the EPA proposes to reiterate in guidance the example analyses to support the clear causal relationship criterion, shown in Table 1 above, and first summarized in the

EPA’s Interim Exceptional Events Implementation Guidance. As noted previously, the EPA does not expect air agencies to include all of the evidence and analyses identified in Table 2 below, but rather to use available information to build a weight of evidence showing.

The EPA’s rationale for proposing the previously identified changes to the clear causal relationship criterion is presented in section V.B. The remainder of this section focuses on the types of analyses that an air agency must provide in its demonstration to make the comparison to historical concentrations. As noted in the Current Situation section, the EPA has included an entry in Table 1 for the comparison to historical concentrations showing.

The comparison to historical concentrations, referred to as the “historical fluctuations” showing in the 2007 Exceptional Events Rule and the Interim Exceptional Events Implementation Guidance, is a requirement in the 2007 Exceptional Events Rule but it is not a statutory

requirement. The EPA’s intent with this regulatory element was to require air agencies to present event-influenced concentration data along with historical data and to quantify the difference, if any, between the event and the non-event concentrations. Comparing event-influenced concentrations to historical concentrations bolsters the weight of evidence within the clear causal relationship determination. The EPA proposes to re-phrase and incorporate the current regulatory requirement at 40 CFR 50.14(c)(3)(iv)(C), which requires that a demonstration to justify data exclusion provide evidence that “[t]he event is associated with a measured concentration in excess of normal historical fluctuations, including background,” within the “clear causal relationship” criterion. In using this approach, we propose to remove from the regulatory text the “in excess of normal historical fluctuations, including background” phrase and to subsume the concept of historical comparisons into what will effectively be a “completeness” requirement within the

“clear causal relationship” criterion. As noted above, we specifically propose to remove the phrase “in excess of normal historical fluctuations, including background” as we believe this language is vague and provides no additional value to historical concentration comparisons.

To aid the EPA’s review, reduce our need to request additional information from air agencies and facilitate our understanding of the air agency’s position, we are proposing rule text changes to indicate that an air agency submitting a demonstration must provide the following types of statistics, graphics and explanatory text regarding comparisons to past data. The rule change would also indicate that this information is sufficient to satisfy the rule’s requirement regarding the comparison to historical concentration data. Table 2 below identifies appropriate analyses and examples for comparing event-related concentrations to historical concentrations within the clear causal relationship criterion.

TABLE 2—EVIDENCE AND ANALYSES FOR THE COMPARISON TO HISTORICAL CONCENTRATIONS

Historical concentration evidence	Types of analyses/supporting information	Required or optional?
1. Comparison of concentrations on the claimed event day with past historical data.	<p><i>Seasonal</i> (appropriate if exceedances occur primarily in one season, but not in others).</p> <ul style="list-style-type: none"> <li>• Use all available seasonal data over the previous 5 years (or more, if available).</li> <li>• Discuss the seasonal nature of pollution for the location being evaluated.</li> <li>• Present monthly maximums of the NAAQS relevant metric (<i>e.g.</i>, maximum daily 8-hour average ozone or 1-hr SO<sub>2</sub>) vs monthly or other averaged daily data as this masks high values.</li> </ul> <p><i>Annual</i> (appropriate if exceedances are likely throughout the year).</p> <ul style="list-style-type: none"> <li>• Use all available data over the previous 5 years (or more, if available).</li> </ul> <p><i>Seasonal and Annual Analyses</i></p> <ul style="list-style-type: none"> <li>• Provide the data in the form relevant to the standard being considered for data exclusion.</li> <li>• Label “high” data points as being associated with concurred exceptional events, suspected exceptional events, other unusual occurrences, or high pollution days due to normal emissions.</li> <li>• Describe how emission control strategies have decreased pollutant concentrations over the 5-year window, if applicable.</li> <li>• Include comparisons omitting known or suspected exceptional events points, if applicable.</li> <li>• See examples at <a href="http://www.epa.gov/ttn/analysis/docs/IdeasforShowingEEEvidence.ppt">http://www.epa.gov/ttn/analysis/docs/IdeasforShowingEEEvidence.ppt</a> and Question 3 in the Interim Q&amp;A document provides additional detail. <sup>a</sup></li> </ul>	<p><i>Required</i> seasonal and/or annual analysis (depending on which is more appropriate).</p>
2. Comparison of concentrations on the claimed event day with a narrower set of similar days.	<ul style="list-style-type: none"> <li>• Include neighboring days at the same location (<i>e.g.</i>, a time series of two to three weeks) and/or other days with similar meteorological conditions (possibly from other years) at the same or nearby locations with similar historical air quality along with a discussion of the meteorological conditions during the same timeframe. <sup>b</sup></li> <li>• Use this comparison to demonstrate that the event caused higher concentrations than would be expected for given meteorological and/or local emissions conditions.</li> </ul>	<p><i>Optional</i> analysis.</p>
3. Percentile rank of concentration when compared to annual data. <sup>c</sup>	<ul style="list-style-type: none"> <li>• Provide the percentile rank of the event-day concentration relative to all measurement days over the previous 5 years to ensure statistical robustness and capture non-event variability over the appropriate seasons or number of years. <sup>d</sup></li> </ul>	<p><i>Required</i> analysis when comparison is made on an annual basis (see item #1).</p>

TABLE 2—EVIDENCE AND ANALYSES FOR THE COMPARISON TO HISTORICAL CONCENTRATIONS—Continued

Historical concentration evidence	Types of analyses/supporting information	Required or optional?
4. Percentile rank of concentration relative to seasonal data. <sup>c</sup>	<ul style="list-style-type: none"> <li>• Use the daily statistic (e.g., 24-hour average, maximum daily 8-hour average, or maximum 1-hour) appropriate for the form of the standard being considered for data exclusion.</li> <li>• Provide the percentile rank of the event-day concentration relative to all measurement days for the season (or appropriate alternative 3-month period) of the event over the previous 5 years.</li> <li>• Use the same time horizon as used for the percentile rank calculated relative to annual data, if appropriate.</li> </ul>	<i>Required</i> analysis when comparison is made on a seasonal basis (see item #1).

<sup>a</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf).

<sup>b</sup> If an air agency compares the concentration on the claimed event day with days with similar meteorological conditions from other years, the agency should also verify and provide evidence that the area has not experienced significant changes in wind patterns, and that no significant sources in the area have had significant changes in their emissions of the pollutant of concern.

<sup>c</sup> The EPA does not intend to identify a particular historical percentile rank point in the seasonal or annual historical data that plays a critical role in the analysis or conclusion regarding the clear causal relationship.

<sup>d</sup> Section 8.4.2.e of appendix W (proposed revisions at 80 FR 45374, July 29, 2015) recommends using 5 years of adequately representative meteorology data from the National Weather Service to ensure that worst-case meteorological conditions are represented. Similarly, for exceptional events purposes, the EPA believes that 5 years of ambient air data, whether seasonal or annual, better represent the range of “normal” air quality than do shorter periods.

As with other evidence in an exceptional events demonstration submittal, the EPA will use a holistic weight of evidence approach in reviewing submitted demonstration packages and will consider the “clear causal relationship” information, including the comparison to historical concentrations showing, along with evidence supporting the other Exceptional Events Rule criteria.

#### F. Treatment of Certain Events Under the Exceptional Events Rule

As we stated in the preamble to the 2007 Exceptional Events Rule, we maintain that air quality data affected by the following event types are among those that could meet the definition of an exceptional event and qualify for data exclusion provided all requirements of the rule are met: (1) Chemical spills and industrial accidents,<sup>57</sup> (2) structural fires, (3) terrorist attacks, (4) volcanic and seismic activities, (5) natural disasters and associated cleanup and (6) fireworks.<sup>58</sup> We are not proposing any changes to the definition or discussion of these event types. The AQS database contains a more detailed list of other similar events that may be identified for special consideration. The EPA will

<sup>57</sup> A malfunction at an industrial facility could be considered to be an exceptional event if it has not resulted in source noncompliance, which is statutorily excluded from consideration as an exceptional event, see CAA 319(b)(1)(b)(iii), and if it otherwise meets the requirements of the Exceptional Events Rule.

<sup>58</sup> Of these noted event types, only fireworks are currently identified in the regulatory language at 40 CFR 50.14. We are not proposing any revisions to the exclusion at 40 CFR 50.14(b)(2) for fireworks that are demonstrated to be significantly integral to traditional national, ethnic, or other cultural events.

consider other types of events on a case-by-case basis.

Based on our implementation experience, the following other potential exceptional events categories warrant additional discussion: Exceedances due to transported pollution, wildland fires including wildfires and prescribed fires, stratospheric ozone intrusions and high wind dust events. We discuss each of these event categories in the following sections.

#### 1. Exceedances Due to Transported Pollution

##### a. Current Situation

The 2007 Exceptional Events Rule implements one important CAA provision related to transported pollution. Certain events, national or international in origin and from natural or anthropogenic sources, may cause exceedances that are eligible for exclusion under the 2007 Exceptional Events Rule if an air agency satisfies the rule criteria. We discuss in this section our position regarding exceedances due to event-related transported pollution. We also clarify in part c of this section how the Exceptional Events Rule provisions currently relate to other CAA mechanisms that address or involve transported pollution. We are not proposing any changes to these relationships.

The EPA believes that the Exceptional Events Rule will often be the most appropriate mechanism to use when addressing transported emissions from out-of-state natural events and/or events due to human activity that is unlikely to recur at a particular location, because the Exceptional Events Rule may be used during the initial area designations

process and may make a difference between an attainment versus a nonattainment designation. It is important to note, however, that the transported natural emissions must be event-related (e.g., wildfires or stratospheric ozone intrusion) versus ongoing on a daily basis.

##### b. Proposed Changes

If an air agency determines that the Exceptional Events Rule is the most suitable approach to address contributions from transported emissions, then the air agency must consider the point of origin and the sources contributing to the exceedance or violation to determine how to address individual Exceptional Events Rule criteria, specifically the not reasonably controllable or preventable criterion and the human activity unlikely to recur or a natural event criterion. The analyses to satisfy the clear causal relationship criterion (which would subsume the CAA’s affects air quality criterion, if promulgated as proposed and discussed in section V.B) are largely independent of whether the point of origin and contributing sources are within the air agency’s jurisdiction. The EPA first addressed these concepts in its Interim Q&A document and now proposes to clarify these intrastate and interstate scenarios.

Under the CAA, the EPA generally considers a state (not including areas of Indian country) to be a single responsible actor. Accordingly, neither the EPA nor the 2007 Exceptional Events Rule provides special considerations for *intrastate* scenarios when an event in one part of a state, such as a county or air district, affects air quality in another part of the same

state, assuming that the event occurs on land subject to state authority (versus tribal government authority). For cases involving intrastate transport, the state or local air agency should evaluate whether contributing event emissions from all parts of the state were not reasonably controllable or preventable. Section V.E.2 discusses the assessment of the not reasonably controllable or preventable criterion. Because there may be special considerations regarding air agencies' authority to regulate activity on federally-owned and managed lands (e.g., national parks within the state), states and tribes should consult with the appropriate FLM or other federal agency and their EPA Regional office early in the development of an exceptional events demonstration package if they believe that sources on federally-owned and managed land contributed event-related emissions to a degree that raises issues of reasonable control.

Interstate and international transport events are different than intrastate events. As noted in section V.E.2, the EPA maintains that it is not reasonable to expect the downwind air agency (i.e., the state or tribe submitting the demonstration) to have required or persuaded the upwind foreign country, state or tribe to have implemented controls on sources sufficient to limit event-related air concentrations in the downwind state nor does the EPA believe that Congress intended to deny the downwind state or tribe of relief in the form of data exclusion. As with any demonstration submittal, the submitting (downwind) state should identify all natural and anthropogenic contributing sources of emissions (both local/in-state and out-of-state) to show the causal connection between an event and the affected air concentration values. A submitting state may provide a less detailed characterization of sources in the upwind state or foreign country than of sources within its jurisdiction. After completing the source characterization, the submitting state should assess whether emissions from sources within its state were not reasonably controllable or preventable (see section V.E.2 of this proposal). Although the downwind state must still assess potential contribution from in-state sources, we propose that the event-related emissions that were transported in the downwind state are "not reasonably controllable or preventable" for purposes of data exclusion. The EPA does not expect air agencies to submit analyses to satisfy the not reasonably controllable or preventable criterion for those upwind, out-of-state sources that

contribute to the exceedance as part of a submitted demonstration. Rather, with respect to this element for such sources, an air agency would merely point to the relevant provision we propose to add to the Exceptional Events Rule. Submitting states are, however, still required to assess the contribution and potential controls from local/in-state sources and submit evidence/statements supporting the other exceptional events criteria (i.e., clear causal relationship, human activity unlikely to recur or a natural event). If the event-related emissions are international in origin and affect monitors in multiple states or regions, the EPA may assist affected agencies in identifying approaches for evaluating the potential impacts of international transport and determining the most appropriate information and analytical methods for each area's unique situation.

The EPA proposes a similar approach to significant out-of-state anthropogenic sources in the case of a mixed natural/anthropogenic event that the submitting state wishes to have treated as a natural event on the grounds that all significant anthropogenic sources were reasonably controlled. That is, if a mixture of natural and anthropogenic sources in an upwind state contributed to an event, the downwind state is not required to demonstrate that the anthropogenic sources in the upwind state were reasonably controlled for those sources to be considered to not have directly caused the event. The submitting state could consider the event to be a natural event based on the situation within the state requesting the data exclusion (that is, the contributing sources within the jurisdiction of the submitting state were either natural or reasonably controlled anthropogenic sources).

As with all exceptional events demonstrations, the EPA will evaluate the information on a case-by-case basis based on the facts of a particular exceptional event including any information and arguments presented in public comments received by the state in its public comment process or by the EPA in a notice-and-comment regulatory action that depends on the data exclusion.

#### c. Relationship Between Exceptional Events Rule Provisions and Other CAA Transport Mechanisms

Two provisions of the CAA other than section 319(b) also provide regulatory relief for transported pollution, for different circumstances than those addressed by the 2007 Exceptional Events Rule. These provisions are briefly described here as context for

understanding the role of the Exceptional Events Rule itself.

- *CAA section 179B, International Transport*—CAA section 179B allows states to consider in their attainment demonstrations whether a nonattainment area might have met the NAAQS by the attainment date "but for" emissions contributing to the area originating outside the U.S. This provision addresses sources of emissions originating outside of the U.S. and provides qualifying nonattainment areas some regulatory relief from otherwise-applicable additional planning and control requirements should the area fail to reach attainment by its deadline. It does not provide a pathway for regulatory relief from designation as a nonattainment area.

- *CAA section 182(h), Rural Transport Areas*—CAA section 182(h) authorizes the EPA Administrator to determine that an ozone nonattainment area can be treated as a rural transport area, which provides relief from more stringent requirements associated with higher nonattainment area classifications (i.e., classifications above Marginal). Under CAA section 182(h), a nonattainment area may qualify as a Rural Transport Area if it does not contain emissions sources that make a significant contribution to monitored ozone concentrations in the area or in other areas, and if the area does not include and is not adjacent to a Metropolitan Statistical Area. Generally, an area qualifies as a Rural Transport Area because it does not contribute to its own or another area's nonattainment problem; rather, ozone exceedances are due to transported emissions, which could be international, interstate or intrastate in origin. The Rural Transport Area determination can be made during or after the initial area designations and classifications process.

Two additional provisions of the CAA specifically address and appropriately regulate transported pollution that does not qualify for data exclusion under the Exceptional Events Rule or for regulatory relief under CAA section 179B or CAA section 182(h). These provisions are briefly described here as context for understanding the role of the Exceptional Events Rule itself.

- *CAA section 110(a)(2)(D)(i)(I), Interstate Transport*—CAA section 110(a)(2)(D)(i)(I) requires states to develop and implement SIPs to address the interstate transport of emissions. Specifically, this provision requires each state's SIP to prohibit "any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will significantly contribute to

nonattainment” of any NAAQS in another state, or which will “interfere with maintenance” of any NAAQS in another state. When the EPA promulgates or revises a NAAQS, each state is required to submit a SIP addressing this interstate transport provision as to that NAAQS within 3 years. The EPA interprets this interstate transport provision to address anthropogenic sources of emissions from other states; we believe that is not intended to address natural sources of emissions.

• *CAA section 126, Interstate Transport*—CAA section 126 provides states and political subdivisions with a mechanism to petition the Administrator for a finding that “any major source or group of stationary sources emits or would emit any air pollution in violation of the prohibition of CAA 110(a)(2)(D)(i).”<sup>59</sup> Where the EPA grants such a petition, an existing source may operate beyond a 3-month period only if the EPA establishes emissions limitations and compliance schedules to bring about compliance with CAA section 110(a)(2)(D)(i) as expeditiously as practicable, but no later than 3 years after such finding. Similar to our interpretation above for CAA section 110(a)(2)(D)(i), the EPA interprets the reference to “major source or group of stationary sources” in section 126 to refer to anthropogenic sources of emissions from other states. The EPA’s interpretation is that this provision is not intended to address natural sources of emissions. This mechanism is available to all downwind states, and political subdivisions, regardless of area designations, that may be affected by anthropogenic sources of emissions from upwind states in violation of the prohibition in CAA section 110(a)(2)(D)(i).

As noted previously, in most cases, the mechanisms in the Exceptional Events Rule often provide the most regulatory flexibility in that air agencies can use these provisions to seek relief from designation of an area as nonattainment. The CAA section 179B (International Transport) and section 182(h) (Rural Transport Areas) apply following, or concurrent with, the initial area designations process.

## 2. Wildland Fires

Fires on wildland play an important ecological role across the globe,

benefiting those plant and animal species that depend upon natural fires for propagation, habitat restoration and reproduction. Wildland can include forestland,<sup>60</sup> shrubland,<sup>61</sup> grassland<sup>62</sup> and wetlands.<sup>63</sup> Fires on wildland can be of two types: wildfire (unplanned) and prescribed fire (intentionally ignited for management purposes). Since promulgation of the 2007 Exceptional Events Rule, the EPA has received and acted upon exceptional events demonstrations for both wildfires and prescribed fires. The EPA anticipates receiving increasing numbers of fire-related demonstrations in the future due to the natural accumulation of fuels in the absence of fire, due to climate change that is leading to increased incidence of wildfire,<sup>64</sup> which may necessitate land managers employing prescribed fire more frequently to manage fuel loads and achieve other benefits as described below,<sup>65 66</sup> and due to the potential for fire-related demonstrations to affect near-term regulatory decisions such as the initial area designations decisions associated with a revised 8-hour ozone NAAQS. Consequently, the EPA is proposing revisions to the 2007 Exceptional Events Rule and developing additional guidance to make the preparation and review of demonstrations for wildland fire events

<sup>60</sup> Forestland is land on which the vegetation is dominated by trees or, if trees are lacking, the land shows historic evidence of former forest and has not been converted to other uses. Definition available at <https://globalrangelands.org/rangelandswest/glossary>.

<sup>61</sup> Shrubland is land on which the vegetation is dominated by shrubs. Definition available at <https://globalrangelands.org/rangelandswest/glossary>.

<sup>62</sup> Grassland is land on which the vegetation is dominated by grasses, grass like plants, and/or forbs. Definition available at <https://globalrangelands.org/rangelandswest/glossary>.

<sup>63</sup> Wetlands, as defined in 40 CFR 230.3(t), means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

<sup>64</sup> The Administrator’s finding on the adverse effects of greenhouse gases included the observation that wildfires have increased, and that there are potential serious adverse impacts from further wildfire occurrence. 74 FR 66530 (December 15, 2009).

<sup>65</sup> *Climate Change in the United States: Benefits of Global Action*, U.S. EPA, EPA-430-R-15-001, June 2015. Available at <http://www2.epa.gov/cira>.

<sup>66</sup> The National Strategy: The Final Phase in the Development of the National Cohesive Wildland Fire Management Strategy, Report to Congress developed by the U.S. Department of Agriculture and the U.S. Department of the Interior, April 2014. Available at <http://www.forestsandrangelands.gov/strategy/thestrategy.shtml>.

more efficient and predictable for all parties.

Wildfire emissions account for a large portion of direct PM<sub>2.5</sub> emissions nationally and can contribute to periodic high PM<sub>2.5</sub> and PM<sub>10</sub> levels. Wildfires also emit volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are precursors to PM<sub>2.5</sub>, PM<sub>10</sub> and ozone. Besides their effect on air quality, wildfires pose a direct threat to public safety. Changes in wildfire risk and occurrence are closely associated with the lack of periodic fire in fire-dependent ecosystems, demographic changes and associated infrastructure investment at the margins of wildland and, as already noted, climate change and climate variability. The threat from wildfires can be mitigated through management of wildland vegetation. Attempts to suppress wildfires have resulted in unintended consequences, especially the buildup of fuel loads, which can create a lingering fire liability that will eventually find resolution, unplanned or planned. Unplanned fires in areas with high fuel loads present high risks to both humans and ecosystems.<sup>67</sup> Planned prescribed fires and letting some wildfires proceed naturally (typically those with lower fire intensity and severity) are tools that land managers can use to reduce fuel load, unnatural understory and tree density, thus helping to reduce the risk of catastrophic wildfires. Allowing some wildfires to continue to burn even though they could be suppressed and the thoughtful use of prescribed fire can influence the occurrence, size and severity of catastrophic wildfires, which may lead to improved public safety, improved protection of property and an overall reduction in fire-induced smoke impacts and subsequent health effects. Thus, appropriate use of prescribed fire may help manage the contribution of wildfires to both background and peak PM and ozone air pollution. However, prescribed fires themselves can affect monitored air quality at some times and places affecting public health, and thus give rise to exceptional events issues. This action proposes a workable approach to addressing these prescribed fire exceptional events issues.

In addition to reducing wildfire risks to humans and ecosystems and wildfire contributions to air pollution, prescribed fires can have benefits to those plant and animal species that

<sup>67</sup> Indeed, “fire policy that focuses on [wildfire] suppression only, delays the inevitable, promising more dangerous and destructive future . . . fires.” Stephens, SL; Agee, JK; Fule, PZ; North, MP; Romme, WH; Swetnam, TW. (2013). *Managing Forests and Fire in Changing Climates*. Science 342: 41–42.

<sup>59</sup> The text of section 126 codified in the United States Code cross references section 110(a)(2)(D)(ii) instead of section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener’s error and the correct cross reference is to section 110(a)(2)(D)(i). See *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

depend upon natural fires for propagation, habitat restoration and reproduction, as well as benefits to a myriad of ecosystem functions (e.g., carbon sequestration, maintenance of water supply systems and endangered species habitat maintenance). The EPA understands the importance of prescribed fire, which mimics a natural process necessary to manage and maintain fire-adapted ecosystems and climate change adaptation, while reducing risk to public safety and the risk of uncontrolled emissions and ecosystem damage from catastrophic wildfires. The EPA is committed to working with federal land managers, other federal agencies, tribes, states and private landowners to effectively manage prescribed fire use to reduce the impact of catastrophic wildfire-related emissions on ozone, PM<sub>10</sub> and PM<sub>2.5</sub>.

#### a. Current Situation

When the EPA promulgated the 2007 Exceptional Events Rule, we included definitions for fire-related terms (e.g., wildfire, prescribed fire and wildland) in the preamble and attributed these definitions to the National Wildland Fire Coordinating Group (now the National Wildfire Coordinating Group or NWCG) Glossary of Wildland Fire Terminology, 2003. The EPA did not, however, codify these definitions in regulatory text. Since promulgation of the 2007 Exceptional Events Rule, the NWCG has modified some of its recommended definitions and the EPA used slightly different definitions in its Interim Exceptional Events Implementation Guidance, creating some confusion for air agencies and other entities working with air agencies who have tried to use fire-related definitions and concepts when preparing and submitting exceptional events demonstrations for fires.

The preamble to the 2007 Exceptional Events Rule discussed how the EPA expected to apply the rule to wildfires and prescribed fires. The EPA stated that wildfires would be considered natural events, while prescribed fires would be considered events caused by human activity. As events caused by human activity, prescribed fires are subject to the “not likely to recur” criterion, and the preamble to the rule discussed the considerations that would apply for this criterion. Section V.F.2.d provides a more detailed summary of the current situation and planned changes for this criterion.

Demonstrations for wildfires and those prescribed fires claimed to be exceptional events must also address the “not reasonably controllable or preventable” criterion. Neither the 2007

Exceptional Events Rule nor its preamble addressed this criterion in any depth for wildfires. Since promulgating the rule in 2007, the EPA has concluded that short, general statements in demonstrations for fire events satisfy this criterion. The EPA has been advising air agencies that when documenting the “not reasonably controllable or preventable” criterion in a wildfire exceptional events demonstration submittal, air agencies should identify the origin and evolution of the wildfire, describe local efforts to prevent fires due to unauthorized activity or accidental human-caused actions (if relevant given the origin of the fire) and explain any efforts to limit the duration or extent (and thus the emissions) of the wildfire.<sup>68 69 70</sup> We have also advised air agencies that if the wildfire originated outside of the jurisdiction of the air agency submitting the exceptional events demonstration, then the submitting air agency should identify this fact in its demonstration.<sup>71</sup>

The 2007 Exceptional Events Rule and its preamble gave more extensive treatment to the not reasonably controllable or preventable criterion for prescribed fires. The rule text tied the eligibility of prescribed fires as approved exceptional events to the air agency having a “certified” SMP in place or, in the alternative, to using BSMP for the prescribed fire(s) in question. In the preamble, the EPA did not provide detailed guidance on SMPs or BSMP, but committed to defining and developing these concepts when we updated the guidance contained in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires*.<sup>72</sup> However, the EPA has not revised this guidance document. Although some states have developed demonstrations that incorporate BSMP employed for a specific prescribed fire and/or have referenced BSMP in their SMPs, the

EPA has not in any other more recent guidance clarified what it means for an air agency or burner to have a certified SMP in place and/or to implement BSMP. Like the inconsistency that has developed since 2007 in fire-related definitions, the absence of further clarifying guidance on SMPs and BSMP has created confusion for air agencies trying to develop these plans and/or apply these practices for purposes of developing and submitting exceptional events demonstrations for prescribed fires.

#### b. Proposed Changes

In this action, the EPA proposes to codify in regulatory language certain fire-related definitions and SMP/BSMP factors necessary for exceptional events demonstration and program implementation purposes. Codifying these definitions in 40 CFR 50.1 will promote understanding and standardize terminology for the purposes of characterizing an event for exceptional events demonstration purposes.

Finalizing these proposed changes will also decouple implementation of the exceptional events process from potential future revisions to the *Interim Policy on Wildland and Prescribed Fires*. Although the EPA solicits comment on the regulatory process associated with developing exceptional events demonstrations for fire-related events, the EPA does not intend to take comment on any aspects of the 1998 *Interim Policy on Wildland and Prescribed Fires* as part of this effort to revise the Exceptional Events Rule.

The proposed new definitions, along with other proposed changes, are described in detail in the separate sections on wildfires (section V.F.2.c) and prescribed fire (section V.F.2.d) that follow immediately below this section.

#### c. Wildfires

*Current Situation.* The preamble to the 2007 Exceptional Events Rule defined a wildfire as “an unplanned, unwanted wildland fire (such as a fire caused by lightning), [to] include unauthorized human-caused fires (such as arson or acts of carelessness by humans), escaped prescribed fire projects (escaped control due to unforeseen circumstances), where the appropriate management response includes the objective to suppress the fire.” The 2007 Exceptional Events Rule preamble also defined a “wildland fire use” as “the application of the appropriate management response to a naturally-ignited (e.g., as the result of lightning) wildland fire to accomplish specific resource management objectives in predefined and designated areas

<sup>68</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf). See question 20b.

<sup>69</sup> Prevention/control efforts could include posting High Fire Danger signs to make people more careful and prevent accidental fires, and/or taking reasonable action to contain a fire once it has started.

<sup>70</sup> Example language to limit the duration and extent of the wildfire might include, “During wildfires, fire management resources were deployed to the fire event giving first priority to protecting life and property.”

<sup>71</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eer_qa_doc_5-10-13_r3.pdf).

<sup>72</sup> *Interim Air Quality Policy on Wildland and Prescribed Fires*. U.S. EPA. April 23, 1998. Available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/firefnl.pdf>.

where fire is necessary and outlined in fire management or land management plans.” The 2007 Exceptional Events Rule preamble further clarified that the EPA believed that both wildfires and wildland fire use fires fall within the meaning of “natural events” as that term is used in CAA section 319(b).

In the 2013 Interim Q&A Document, after consulting with other federal agencies that manage wildfires and prescribed fires, the EPA defined a wildfire as “[a]ny fire started by an unplanned ignition caused by lightning; volcanoes; unauthorized activity; accidental, human-caused actions; and escaped prescribed fires.”<sup>73</sup>

Building off of the principles in the February 2009 *Guidance for Implementation of Federal Wildland Fire Management Policy*,<sup>74</sup> the NWCG defines “wildland” as “an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.”<sup>75</sup>

*Proposed Changes.* Although the EPA has previously approved exceptional events demonstrations for wildfires,<sup>76</sup> the EPA recognizes air agencies preparing exceptional events demonstrations for future wildfires will benefit from additional clarification and guidance related to wildfire terminology. This section discusses the EPA’s proposed changes.

(i) *Definition of wildland and wildfire.* For purposes of this action, the EPA proposes to codify in regulatory language the definition of “wildland” by using the October 2014 NWCG Glossary definition that a wildland is “an area in which human activity and development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.” As previously noted, wildland can include forestland, shrubland, grassland and wetlands. This proposed definition of wildland would include lands that are predominantly wildland, such as

land in the wildland-urban interface.<sup>77 78</sup>

In proposing this definition for wildland, the EPA considered the types of human intervention that could affect whether a land is considered a “wildland.” In our view and the view of other federal agencies with which we have consulted in the development of this proposed action, the presence of fences to limit the movement of grazing animals, or of infrastructure to provide water to grazing animals, does not prevent a land area from being wildland. Cultivated cropland (*i.e.*, a field that is plowed or disked or from which crops are removed on an annual or more frequent basis) is not wildland. Land areas on which nursery stock is grown to marketable size (*e.g.*, Christmas tree farms) are generally not wildland unless they are “wild” in terms of a having only limited human entrance and intervention for management or removal purposes thereby resulting in a complex ecosystem. Generally, managed timber lands may be considered wildland if they have a complex ecosystem affected by only limited human entrance and intervention. The EPA invites comment on whether it would be appropriate to incorporate these examples of land use types that can be considered to be (or not to be) wildland into the regulatory definition of wildland or whether or it is adequate to discuss them in the preamble only.

Also for purposes of this action, the EPA proposes to codify in regulatory language the following definition of “wildfire,” which slightly modifies the definition of “wildfire” with respect to prescribed fires that appeared in the Interim Q&A document.

A wildfire is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions; or a prescribed fire that has been declared to be a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

<sup>77</sup> The wildland-urban interface is the line, area or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. The term describes an area within or adjacent to private and public property where mitigation actions can prevent damage or loss from wildfire. See, Glossary of Wildland Fire Terminology, PMS 205. October 2014. Available at <http://www.nwcg.gov/sites/default/files/products/pms205.pdf>.

<sup>78</sup> We would generally treat a large prescribed fire in a wildland-urban interface area as a prescribed fire on wildland, subject to the prescribed fire provisions described in this proposal. We do not expect a small prescribed fire in an interface area (*e.g.*, a prescribed burn ignited by a single landowner on his/her personal property) to generate emissions that would raise exceptional events issues.

This proposed definition of wildfire does not require that the objective be to put out a fire for the fire to be categorized as a wildfire. When an unplanned fire on wildland does not threaten catastrophic consequences, it may be very appropriate to allow it to continue. The proposed definition therefore encompasses the type of activity previously referred to as a wildland fire use (*i.e.*, a situation in which a fire manager deliberately allows a wildfire to continue to burn over a certain land area rather than immediately extinguish it or block its progress into that area). This inclusion is consistent with the approach taken in 2007 that all types of wildfire were considered to be natural. We note here, as guidance, that the part of the proposed definition referring to a prescribed fire that has been declared to be a wildfire refers to specific instances in which the conditions of a particular prescribed fire have developed in a way that leads the fire manager to decide that the fire should be treated as a wildfire, for example if it has escaped secure containment lines and requires suppression along all or part of its boundary or no longer meets the resource objectives (*e.g.*, smoke impact, flame height). It is not the intention that land managers may categorically re-define some types of prescribed fire to be wildfires.

Because the EPA is proposing in rule text that all wildfires on wildland are always considered natural events, the proposed definition of wildland will in turn determine which fires are considered to be natural events. This is consistent with the approach in the 2007 Exceptional Events Rule. The EPA realizes that some wildfires are initiated by human actions (*e.g.*, careless use of campfires or leaf and brush pile fires). The EPA also realizes that past human activity in the form of decades of suppressing wildfires has influenced the size and emissions of wildfires that do occur. However, wildfire is mostly dominated by natural factors, and the EPA believes that treating all wildfires on wildland as natural events is in keeping with Congressional intent and not contradictory to any plain meaning of CAA section 319(b). Therefore, because a wildfire on wildland is a natural event and because natural events can recur, an air agency would not need to address event recurrence in the “human activity unlikely to recur at a particular location or a natural event” portion of its exceptional events demonstration.

(ii) *Not reasonably controllable or preventable.* Although a wildfire is unplanned, the “not reasonably

<sup>73</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/ee\\_r\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/ee_r_qa_doc_5-10-13_r3.pdf).

<sup>74</sup> *Guidance for Implementation of Federal Wildland Fire Management Policy*, developed cooperatively by the Fire Executive Council, February 13, 2009. Available at <http://wildfiretoday.com/documents/Federal%20Wildland%20Fire%20Management%20Policy%202002-13-2009.pdf>.

<sup>75</sup> National Wildfire Coordinating Group. Glossary of Wildland Fire Terminology, PMS 205. October 2014. Available at <http://www.nwcg.gov/sites/default/files/products/pms205.pdf>.

<sup>76</sup> See submitted exceptional events demonstrations available on the EPA’s Web site at <http://www2.epa.gov/air-quality-analysis/exceptional-events-submissions-table>.



controllable or preventable” criterion still applies. Another function of the definition of wildland is that the EPA is proposing that the treatments of wildfires and prescribed fires on wildland with regard to the not reasonably controllable or preventable criterion have a number of common aspects, as described here and below in the section on prescribed fires, because a wildland situation presents particular considerations applicable to both fire types with respect to what prevention or control measures may be reasonable. The EPA is not proposing any general approach for wildfires or prescribed fires that are not on wildland.<sup>79</sup>

Because wildfires on wildland are unplanned, fire management agencies generally have either no advanced notice or limited and uncertain notice, of wildfire ignition and location. In addition, many areas of wildland are very remote and rugged, and thus not easily reached and traversed. These factors generally limit preparation time and on-site resources to prevent or control the initiation, duration or extent of a wildfire. Also, by their nature, catastrophic wildfires typically present some risk of property damage, ecosystem damage and/or loss of life (of the public or firefighters), which is a strong motivation for appropriate suppression and control efforts. The EPA believes that land managers and other fire management entities have the motivation and the best information for taking action to reasonably prevent and limit the extent of wildfires on wildland, thus also controlling the resulting emissions. Therefore, the EPA believes that it is not useful to require air agencies to include in their individual wildfire exceptional events demonstrations descriptions of prevention and control efforts employed by burn managers to support a position that such efforts were reasonable. To increase the efficiency of the exceptional events process, the EPA proposes a new approach for wildfires on wildland, under which there would be a rebuttable presumption that every wildfire on wildland satisfies the “not reasonably controllable or preventable” criterion, unless evidence in the record demonstrates otherwise. Applying this categorical presumption of not

reasonably controllable for wildfires would involve referencing the appropriate regulatory citation in the demonstration.

As previously stated, there will be situations in which a fire manager could have suppressed or contained a wildfire but has allowed the fire to continue burning through an area with a current, in-place land management plan calling for restoration through natural fire or mimicking the natural role of fire. The EPA recognizes that this scenario could occur when a fire manager has a plan for acquiring personnel and equipment to address the wildfire (either coincidentally or because the wildfire was originally a prescribed fire) but the manager determines that allowing the wildfire to continue burning is safe and will conserve overall fire management resources compared to suppressing or containing the current wildfire and then conducting a separate prescribed burn at a later time. In such a scenario, even though the fire would meet the definition of a wildfire and even though we are proposing that in general wildfires will not need to be reviewed individually against the not reasonably controllable or preventable criterion, we would expect the fire manager to employ appropriate BSMP as described in section V.F.2.d when possible.

(iii) *Coordinated communications.* Regardless of the above considerations for wildfires, the EPA urges land managers and air agencies to coordinate, as appropriate, in developing plans and appropriate public communications regarding public safety and reducing exposure in instances where wildfires are potential exceptional events and contribute to exceedances of the NAAQS. Coordinated efforts can help air agencies satisfy the Exceptional Events Rule obligation at 40 CFR 51.930 that air agencies must provide public notice and public education and must provide for implementation of reasonable measures to protect public health when an event occurs.<sup>80</sup> Also, when wildfire impacts are frequent and significant in a particular area, land managers, land owners, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively to take steps to minimize fuel loading in areas vulnerable to fire.<sup>81</sup>

Fuel load minimization steps can consist of both prescribed fire and mechanical treatments, such as using mechanical equipment to reduce accumulated understory.

#### d. Prescribed Fires

As noted previously, the EPA recognizes and acknowledges the potential significant impact on air quality posed by catastrophic wildfires. The use of prescribed fire on wildland can influence the occurrence, severity, behavior and effects of catastrophic wildfires, which may help manage the contribution of wildfires to measured ambient pollutant levels (particularly ozone and PM concentrations). Additionally, prescribed fires can benefit the plant and animal species that depend upon natural fires for propagation, habitat restoration and reproduction, as well as a myriad of ecosystem functions (e.g., carbon sequestration, maintenance of water supply systems and endangered species habitat maintenance). The EPA formally recognized in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* that federal, tribal and state owners and land managers use prescribed fire on wildland to achieve some of these resource benefits, to correct the undesirable conditions created by past wildfire suppression management strategies and to reduce the risk of wildfires to the public. Although the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* focused on the role of federal, tribal and state owners/land managers, it also recognized that prescribed fires on private lands achieve some of the same goals. These concepts, also noted in the preamble to the 2007 Exceptional Events Rule, are summarized in more detail immediately below. In recent regulatory actions,<sup>82</sup> the EPA has continued to express an understanding of the importance of prescribed fire, noting that it can be used to mimic the natural process necessary to manage and maintain existing fire-adapted ecosystems and/or return an area to its historical ecosystem (or another natural ecosystem if the historical ecosystem is no longer attainable) while reducing the risk to public safety and the risk of uncontrolled emissions from catastrophic wildfires.

*Current Situation.* The 2007 Exceptional Events Rule recognized the benefits of prescribed fire as

<sup>79</sup> While we are proposing special provisions only for fires that occur predominantly on wildland, we do not intend to restrict fires on other types of land from receiving similar treatment. In addressing the not reasonably controllable or preventable criterion in a demonstration for a wildfire that is not on wildland, air agencies should state that available resources were reasonably aimed at suppression and avoidance of loss of life and property and that no further efforts to control air emissions from the fire would have been reasonable.

<sup>80</sup> 72 FR 13575 (March 22, 2007).

<sup>81</sup> One example of this collaborative approach is the evolving interagency Wildland Fire Air Quality Response Program, which has developed resources to help address and predict smoke impacts from wildfires to reduce public exposure to wildfire smoke. Additional information is available at [http://www.westar.org/Docs/Business%20Meetings/Spring14/Boise/12.3%20Lahm\\_WFAQRP\\_5\\_28\\_14.pdf](http://www.westar.org/Docs/Business%20Meetings/Spring14/Boise/12.3%20Lahm_WFAQRP_5_28_14.pdf).

<sup>82</sup> See, for example, National Ambient Air Quality Standards for Ozone; Proposed Rule (79 FR 75234, December 17, 2014) and Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule (80 FR 12264, March 6, 2015).

summarized earlier in this section and included provisions for these event types in both the preamble to the final rule and in regulatory language. The preamble to the 2007 Exceptional Events Rule defined a prescribed fire as “a fire ignited by management objectives to meet specific resource management needs.” This was consistent with the definition of prescribed fire in general use by the fire management community at the time.<sup>83</sup> Also in the preamble language, the EPA explained that prescribed fire cannot be classified as natural given the extent of the direct human causal connection. However, the preamble explained that a prescribed fire that causes or contributes to an exceedance or violation of an ambient air quality standard could still be considered an exceptional event if it satisfies all core statutory elements of CAA section 319(b), including the “human activity that is unlikely to recur at a particular location” and the “not reasonably controllable or preventable” criteria.

The 2007 Exceptional Events Rule preamble further explained that air agencies should take into account the natural fire return interval<sup>84</sup> as part of the basis for establishing that the human activity (*i.e.*, the prescribed fire) is “unlikely to recur at a particular location.” The preamble acknowledged that the natural fire return interval can vary widely and range from once every year to less frequently than once every 200 years.

When addressing the “not reasonably controllable or preventable” criterion, the 2007 Exceptional Events Rule preamble instructed agencies to examine whether there are “reasonable alternatives,” such as mechanical or other (*e.g.*, chemical) treatments to the use of prescribed fire. The preamble language recognized that, although case- and area-specific, any number of conditions could exist that would favor the use of prescribed fire rather than alternate treatments. Such scenarios identified in the preamble included: significant build-up of forest fuels in a particular area that if left unaddressed would pose an unacceptable risk of catastrophic wildfire; pest or disease

outbreak; natural species composition dependent on a specific fire return interval; and legal requirements precluding the use of mechanical fuel reduction methods.

The 2007 Exceptional Events Rule also indicated, in both preamble discussion and rule text, that to further satisfy the “not reasonably controllable or preventable” criterion for prescribed fires and to address the principle at section 319(b)(3)(A) of the CAA that the protection of public health is the highest priority, a prescribed fire would be considered to be an exceptional event only if the state has certified to the EPA that it has adopted and is implementing a SMP or the state has ensured that the burner has employed BSMP. While the EPA did not identify in the 2007 Exceptional Events Rule the necessary components of an SMP or what SMP certification entails, the preamble cited the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires*.<sup>85</sup> This policy identified the following basic components of a certifiable SMP:<sup>86</sup>

- Authorization to Burn—includes a process for authorizing or granting approval to manage fires for resource benefits within a region, state or on Indian lands and identify a central authority responsible for implementing the program. The authorization process could include burn plans that consider air quality and the ability of the airshed to disperse emissions from all burning activities on the day of the burn.

- Minimizing Air Pollutant Emissions—encourages wildland owners/managers to consider and evaluate alternative treatments to fire, but if fire is the selected approach to follow emission reduction techniques.

- Smoke Management Components of Burn Plans—identifies the following components if the SMP requires burn plans: Actions to minimize fire emissions, evaluate smoke dispersion, public notification and exposure reduction procedures and air quality monitoring.

- Public Education and Awareness—establishes the criteria for issuing health advisories when necessary and

procedures for notifying potentially affected populations.

- Surveillance and Enforcement—includes procedures to ensure that wildland owners/managers comply with the SMP.

- Program Evaluation—provides for periodic review by all stakeholders of the SMP effectiveness and program revision as necessary.

The 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* also noted, regarding the certification process for SMPs, that to receive special consideration for air quality data whose concentrations were influenced by prescribed fires, “[t]he State/tribal air quality manager must certify in a letter to the Administrator of EPA that at least a basic [smoke management] program has been adopted and implemented . . . .” The 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* further identified that federal agencies intending to use prescribed fire should operate under an approved prescribed fire plan and meet the National Environmental Policy Act (NEPA) requirements, where applicable, prior to ignition.<sup>87</sup>

The EPA did not use the preamble to the 2007 Exceptional Events Rule to expand on the concept of using BSMP in lieu of an SMP. Rather, the EPA only noted that burners could use BSMP to minimize emissions and control the impacts of fire. Although the EPA identified several example BSMP in a footnote in the preamble (footnote 12 at 72 FR 13567), we also committed to developing the concept when we updated the guidance in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires*. The EPA has not revised this guidance and does not currently plan to do so. Although some states have developed demonstrations that incorporate BSMP employed for a specific prescribed fire and/or referenced BSMP in their SMPs, the EPA has not in any other more recent guidance clarified what it means for an

<sup>83</sup> The October 2014 NWCG definition of “prescribed fire” is similar but includes the concept that the fire is not illegal: “[a]ny fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific objectives.”

<sup>84</sup> The natural fire return interval is the typical number of years between two successive naturally-occurring fires in a specified area or ecosystem. The historical rate of return of these fires resulted in plant communities that evolved with recurring fire and therefore became dependent on fire for maintenance.

<sup>85</sup> The discussion of the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* recommendations regarding SMPs appears in the preamble to the 2007 Exceptional Events Rule at 72 FR 13567 (March 22, 2007).

<sup>86</sup> The language associated with the six basic components of a certifiable SMP was taken directly from the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires*. For context, the EPA notes that the identified components of a certifiable SMP apply to managing smoke from prescribed fires managed for resource benefits. The EPA would expect burn managers to consider actions and approaches where applicable or where appropriate rather than in all prescribed fire scenarios.

<sup>87</sup> In specifying the basic components of certifiable SMPs that would include the requirement for agency approval of prescribed fire plans, the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* noted that SMPs can mitigate the nuisance and public safety hazards associated with smoke from prescribed fires intruding into populated areas, prevent deterioration of air quality and NAAQS violations and address visibility impacts in mandatory Class I Federal areas. Since the EPA issued the Interim Policy in 1998, some federal agencies have reported to us their assessment that some states and/or local air agencies have managed their SMP (or other regulatory programs) in such a way as to exclude the use of prescribed fires in areas to such an extent that fuels have continued to accumulate to levels that increase the likelihood of catastrophic wildfires.

air agency or burner to have a certified SMP in place and/or to implement BSMP.

In addition to conditioning the approval of a prescribed fire as an exceptional event on the existence and implementation of a certified SMP or the actual use of BSMP, as described above, the 2007 Exceptional Events Rule also requires that “[i]f an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.” To date, air agencies have submitted few exceptional events demonstrations for prescribed fires. One recent submission came from Kansas, a state already operating an SMP.<sup>88</sup>

The 2007 Exceptional Events Rule at 40 CFR 50.14(b)(3) allows for the exclusion of data where a state demonstrates to the EPA’s satisfaction that emissions from prescribed fires caused a specific air pollution concentration in excess of one or more NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements in the Exceptional Event Rule. The regulatory language also requires that the subject prescribed fire meets the definition in 40 CFR 50.1(j) and requires that the state has certified to EPA that it has adopted and is implementing a Smoke Management Program or the state has ensured that the burner employed basic smoke management practices. The definition of an exceptional event at 40 CFR 50.1(j) includes the requirement that an event “is not reasonably controllable or preventable.” Thus, the EPA has interpreted that a demonstration for a prescribed fire independently address both the SMP/BSMP element and the not reasonably controllable or preventable criterion. We have not indicated that meeting the SMP/BSMP condition is sufficient to satisfy the not reasonably controllable or preventable criterion.

*Proposed Changes.* As previously noted, the EPA has not to date clarified fire-related definitions or its expectations regarding SMPs or BSMP in rule or preamble form. This uncertainty has created confusion for air and fire management agencies trying to develop fire-related plans and/or apply fire management practices for

prescribed fires. It has also created confusion for air agencies when developing and submitting exceptional events demonstrations for both wildfires and prescribed fires.

To assist air agencies in documenting an exceptional events package for a prescribed fire on wildland, the EPA proposes to clarify its expectations for a satisfactory demonstration, as follows.

(i) *Definition of a prescribed fire.* We are proposing to adopt in rule language the current NWCG-recommended definition of a prescribed fire: “[a]ny fire intentionally ignited by management actions in accordance with applicable laws, policies and regulations to meet specific objectives.” In this definition, “management” refers to the owner or manager of the land area to which prescribed fire is applied, and “specific objectives” refers to specific land or resource management objectives.

(ii) *Events caused by human activity.* We are proposing to say in rule form that prescribed fires are events caused by human activity. Thus, to be considered an exceptional event, every prescribed fire demonstration must address the “human activity unlikely to recur at a particular location” criterion.

(iii) *Unlikely to recur at a particular location.* As discussed in more detail in section V.E.1 of this proposal, this requirement of CAA section 319(b) is not specific and requires interpretation on a case-by-case or event type-by-event type basis. The term “unlikely” implies consideration of the expected future frequency of events similar to the event that has already happened, but does not convey any particular benchmark for what frequency should be low enough to be considered “unlikely.” Also, the term “at a particular location” requires interpretation, as it could refer to the exact area or only to the general area of the event, to the location of the ambient monitoring station or stations that were affected by the event or to the combination of both.

As was our position in 2007, we continue to believe that the natural fire return interval is a useful and appropriate benchmark for a satisfactory demonstration that a prescribed fire is unlikely to recur at a particular location, in the sense that if a planned program of prescribed fire calls for the application of prescribed fire at a similar interval to the natural fire return interval at given locations then each prescribed fire conducted in that program can be considered not likely to recur at its particular location. However, we now believe based on experience and further consideration that the natural fire return interval is not the only appropriate benchmark. It can be

difficult in some cases to determine what fire return interval prevailed under natural conditions, which may not have existed for decades or even hundreds of years in a particular area. Also, in some cases environmental conditions may have changed, for example due to climate change, such that the original natural ecosystem cannot realistically be restored and the well-considered land management goal instead may be the development and maintenance of a sustainable and resilient ecosystem that is different than what historically existed and that will likely reduce the risk of catastrophic wildfire. In such a case, the frequency of prescribed fire needed to establish or restore such an ecosystem during a transitional period and/or the frequency needed to sustain the resilient ecosystem may be different than the natural fire return interval that once prevailed. It is also important to consider issues of fire personnel and public safety and protection of nearby property. Land managers may need to apply prescribed fire at a frequency that maintains the accumulation of fuel loading between prescribed fires at a level that does not create the risk of a dangerous wildfire.

Accordingly, the first proposed change for prescribed fires on wildland is to include in the rule text two benchmarks for the expected future frequency of prescribed fires on wildland to meet the not likely to recur criterion: (1) The natural fire return interval as articulated in the 2007 preamble and (2) the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem. If finalized, an air agency could include information provided by the land manager with respect to the appropriate benchmark for a prescribed fire on wildland as the basis for satisfying the human activity unlikely to recur at a particular location criterion in its exceptional events demonstration.<sup>89</sup>

Successfully implementing one of these benchmarks for prescribed fire frequency necessitates that the air agency and the land manager collaborate to establish and document the appropriate fire return interval or frequency in a submitted demonstration. Federal agencies that use prescribed fire to manage lands for which they are responsible generally prepare multi-year plans for the use of prescribed fire in a given national park, national forest, armed forces base or other land area. Many of these plans include an

<sup>88</sup> Treatment of Data Influenced by Exceptional Events: Exceptional Events Submissions Table. U.S. Environmental Protection Agency, Research Triangle Park, NC. See links associated with “April 2011 Fires” in the ozone section of the table available at <http://www2.epa.gov/air-quality-analysis/exceptional-events-submissions-table>.

<sup>89</sup> The benchmarks for the expected frequency of prescribed fires not on wildland would be assessed on a case-by-case basis.

objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and incorporate the best science available to determine what prescribed fire cycle will accomplish this.<sup>90</sup> Some tribes, private landowners (and federal, state and local agencies working with private landowners) and state agencies that manage state-owned lands (e.g., state parks) also prepare multi-year management plans. While plans developed by public agencies (i.e., state and federal agencies) often undergo public comment prior to being finalized, the plans developed by tribes and private landowners may not follow a public comment process. However, public agencies often work with tribes and private owners to develop these plans, which are based on conservation practices and standards that have often undergone public comment as part of the state or federal agency process.

The EPA understands that multi-year plans incorporate factors relevant to identifying and selecting the areas and times under which management will initiate a specific prescribed fire. The EPA also recognizes that evaluating the behavior and results of prior prescribed fires aids in determining the frequency and need for future prescribed fire in a given area. In addition, personnel and equipment must be available on site, which cannot be specifically planned far in advance. Thus, it is typical for multi-year plans to identify somewhat general targets for the frequency of prescribed fire use and for specific burn plans. Even then, unexpected differences between planned and actual fire behavior, landscape or ecosystem characteristics, fuel loading patterns and weather patterns may cause management to deviate from the general plan and/or the specific burn plan. Therefore, when the EPA reviews an exceptional events demonstration for a prescribed fire conducted under a wildland management plan, we intend to compare the actual time pattern of prescribed fires on the land with the pattern described in the applicable multi-year plan in a general way, rather than treating the multi-year plan as containing a specific schedule to which management must adhere. For example, if the wildland management plan identified an approximate 5-year burn interval, the EPA would not disapprove

a demonstration if the burn occurred on a 4-year or a 6-year interval.

Therefore, we are proposing in rule text that we will consider a demonstration's referencing of a multi-year land or resource management plan<sup>91</sup> (and including either a copy or an internet link to the plan) with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species that also identifies the subject area as a candidate for prescribed fire to be dispositive evidence that a particular fire conducted in accordance with such a plan satisfies the "unlikely to recur at a particular location" criterion. We would also consider a demonstration's referencing of a fire management plan for tribal or private lands that has been reviewed and certified by the appropriate fire and/or resource management professionals and agreed to and followed by the land owner/manager to be sufficient evidence satisfying the "unlikely to recur at a particular location" criterion.

(iv) *Not reasonably controllable or preventable.* Consistent with current practice and 2007 preamble/rule language, the EPA considers it appropriate to allow air agencies to rely on an in-place and implemented state-certified SMP to satisfy the controllability prong of the "not reasonably controllable or preventable" criterion. The EPA proposes to incorporate the six elements of SMPs discussed in the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* and referenced in the preamble to the 2007 Exceptional Events Rule into the preamble of the final rule for this proposal, where it would serve as guidance. That is, at a minimum, a state-certified SMP would include provisions for (i) authorization to burn, (ii) minimizing air pollutant emissions, (iii) smoke management components of burn plans, (iv) public education and awareness, (v) surveillance and enforcement, and (vi) program evaluation. Certification would require that the air agency certify in a letter to the Administrator of the EPA, or a Regional Administrator, that it has adopted and is implementing a SMP.<sup>92</sup> Alternatively, the EPA solicits comment on incorporating these SMP elements

into rule text language. The EPA proposes to accept as sufficient the testimony of the air agency submitting an exceptional events demonstration that the SMP is being implemented, provided that prior to the EPA's acting on a demonstration, the record contains no clear evidence to the contrary.

Consistent with current practice and 2007 preamble and rule language, the EPA also considers it appropriate to allow air agencies to rely on a burn manager's use of BSMP that minimize emissions and control impacts, in lieu of a state-certified SMP, to satisfy the controllability prong of the "not reasonably controllable or preventable" criterion. To provide clarity and reduce uncertainty for air agencies and burn managers, the EPA proposes to identify in the rule text six BSMP practices as being generally applicable for exceptional events purposes for prescribed fires on wildland as well as other prescribed fires. The six BSMP, listed and described in more detail in Table 3, come from guidance on BSMP for prescribed burns provided by the U.S. Department of Agriculture (USDA) Forest Service (USFS) and USDA Natural Resources Conservation Service (NRCS).<sup>93</sup> Land managers of other federal, state and local agencies and private land owners generally endorse and follow this BSMP guidance.<sup>94</sup> While the listed practices are broadly stated, fire managers use site-specific considerations to select the exact actions of each type and apply them to specific burn projects. There may be situations in which one or more of the six BSMP is clearly not applicable for a particular prescribed burn—for example, if a prescribed fire is so remote that there are no neighbors to be notified. The EPA generally does not intend to challenge a burn manager's selection of the intensity or specific measure within the BSMP categories when we review a particular exceptional events demonstration. As part of the on-going assessment of our

<sup>93</sup> USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1046311.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046311.pdf).

<sup>94</sup> The EPA also addressed how federal agencies may use basic smoke management practices to establish a presumption of conformity in the preamble to the EPA's General Conformity Rule at 40 CFR 93.153(g)-(i) (75 FR 17264, April 5, 2010). The six practices identified in Table 3 are not a presumed to conform action for purposes of a federal agency satisfying their General Conformity responsibilities. For basic smoke management practices to provide a presumption of conformity, the identified basic smoke management practices must be publicly and state reviewed as part of a presumed to conform action under 40 CFR 93.153(g) or (f) of the General Conformity Rule.

<sup>90</sup> An example of a federal land management plan that considers the need for the use of prescribed fire is the *Land and Resource Management Plan for the Kaibab National Forest, Coconino, Yavapai, and Mojave Counties, Arizona*, USDA Forest Service Southwestern Region, MB-R3-07-17, February 2014, available at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb3791580.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb3791580.pdf).

<sup>91</sup> These plans could also include fire management plans, prescribed fire on wildland management plans, landscape management plans or equivalent public planning documents.

<sup>92</sup> The EPA anticipates that any person within an air agency responsible for submitting exceptional events demonstrations or SIP revisions could also be responsible for certifying a Smoke Management Program.

regulatory programs, we intend to generally review those practices commonly employed by federal agencies and other users of prescribed fire.

As another component of the approach for prescribed fires on wildland, the EPA is proposing to accept as evidence of the actual use of BSMP the fire manager’s statement that

he or she employed applicable BSMP for a prescribed fire. Documentation of such statement for an exceptional events demonstration could consist of a copy of the routine post-burn report or a letter prepared by the fire manager (see example content of a burn report in Table 4). The EPA and other federal agencies will work collaboratively to

provide access to such post-burn reports by air agencies that need them. We encourage land managers and other organizations that employ prescribed fires to work with states and tribes to develop an efficient process to provide air agencies with documentation that BSMP were employed for particular prescribed fires.

TABLE 3—SUMMARY OF BASIC SMOKE MANAGEMENT PRACTICES, BENEFIT ACHIEVED WITH THE BSMP, AND WHEN IT IS APPLIED

[before, during or after ignition of the burn]<sup>a</sup>

Basic smoke management practice	Benefit achieved with the BSMP	When the BSMP is applied—before/during/after the burn
Evaluate Smoke Dispersion Conditions .....	Minimize smoke impacts .....	Before, During, After.
Monitor Effects on Air Quality .....	Be aware of where the smoke is going and degree it impacts air quality.	Before, During, After.
Record-Keeping/Maintain a Burn/Smoke Journal.	Retain information about the weather, burn and smoke. If air quality problems occur, documentation helps analyze and address air regulatory issues.	Before, During, After.
Communication—Public Notification .....	Notify neighbors and those potentially impacted by smoke, especially sensitive receptors.	Before, During.
Consider Emission Reduction Techniques .....	Reducing emissions through mechanisms such as reducing fuel loading can reduce downwind impacts.	Before, During, After.
Share the Airshed—Coordination of Area Burning.	Coordinate multiple burns in the area to manage exposure of the public to smoke.	Before, During, After.

<sup>a</sup> The EPA believes that elements of these BSMP could also be practical and beneficial to apply to wildfires for areas likely to experience recurring wildfires.

TABLE 4—ELEMENTS THAT MAY BE INCLUDED IN BURN PLANS AND POST-BURN REPORTS FOR PRESCRIBED FIRES SUBMITTED AS EXCEPTIONAL EVENTS

Element	Burn plan	Post-burn report
Fire Name <sup>a</sup> .....	X .....	X.
Permit number (if appropriate) .....	X .....	X.
Latitude/longitude and physical description .....	X .....	X.
Date of burn, ignition time and completion time (duration of burn).	X .....	X.
AQI status on burn day, if available (both in the vicinity of the fire and in the affected upwind area).	Predicted .....	Actual.
Acres burned .....	Planned .....	Actual (blackened).
Description of fuel loading .....	Estimated .....	Actual (tons consumed).
Meteorological data (weather conditions, wind speed and direction, dispersion).	Predicted conditions (including predicted dispersion).	Actual conditions (including actual dispersion).
Smoke Impacts .....	Anticipated smoke impacts .....	Observed or reported smoke impacts (include nature, duration, spatial extent and copies of received complaints).
BSMP actions to reduce impacts .....	Expected BSMP actions .....	Actual BSMP actions.
Recommendations for future burns in similar areas.	.....	X.
Analytics (modeled/actual fire spread, satellite imagery and analysis, webcam/video, PM/ozone concentrations over the course of the fire).	.....	X.

<sup>a</sup> The “Fire Name” should be unique and referenced, to the greatest extent possible, in all exceptional events-related documentation, including the event name in AQS. The fire name could simply consist of the county and state in which the burn occurred (e.g., County X, State Y Prescribed Burn on Date Z) if no other name has been assigned.

States with certified SMPs typically have robust communications between officials concerned with air quality impacts and officials and members of

the public who use prescribed fire. These groups communicate during the development of the SMP, during the day-to-day burn authorization process

and in the periodic review and potential revision of the SMP. States that instead rely on fire managers employing BSMP on a more individual basis may not have

such regularly occurring communications processes, particularly in states in which state legislation gives the leadership of fire management to a forestry or public safety agency rather than to an air agency. We encourage all agencies and managers/owners involved in land, air quality and fire management to develop good communications about both fire use practices in general and plans for specific prescribed fires with use of BSMP. This will, among other benefits, allow them to better coordinate on public air quality notice efforts and, if necessary, public health advisories should smoke enter an inhabited area. Additionally, the EPA encourages the development of “prescribed fire councils,” comprised of federal, state, tribal, private and other stakeholders to coordinate activities involving fire planning issues and, thus, minimize or prevent smoke impacts while using prescribed fire to accomplish land management objectives.<sup>95</sup> However, we are not proposing that notifications between prescribed fire users and specific types of state agencies be a condition for approval of a prescribed fire as an exceptional event.

As previously stated, to date we have considered the existence and implementation of a SMP or the use of BSMP to be a necessary part of the supporting evidence needed to satisfy the not reasonably controllable or preventable criterion, but we have not clearly addressed what conditions are minimally sufficient to satisfy the criterion. The remainder of this section focuses on that issue.

Because prescribed fires are intentionally initiated, clarifying the minimal conditions for the not reasonably preventable prong is particularly relevant. The detailed USFS/NRCS guidance on the fifth listed BSMP, Consider Emission Reduction Techniques, includes the potential to reduce the fuel loading. It does not suggest that it may be reasonable to *not* ignite a particular prescribed fire (*i.e.*, that the fire be prevented), because this guidance is aimed at those fires that are already planned to happen. Similarly, SMPs address coordination of previously planned prescribed fires and typically do not ask SMP participants to consider whether particular prescribed fires are reasonably preventable. Therefore, we do not believe that the existence of an SMP or the use of BSMP is a sufficient basis for concluding that a prescribed fire is not reasonably

preventable. A prescribed fire should be concluded to be not reasonably preventable on the basis of the benefits that would be foregone if it were not conducted, as described below.

For federal agencies, the planning of prescribed fire programs typically happens through the development of multi-year plans that focus on specific land or resource management objectives. This planning process, and the resulting multi-year plan, typically considers the importance of a prescribed fire program to achieving land management goals, which may include an objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem, in light of the availability, cost and effectiveness of other approaches to fuel management. The final multi-year plans thus generally identify the level of prescribed fire use necessary to achieve those goals. As noted previously, some tribes, private landowners (and federal, state and local agencies working with private landowners) and state agencies that manage state-owned lands (*e.g.*, state parks) also prepare multi-year management plans. While plans developed by public agencies (*i.e.*, state and federal agencies) often undergo public comment prior to being finalized,<sup>96</sup> the plans developed by tribes and private landowners may not follow a public comment process. However, public agencies often work with tribes and private owners to develop these plans, which are based on conservation practices and standards that have often undergone public comment as part of the state or federal agency process. Not conducting the prescribed fire programs described in such plans could mean forgoing important ecosystem services and other benefits. Accordingly, the EPA is proposing in rule text form to consider a prescribed fire on wildland conducted in accordance with a multi-year fire management plan that has an objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem to be not reasonably preventable, provided there is no compelling evidence to the contrary in the record when the EPA approves the associated exceptional events demonstration.<sup>97</sup>

<sup>96</sup> Many multi-year plans developed by state and federal agencies are available electronically online or can be requested directly from the preparing agency. Interested parties can also request electronic versions of project level plans, if they are not available online.

<sup>97</sup> On a case-by-case basis, in the absence of a multi-year plan, the EPA would also consider a prescribed fire on wildland conducted on a fire return interval established according to scientific

We also propose in rule text that compliance with either a state-certified SMP or BSMP is sufficient to establish that a prescribed fire was not reasonably controllable, provided there is no compelling evidence to the contrary in the record when the EPA concurs with the associated exceptional events demonstration. This is an appropriate approach to implementing CAA section 319(b), because SMPs and BSMP aim to reasonably control the air quality impacts of prescribed fires.<sup>98</sup>

This two-part categorical approach would reduce the length of exceptional events demonstrations for prescribed fires on wildland and make the demonstration preparation and review process more resource efficient. In summary, to satisfy the not reasonably controllable or preventable criterion for a prescribed fire on wildland, a demonstration would need to identify that the prescribed burn was conducted in accordance with a multi-year plan that has an objective of the establishment, restoration and/or maintenance of a sustainable and resilient wildland ecosystem and was conducted in compliance with either a state-certified SMP or BSMP.

Finally, we are proposing to remove the phrase “and must include consideration of development of a SMP” from the sentence of the existing text of 40 CFR 50.14(b)(3) that reads, “If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.” While the EPA supports states considering the development of a SMP in the situation described in this sentence, we believe states have had ample opportunity to develop such a program since 2007. This rule language effectively requires an ongoing consideration to develop an SMP every time a prescribed fire causes a NAAQS exceedance or violation that merits exclusion as an exceptional event. We do not believe Congress intended this ongoing consideration to be a requirement flowing from CAA section 319(b). In addition, we believe that an

literature to satisfy the not reasonably controllable or preventable criterion provided the prescribed fire was also conducted with the objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and conducted in compliance with either a state-certified SMP or BSMP. This case-by-case approach is similar to the approach currently used under the 2007 Exceptional Events Rule.

<sup>98</sup> With respect only to the not reasonably controllable prong, we also believe that the SMP and BSMP approach each is sufficient for prescribed fires that are not on wildland.

<sup>95</sup> See additional information on prescribed fire councils on the Coalition of Prescribed Fire Councils, Inc. Web site at <http://www.prescribedfire.net/membership/state-councils>.

SMP is most appropriate when multiple parties wish to employ prescribed fire at about the same time in the same airshed, which is a more narrow situation than specified in this sentence. We also do not want our rules to be open to an inference that development of a SMP should only be considered following a NAAQS exceedance or violation, because the impacts from fires may affect public health in areas without NAAQS-compliance air monitoring stations. Also, we believe that when air agencies observe NAAQS exceedances or violations attributed to a prescribed fire, air agencies should consider a wide range of alternatives including, but not limited to, the development of a SMP. For example, agencies might also consider the more frequent or intensive use of BSMP to limit the fuel available to burn in each fire.

The EPA solicits comment on all aspects of the identified fire-related approaches.

### 3. Stratospheric Ozone Intrusions

#### a. Current Situation

Stratospheric ozone intrusions are natural events that occur when a parcel of air originating in the stratosphere is re-entrained into the troposphere, and in some cases mixes directly to the surface of the earth. These relatively rare events can create elevated ozone concentrations that affect areas ranging from a single monitoring site to a wider area as the air mass with a high ozone concentration moves across the landscape.

Normally, the tropopause, the temperature inversion layer of air that separates the troposphere from the stratosphere, limits the transport of stratospheric air into the troposphere, the lowest layer of the Earth's atmosphere.<sup>99</sup> In some cases, however, parcels or ribbons of ozone-rich air from the stratosphere can be transported rapidly to the surface during deep mixing events, such as thunderstorms or strong frontal passages, by a process known as tropopause folding. Although this "folding" process can occur throughout the year, it is typically associated with frontal passages and upper level low pressure systems during the spring season.<sup>100 101</sup> The ozone

transported through these "folds," or through other less significant mechanisms, may disperse within and be destroyed in the upper troposphere or it may mix down to the surface.<sup>102</sup> The "intrusion" of stratospheric ozone is identified most frequently at high elevation sites where upper tropospheric air is more likely to reach the surface than at lower elevation sites where more downward movement would be needed for a monitoring site to be affected. At these high elevation sites in particular, stratospheric ozone intrusion has been estimated to contribute about 20 to 25 percent of the total tropospheric ozone budget and can cause relatively short-term (*i.e.*, ranging from several hours to 2–3 days in duration) increases of surface ozone of 10 to 50 ppb above normal background levels.<sup>103</sup> Stratospheric intrusions with short-lived surface ozone concentrations of several hundred ppb have also been observed, although these events are extremely rare.

Because stratospheric intrusion events are relatively infrequent and because identifying and monitoring these events are challenging, there have been few direct measurements showing that a given parcel of surface air contains stratospheric ozone (versus ozone generated by local natural or anthropogenic sources). Interpreting these direct measurements is also challenging. One approach to confirm the presence of stratospheric ozone in surface air is through the use of the beryllium tracers, beryllium isotopes Be-7 and Be-10, which are produced primarily in the stratosphere by cosmic ray collisions with atmospheric gas atoms.<sup>104</sup> Beryllium isotope measurements are, however, rare and expensive, and, consequently not normally available.

More common approaches to identify stratospheric ozone in surface air can

shedding stratospheric air." *Geophys. Res. Lett.*, 41, 7785–7790, doi:10.1002/2014GL061921.

<sup>101</sup> A. O. Langford, K. C. Aikin, C. S. Eubank and E. J. Williams. Stratospheric Contribution to High Surface Ozone in Colorado During Springtime, *Geophysical Research Letters*, Vol. 36, Issue 12, June 2009.

<sup>102</sup> Other mechanisms by which stratospheric ozone is transported into the troposphere include cutoff cyclones, streamers (long filamentary structures that often roll into vortices), and clear air turbulence (see [http://www.atmos.umd.edu/~dkuhl/documents/Kuhl\\_Tropopause\\_Folding.ppt](http://www.atmos.umd.edu/~dkuhl/documents/Kuhl_Tropopause_Folding.ppt)).

<sup>103</sup> Integrated Science Assessment of Ozone and Related Photochemical Oxidants (Final Report). U.S. EPA, Washington, DC EPA/600/R-10/076F. Available at: [http://www3.epa.gov/ttn/naaqs/standards/ozone/s\\_o3\\_2008\\_isa.html](http://www3.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_isa.html).

<sup>104</sup> Cristofanelli, P. A 6-year analysis of stratospheric intrusions and their influence on ozone at Mt. Cimone (2165 m above sea level). *Journal of Geophysical Research*, Vol. 111, D03306, doi:10.1029/2005JD006553, 2006.

include evaluating measurements at the potentially influenced ozone monitoring site for very low concentrations of CO and/or relative humidity. Both can be strong indicators of stratospheric air because, relative to tropospheric air, stratospheric air has very low relative humidity and very low concentrations of other air pollutants such as CO, NO<sub>x</sub> and PM. The concurrent impacts on CO and relative humidity can be subtle, however, when stratospheric air has mixed with tropospheric air as the mixing process dilutes the ozone enhancement and increases CO and water vapor concentrations relative to stratospheric conditions. Typical CO monitors used for ambient air monitoring have operational ranges of 500 to 50,000 ppb (0.5 to 50 ppm) and are not sufficiently sensitive to reliably measure the very low CO levels found in stratospheric air (50 to 150 ppb). Additionally, few rural high altitude monitoring sites have both ozone and CO monitors.<sup>105</sup> The EPA urges air agencies to provide concurrent readings of ozone and CO and/or relative humidity in their exceptional events demonstrations if they have these data. The EPA will evaluate these data as a part of a weight of evidence showing alongside other qualitative evidence in a clear causal relationship showing.

A third measurement-based approach to identifying stratospheric ozone could include measurements of ozone above ground level (*i.e.*, measurements in the troposphere). This approach is also uncommon. Currently, five sites in the U.S. conduct ozone sonde (balloon) launches two or more times per week and an additional few research locations operate ozone lidars to vertically measure ozone profiles.<sup>106 107</sup>

In the absence of direct measurements of stratospheric tracers at ground level,

<sup>105</sup> A recent review of AQS data revealed 216 sites in the United States with collocated ozone and carbon monoxide monitors in operation after January 1, 2014. Most of these sites are located in either urban or suburban locations. In these settings, local emissions would likely hide the stratospheric CO suppression.

<sup>106</sup> Lidar, which stands for Light Detection and Ranging, is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses, combined with other data recorded by the airborne system, generate precise, three-dimensional information about the shape of the Earth and its surface characteristics. See, NOAA definition at <http://oceanservice.noaa.gov/facts/lidar.html>.

<sup>107</sup> See NOAA data available at <ftp://aftp.cmdl.noaa.gov/data/ozwv/Ozonesonde>. On April 30, 2015, NOAA's site identified the following five sites in the U.S. that conduct bi-weekly ozone sonde launches: Hilo, HI; Huntsville, AL; Narragansett, RI; Trinidad Head, CA; and Boulder, CO. Additional launches occur in Pago Pago, American Samoa, and outside of the U.S. in Greenland, Antarctica and Fiji.

<sup>99</sup> The height of the tropopause varies with latitude and season but the average height at mid-latitudes is about 11 kilometers (km) (7 miles or 36,000 feet). The stratosphere, the second layer of the Earth's atmosphere, is located above the tropopause at 13 to 50 km (8–31 miles or 43,000 to 160,000 feet) above the Earth's surface.

<sup>100</sup> Pan, L. L., et al. (2014), "Thunderstorms enhance tropospheric ozone by wrapping and

meteorological models can indicate conditions under which stratospheric air parcels may reach the surface. Meteorological models such as the National Oceanic and Atmospheric Administration (NOAA)/National Weather Service (NWS) North American Mesoscale Forecast System (NAM) or the NOAA Rapid Update Cycle (RUC) models simulate parameters characteristic of stratospheric air such as isentropic potential vorticity (IPV) and potential temperature (PT) that can be used to identify tropopause folding. Visualization tools using the model output can show spatially where stratospheric air is located in proximity to or in contact with the surface. Similarly, atmospheric chemistry models, such as the National Aeronautics and Space Administration (NASA)/NOAA Real-time Air Quality Modeling System (RAQMS)<sup>108</sup> can provide both real time intrusion forecasting and retrospective analysis of ozone from intrusions. Finally, satellite observation of atmospheric ozone and CO can be used to validate predictions based on atmospheric modeling.

Although as of the date of this proposal the EPA has concurred with only one stratospheric ozone intrusion exceptional events demonstration prepared under the provisions of the 2007 Exceptional Events Rule (and disapproved none),<sup>109</sup> the EPA has been communicating that we consider it appropriate to use the previously mentioned stratospheric ozone tools with other event/pollutant exceptional events analyses (e.g., seasonal analysis of ozone data, comparison of event days with non-event days, trajectory analysis, ozone measurement time series and spatial distribution analysis, meteorological analysis to show the presence of weather systems associated with typical intrusions and balloon soundings of the NWS Upper Air Observation Program to detect parcels of dry air aloft) to successfully demonstrate stratospheric ozone exceptional events.

#### b. Proposed Changes

As is true for all exceptional events and pollutant combinations, when submitting a demonstration for stratospheric ozone intrusion events, air agencies must address all of the Exceptional Events Rule criteria. As noted in this action, the EPA proposes

to return to the core statutory elements and implicit concepts of CAA section 319(b): That the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event was not reasonably controllable or preventable and the event was a human activity that is unlikely to recur at a particular location or was a natural event. The EPA suggests the following approach when addressing these technical criteria for an ozone exceedance or violation caused by a stratospheric intrusion.

An air agency should begin by showing the geographic extent of elevated or exceedance-level ozone concentrations associated with the intrusion event in conjunction with an evaluation of the historical measured surface ozone levels for the same season (see section V.E.3 of this proposal for example analyses of how to present the comparison to historical concentrations within the clear causal relationship criterion). If the intrusion happened at a time of year when local or transported photochemical ozone is generally low, evidence that the intrusion affected ground level air quality may be relatively brief and still be sufficient, compared to an intrusion occurring at the height of the historical ozone season.

If intrusion claims coincide with historically high photochemistry seasons, then the air agency may need additional evidence to support the clear causal relationship criterion by showing the relative contribution estimates to the exceedance from local and transported anthropogenic pollutants compared to the intrusion contribution. An air agency can provide additional analyses supporting the clear causal relationship by showing that an intrusion occurred at or near the location of an identified monitor by using atmospheric models such as RAQMS, NAM or RUC, with additional data from satellite observations of total column ozone and CO.

The EPA intends to accept a short statement in a demonstration that because stratospheric ozone intrusions are purely natural events and are large in scale, they are not reasonably controllable or preventable.

#### 4. High Wind Dust Events

##### a. Current Situation

The 2007 Exceptional Events Rule preamble noted that “[t]he EPA’s final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised

by unusually high winds will be treated as due to uncontrollable natural events where (1) The dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or from anthropogenic sources outside the State.” As noted in section IV.B of this document, although this language still reflects the EPA’s interpretation of what might be appropriate under the Exceptional Events Rule, the D.C. Circuit determined the language to be a legal nullity because the EPA did not specifically address high winds or ambient particulate matter concentrations in the promulgated regulatory language in 40 CFR 50.14.

The preamble to the 2007 Exceptional Events Rule also noted that because “. . . the conditions that cause or contribute to high wind events vary from area to area with soil type, precipitation, and the speed of wind gusts, [air agencies] should provide appropriate documentation which indicates what types of circumstances contributed to the exceedances or violation at the monitoring site in question.” The EPA declined to identify a specific high wind threshold to qualify as being an exceptional event and instead relied on air agencies to submit appropriate documentation supporting their position.

Because of the uncertainty associated with these high wind statements and stakeholder feedback asking the EPA to interpret this language and provide examples of applying the provisions in the 2007 Exceptional Events Rule to high wind dust events, the EPA clarified many concepts related to high wind dust events in its May 2013 Interim Exceptional Events Implementation Guidance, specifically the Interim High Winds Guidance document.<sup>110</sup> In this guidance, the EPA defined a high wind dust event as including the high wind and the dust that the wind entrains and transports to a monitoring site, clarified our expectations regarding “reasonable controls” for high wind events with contribution from both natural and anthropogenic sources and introduced the concept of establishing a value for a high wind threshold, up to which reasonable windblown dust controls are

<sup>108</sup> See <http://raqms-ops.ssec.wisc.edu/>.

<sup>109</sup> Wyoming Department of Environmental Quality, Air Quality Division. Big Piney and Boulder, Wyoming Ozone Standard Exceedance, June 14, 2012. Available at <http://www2.epa.gov/air-quality-analysis/exceptional-events-submissions-table>.

<sup>110</sup> *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).



expected to be effective in the absence of site specific data or analyses.

As identified in the Interim High Winds Guidance document, dust phenomena are experienced primarily in the western U.S. where rainfall is seasonal, creating dry and dusty landscapes.<sup>111</sup> In high wind dust events, the meteorological phenomenon (*i.e.*, wind) is purely natural, but the pollution from the event may be a mixture of natural sources (*e.g.*, undisturbed soil) and anthropogenic sources (*e.g.*, soil disturbed by human activity, emissions from sand and gravel facilities, etc.). The EPA generally classifies high wind dust events as “natural events” in cases where windblown dust is entirely from natural sources or where all significant anthropogenic sources of windblown dust have been reasonably controlled.<sup>112</sup> This long-standing policy was first established in the PM<sub>10</sub> Natural Events Policy, which provided that:

Ambient PM-10 concentrations due to dust raised by unusually high winds will be treated as due to uncontrollable natural events under the following conditions: (1) The dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM).<sup>113</sup>

Also integral to definition of a high wind dust event is that the wind speed be “high,” or, as indicated in the PM<sub>10</sub> Natural Events Policy, “unusually high.” Only “high wind” dust events are exceptional events and “high” is area-specific.

Typically, undisturbed desert landscapes in the western U.S. have a natural crust that protects the surface

and tends to limit emissions of windblown dust. The wind speed capable of causing emissions from these natural undisturbed areas varies by location, depending on characteristics of the local landscape (*e.g.*, soil type and characteristics, vegetation). Numerous studies have been conducted to determine the minimum wind speed capable of causing emissions from natural undisturbed areas and/or overwhelming reasonable controls on anthropogenic sources.<sup>114</sup> In the Interim High Winds Guidance, the EPA called the minimum threshold wind speed capable of causing emissions from natural undisturbed areas or overwhelming reasonable controls on anthropogenic sources the “high wind threshold.”

In the Interim High Winds Guidance, the EPA articulated its expectations regarding the development and application of high wind thresholds. In this guidance, the EPA encouraged air agencies to identify an appropriate high wind threshold for each area experiencing high wind dust events within their exceptional events submissions for high wind dust events.<sup>115</sup> The guidance recommended that these thresholds should consider local conditions and specify a minimum wind speed capable of causing emissions from those natural undisturbed areas or overwhelming reasonable controls on contributing anthropogenic sources (*see* section V.E.2 for additional discussion regarding reasonable controls). This approach was consistent with the PM<sub>10</sub> Natural Events Policy in which the EPA recommended that air agencies define the conditions in which BACM level controls were overwhelmed. The area-specific high wind threshold should be representative of conditions (*i.e.*, sustained wind speeds<sup>116</sup>) that are capable of

overwhelming reasonable controls (whether RACM, BACM or other) on anthropogenic sources and/or causing emissions from natural undisturbed areas. The threshold was not intended to represent the minimum wind speed at which *any* level of emissions could occur (*e.g.*, aerodynamic entrainment), but rather when significant emissions begin due to reasonable controls or natural undisturbed areas becoming overwhelmed. We have stated that if an agency is unable to develop an area-specific high wind threshold, we generally will accept a threshold of a sustained wind of 25 mph for areas in the western U.S. provided the agencies support this as the level at which they expect stable surfaces (*i.e.*, controlled anthropogenic and undisturbed natural surfaces) to be overwhelmed.<sup>117</sup> We did not indicate what form such support could take. We also have said that if we receive specific information based on relevant studies to choose an alternative high wind threshold for an identified area, we will notify the affected air agency.

Also as noted in the Interim High Winds Guidance document, the EPA has expected air agencies to provide relevant wind data (*e.g.*, wind speed and direction) as part of an exceptional events submission for high wind dust events. Wind speed data consist of analyses and statistics showing how the observed high wind dust event wind speed compares to the distribution of historical wind speeds and the established high wind threshold. The EPA has recommended that air agencies show these historical comparisons on an annual and/or seasonal basis, depending on which is more appropriate, using a format similar to the recommended format of the comparison to historical concentrations showing as part of the clear causal relationship criterion discussed in section V.E.3 of this proposal. The EPA has encouraged air agencies to discuss wind direction in the narrative and to present wind direction information graphically in

*130510.pdf* for details on the calculation of sustained wind speed. Generally, the EPA will accept that high winds could be the cause of a high 24-hour average PM<sub>10</sub> or PM<sub>2.5</sub> concentration if there was at least one full hour in which the hourly average wind speed was above the area-specific high wind threshold.

<sup>117</sup> The 25 mph threshold is based on studies conducted on natural surfaces. *See* additional information relevant to establishing this threshold in Appendix A1 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).

<sup>111</sup> We use “Western U.S.” to refer to states in the Great Plains (North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas) and those farther west including Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

<sup>112</sup> As identified in section V.D of this proposal, the EPA will generally consider human activity to have played little or no *direct* role in causing emissions of the dust generated by high wind for purposes of the regulatory definition of “natural event” if contributing anthropogenic sources of the dust are reasonably controlled, regardless of the amount of dust coming from these reasonably controlled anthropogenic sources, and thus the event could be considered a natural event. In such cases, the EPA believes that it would generally be a reasonable interpretation to find that the anthropogenic source had “little” direct causal role. If anthropogenic sources of windblown dust that are reasonably controllable but that did not have those reasonable controls applied at the time of the high wind event have contributed significantly to a measured concentration, the event would not be considered a natural event.

<sup>113</sup> *Areas Affected by PM-10 Natural Events* (the PM<sub>10</sub> Natural Events Policy), memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to EPA Regional Offices, May 30, 1996.

<sup>114</sup> *See* Appendix A1 of the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).

<sup>115</sup> *See* Appendices A2 and A3 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf) for additional information on the development of a high wind threshold.

<sup>116</sup> Section 6.3.2.2 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf).

maps/plots in the clear causal relationship section of the high wind dust exceptional events demonstration.

In considering past high wind dust event demonstrations, the EPA has found that the “not reasonably controllable or preventable” and the “clear causal relationship” (to include the comparison to historical concentrations showing) criteria play significant roles in the supporting exceptional events documentation. The EPA has generally found that for high wind dust events, air agencies can meet the “human activity or natural event” criterion by satisfying the requirements for not reasonably controllable or preventable and clear causal relationship as well as addressing the additional components of exceptional events demonstration packages as discussed in section V.G.

As is the case with all demonstration packages, air agencies with agricultural sources that potentially contribute to high wind event-related emissions should address the question of source contribution and associated reasonable controls on these sources within the not reasonably controllable or preventable portion of the demonstration. The EPA has noted in previous guidance that when considering the anthropogenic sources that contribute to event-related emissions and the appropriate “reasonable controls” on these sources, air agencies should be aware of USDA/NRCS-approved Best Management Practices (BMPs) (also referred to as conservation management practices) that are designed to effectively reduce fugitive dust air emissions and prevent soil loss in agricultural applications.<sup>118</sup> We have stated that these BMPs could be included in the collection of controls determined to constitute reasonable controls for wind-blown dust events in areas in which they have been implemented.

#### b. Proposed Changes

The EPA proposes to include in the preamble to the final rule for this action a modified version of some of the language that first appeared in the Interim High Winds Guidance document and to incorporate into the rule text the revisions proposed in this section. We also intend to revise the Interim High Winds Guidance to be consistent following promulgation of final Exceptional Events Rule revisions.

*Definition of an Event.* Consistent with the EPA’s proposal to revise the

regulatory definition of an exceptional event to include both the event and its associated resulting emissions, the EPA proposes to define a high wind dust event as an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site. Consistent with the nullified language in the 2007 Exceptional Events Rule preamble, the PM<sub>10</sub> Natural Events Policy and the Interim High Winds Guidance, the EPA proposes to define high wind dust events in the rule text as “natural events” in cases where windblown dust is entirely from natural sources or where all significant anthropogenic sources of windblown dust have been reasonably controlled.

*High Wind Threshold.* To facilitate clearer expectations regarding the evidence needed to demonstrate which controls constitute “reasonable controls,” the EPA proposes to codify in rule language the definition of “high wind threshold” as the minimum threshold wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event. The EPA proposes to accept a threshold of a sustained wind of 25 mph for areas in the western U.S. provided this value is not contradicted by evidence in the record when we review a demonstration. If the EPA receives specific information based on relevant studies that suggest a different high wind threshold for an identified area, the EPA will notify the affected air agency so that the agency may consider basing its demonstration on that threshold value. The EPA would consider such information as part of the weight of evidence analysis for a submitted demonstration. In lieu of using the default 25 mph high wind threshold, air agencies would have the option to identify an area-specific high wind threshold that is more representative of local/regional conditions.

The high wind threshold concept will continue to apply to the review of demonstrations for events in a nonattainment or maintenance area for which the dust controls in a recently approved SIP are generally accepted as sufficient to satisfy the not reasonably controllable criterion. For such a demonstration, the controls specified in the SIP should be considered reasonable, while acknowledging the possibility that the controls are not being complied with and that uncontrolled anthropogenic sources of PM could be the contributing to the exceedance. For events with sustained wind speeds above the high wind threshold, it is very plausible that SIP

controls were being implemented and the high PM concentrations are due to emissions generated from sources in the area despite implementation of the SIP measures. Conversely, for events with sustained wind speeds below the high wind threshold, it becomes more plausible that there may be noncompliance with control measures or that uncontrolled anthropogenic sources are contributing to the exceedance. Therefore, the comparison of sustained wind speeds during an event to the high wind threshold will help the EPA Regional offices determine what evidence is required to be included in a demonstration regarding reasonable controls, the possibility of non-compliance, or non-event sources.

*Large-Scale or High-Energy High Wind Dust Events.* The EPA proposes to codify in rule language to apply a case-specific approach when considering reasonableness of controls for remote, large-scale, high-energy and/or sudden high wind dust events, such as “haboobs” in the southwest where sustained wind speeds can exceed 40 mph and generate walls of dust several miles wide and more than a mile high. The proposed rule text provides that in these situations, the event will be considered not reasonably preventable or controllable. Therefore, a demonstration limited to such event(s) will not need to substantively address this criteria. The EPA solicits comment on this proposed, case-specific approach when considering reasonableness of controls for remote, large-scale, high-energy and/or sudden high wind dust events.

*Other Types of High Wind Dust Events.* Any demonstration for a non-high-energy event would be evaluated on a case-by-case basis. In doing so, the EPA would consider what controls are reasonable in light of an area’s attainment status and associated CAA control requirements, the frequency, and range of non-high energy wind events known (at the time of the particular event that is the subject of the demonstration) to occur in the area.

*The Role of the EPA-approved SIP in Nonattainment and Maintenance Areas.* As stated in section V.E.2, the EPA proposes to establish by rule a non-rebuttable presumption that, during a 5-year window (or, alternatively another appropriate timeframe) following approval of an attainment plan or maintenance plan SIP during which no subsequent new obligation for the air agency to revise the SIP has arisen, the control measures included in the SIP that are specific to the relevant pollutant, sources and event type satisfy the not reasonably controllable or

<sup>118</sup> Reference Guide for Cropping Systems and General Land Management. USDA, NRCS and U.S. EPA. October 2012. Available at [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprd1049502.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprd1049502.pdf).

preventable criterion.<sup>119</sup> Otherwise, the air agency and the EPA would evaluate the not reasonably controllable or preventable criterion on a case-by-case basis.

We describe below one potential scenario in which deference to the SIP for purposes of “reasonable controls” (versus a case-by-case analysis) satisfies the not reasonably controllable or preventable criterion. We also provide two other scenarios needing a case-by-case analysis for purposes of satisfying the not reasonably controllable or preventable criterion. We identify these scenarios below and then discuss them in more detail in sequence.

- **Nonattainment Area Scenario 1**—The EPA approved the SIP with the enforceable control measures as meeting attainment or maintenance planning requirements within 5 years of the date of submittal of the event AND the air agency is not under an obligation to revise the SIP for the reason listed in Scenario 2 or any other reason. Additionally, the sustained winds during the event are above the high wind threshold. The SIP includes enforceable control measures that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP that have or may have contributed to event-related emissions. This indicates that in the development and approval of the SIP, both the EPA and the state considered what event-related controls were sufficient to meet the attainment or maintenance plan requirements of the CAA.

- **Nonattainment Area Scenario 2**—The air agency is under an obligation to revise the SIP as a result of a SIP call based on failing to provide for attainment and maintenance of the relevant NAAQS as evidenced by current violations.<sup>120</sup>

- **Maintenance Area Scenario 3**—The EPA approved the SIP more than 5 years prior to the date of submittal of a demonstration.

#### Details for Nonattainment Area Scenario 1

In this scenario, where the sustained winds during the event are above the high wind threshold, the EPA would apply a non-rebuttable presumption that

the controls in the existing SIP represent reasonable measures to prevent or control any event of the given type that occurs in the 5-year window. To satisfy the not reasonably controllable or preventable criterion, the EPA would expect the submitting air agency to identify the emission sources that contribute to the event emissions and exceedance and identify the associated SIP controls plus any other enforceable control measures required by state laws or rules. The air agency would also identify the implementation status of these controls and provide evidence of effective implementation and enforcement.

Example: An air agency submits a demonstration for a high wind dust event in a PM<sub>10</sub> nonattainment area that occurred in October 2015. The air agency has an EPA-approved attainment plan SIP for the affected area that was approved in October 2010 and that SIP includes enforceable controls implemented in accordance with the SIP that address the event-related pollutant (*i.e.*, PM) and all sources necessary to fulfill the requirements of the CAA. The sustained winds during the event were above the high wind threshold. In the not reasonably controllable or preventable portion of its high wind dust demonstration, the air agency would describe the event-related wind characteristics and identify the natural and anthropogenic emission sources that contributed to the event emissions and the associated SIP and other control measures. The air agency would then describe the implementation status of these controls and provide evidence of effective implementation and enforcement. The air agency would conclude the “not reasonable controllable or preventable” portion of the demonstration by affirmatively stating that because the EPA had approved the SIP within 5 years of the event and because the SIP measures and other measures specific to the pollutant and at least some anthropogenic emission sources that contributed to the event emissions were implemented, the agency has satisfied the not reasonably controllable or preventable criterion.

In reviewing the demonstration in this scenario, the EPA would generally concur that the air agency met the not reasonably controllable or preventable criterion during the 5-year period provided the SIP was implemented and the event was not attributable to noncompliance. Thus, assuming the demonstration also satisfied the remaining technical and procedural elements in the Exceptional Events Rule, the EPA would concur with the air

agency’s request to exclude data for purposes of regulatory actions within the scope of the final revised Exceptional Events Rule. If, however, the air agency experienced an exceedance or violation during the 5-year period for reasons other than those attributable to the successful exceptional events demonstration (*e.g.*, industrial source noncompliance or another type of event), the EPA may take one of these actions. In addition, the EPA may issue a SIP call because the SIP is inadequate with regard to a requirement of the CAA that is not tied to the occurrence of NAAQS violations related to exceptional events. If the EPA issues a SIP call during the 5-year window, the situation would switch to Scenario 2.

#### Details for Nonattainment Area Scenario 2

In this scenario (where the SIP is being revised to respond to a SIP call involving the PM<sub>10</sub> or PM<sub>2.5</sub> NAAQS), the existing SIP controls should *not* be presumed to satisfy the not reasonably controllable or preventable criterion regardless of whether the event-related wind speeds are above or below the high wind threshold. The EPA recommends that as the first step in preparing an exceptional events demonstration, the air agency should assess the case-specific effectiveness of the controls that were in place at the time of the event and consider potential controls that are more comprehensive and effective than those in the SIP that the agency could have implemented before or during the event. This case-specific assessment should apply the concept that if a set of control measures *should reasonably have been in place* for emission sources that contribute to the event emissions in light of the information in the record of the EPA action that has created the obligation to revise the SIP, then those controls *must* have been in place for the event to satisfy the not reasonably controllable or preventable criterion.

The submitting air agency preparing a case-specific assessment should first identify the natural and anthropogenic emission sources that significantly contribute to the event emissions and exceedance. The air agency should categorize sources as those that are addressed through SIP or other state or local laws or rules and those sources that are not addressed by SIP measures or other measures. Where the contributing source has SIP or other controls, the air agency would identify the implementation status of these controls and provide evidence of effective implementation and

<sup>119</sup> A request for data exclusion must also show that the event was not a result of noncompliance with any existing state or local laws or rules that have not been incorporated into the SIP.

<sup>120</sup> Other possible reasons for an area to be in a Scenario 2 situation would be if it has been designated nonattainment for a revised NAAQS for the relevant pollutant or is subject to a SIP call for the relevant pollutant following the EPA’s determination that the SIP is inadequate for some other reason.

enforcement. The air agency should also consider whether those SIP controls should have been made more stringent and effective prior to the event. For emission sources that contribute to the event emissions but are not specifically addressed in the SIP or other laws or rules, the air agency should identify and document why it was reasonable to have not implemented controls.

We invite comment on whether there should be a grace or grandfathering period before a SIP call involving a relevant NAAQS has the effect of ending the deference that applied prior to the SIP call, such that for an event occurring during the grace period the SIP would be given the deference described for the first scenario. We believe that such a grace period should not extend beyond the due date for the required SIP revision in response to the SIP call.

Example: An air agency has an EPA-approved attainment plan SIP for a PM<sub>10</sub> nonattainment area that was approved in 1994 and includes controls for some of the anthropogenic emission sources that contribute fugitive dust during high wind events. The nonattainment area did not include fugitive dust controls for gravel operations in its 1994 SIP and has not required any controls of these operations in the years since SIP approval. The area does not have an approved maintenance plan, in part because it has been experiencing unresolved exceedances since 1994. The air agency alerts the reviewing EPA Regional office that it wishes to submit an exceptional events demonstration for a high wind dust event that occurred in 2015 and affected several of the area's monitoring sites. This is the second high wind dust event associated with an exceedance in the past 3 years. After the first event, the EPA issued a SIP call for the air agency to revise its PM<sub>10</sub> SIP, but the air agency has not yet submitted a new SIP. Because the EPA issued a SIP call, the air agency is required to show on a case-specific basis that the not reasonably controllable or preventable criterion has been met. Applying the concept that if a set of control measures *should reasonably have been in place* for emission sources that contribute to the event emissions to the information in the record supporting the SIP call would likely result in a determination that those controls *must* have been in place for the event to satisfy the not reasonably controllable or preventable criterion. Because the gravel operations are not controlled and because the high wind dust event was the second in 3 years, the air agency had a basis for understanding the possible need for better controls. Given the air agency's knowledge of recurring events, the air

agency may not be able to make a sufficient showing for the not reasonably controllable or preventable criterion and the reviewing EPA Regional office may not be able to concur with the air agency's request to exclude data. If, however, the air agency can show that the gravel operations did not contribute to the event-related emissions, the reviewing EPA Regional office might be able to concur with the air agency's request to exclude data.

#### Details for Maintenance Area Scenario 3

In this scenario (where the SIP was approved more than 5 years prior to the date of submittal of a demonstration and the air agency is not under an obligation to revise the SIP), because of the passage of time the SIP controls should not be presumed to satisfy the not reasonably controllable or preventable criterion regardless of whether the event-related wind speeds are above or below the high wind threshold. In this case, the air agency should complete a case-specific assessment of the reasonableness of controls to satisfy the not reasonably controllable or preventable criterion. The assessment should consider controls beyond those required by the existing SIP and other state or local laws and rules. The case-specific assessment should apply the concept that if a set of control measures *should reasonably have been in place* for emission sources that contribute to the event emissions, then those controls *must* have been in place for the event to satisfy the not reasonably controllable or preventable criterion. The submitting air agency should first identify the natural and anthropogenic emission sources that contribute to the event emissions and exceedance. The air agency should categorize sources as those that are addressed through SIP or other state or local laws or rules and those sources that are not addressed by SIP measures or other measures. Where the contributing source has SIP or other controls, the air agency would identify the implementation status of these controls and provide evidence of effective implementation and enforcement. The air agency should also consider whether those SIP controls should have been made more stringent and effective prior to the event. For emission sources that contribute to the event emissions but are not specifically addressed in the SIP or other laws or rules, the air agency should identify and document why it was reasonable to have not implemented controls.

Example: An air agency has an EPA-approved attainment plan SIP for a PM<sub>10</sub> former nonattainment area that was approved in 2008 and includes controls

for anthropogenic emission sources that contribute fugitive dust during high wind events. The area has an approved maintenance plan. Between 2008 and 2014 it has *not* been experiencing exceedances related to high winds. In 2014 there is a single high wind dust event with sustained wind speeds above the high wind threshold that results in two exceedance days, sufficient to constitute a 3-year NAAQS violation. The air agency submits a demonstration covering both exceedances. In the not reasonably controllable or preventable portion of its demonstration, the air agency would identify all sources contributing to the event emissions, including natural sources, sources identified and controlled in the SIP, and any sources not controlled by the SIP. The air agency would then identify the applicable controls, the implementation status of these controls and evidence of enforcement. The air agency should also consider whether those SIP controls should have been made more stringent and effective prior to the event. Given the area's past history of not having events and the fact that the sustained wind speed during the event was above the high wind threshold, it is likely that the air agency could make a sufficient showing for the not reasonably controllable or preventable criterion. In this case, provided the air agency satisfies the other rule criteria, the EPA Regional office would likely concur with an air agency's request for data exclusion.

However, in this maintenance area scenario, another possible outcome of an event that causes an exceedance or violation is that the EPA determines that the not reasonably controllable or preventable criterion is not met and the event-affected data are retained for regulatory actions within the scope of the Exceptional Events Rule. This may lead to the EPA taking an action that places the air agency under an obligation to revise the SIP, in which case the situation would change into the second scenario for any later events of the same type.

*Best Management Practices.* The EPA solicits comment on whether or not, as part of the assessment of local sources and reasonable controls, USDA/NRCS-approved BMPs constitute sufficient reasonable controls in any or in all high wind event-affected areas and whether these measures should therefore be specifically and categorically identified in preamble or rule language as constituting reasonable controls. As discussed in the "Current Situation" section, the EPA has noted in previous guidance that USDA/NRCS-approved BMPs designed to effectively reduce

fugitive dust air emissions and prevent soil loss in agricultural applications could be included in the collection of controls determined to constitute reasonable controls for wind-blown dust events in areas in which they have been implemented.<sup>121</sup> Although the EPA has addressed the sufficiency of BMPs in decisions on individual exceptional events demonstrations when the BMPs were part of a SIP-approved BACM determination, we have not previously addressed whether or not BMPs individually or in some combination with each other constitute sufficient reasonable controls nationally or in any particular types of areas. We recognize that this question may be difficult to answer because BMPs often describe general types of practices (e.g., installing wind breaks) rather than specifying the penetration, scale or intensity of use of these practices by the landowners who adopt them. Therefore we also solicit comment on the evidence for degree of penetration, scale and intensity that would be appropriate in demonstrations to consider BMPs individually or in some combination with each other to be reasonable controls.

#### *G. Other Aspects of Flagging Exceptional Events-Influenced Data and Demonstration Submittal and Review*

##### 1. Who may submit a demonstration and request for data exclusion?

###### a. Current Situation

Before addressing the schedule and mechanics of flagging event-influenced data and preparing demonstrations, the EPA believes it is necessary to first clarify which parties can submit an exceptional events demonstration package to the EPA. The CAA language at section 319(b)(3)(B)(i) states that “the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies.” As noted in section V.A of this proposal, state, local and some tribal agencies administer air quality management programs within their jurisdiction, which includes monitoring and analyzing ambient air quality and submitting monitoring data to the EPA, which are then stored in the

EPA’s AQS database. Also, FLMs and other federal agencies operate air quality monitoring stations on some lands they manage, and some of these monitors meet the technical specifications and quality assurance requirements for their data to be used in regulatory determinations. As operators of regulatory monitors, each of these agencies can flag their own data within AQS for consideration as an exceptional event.

As discussed in section V.F.1 of this proposed action, however, the EPA generally considers a state, exclusive of tribal lands, to be a single responsible actor, and, as the state is the entity primarily responsible for administering air quality planning and management activities, the state has been ultimately responsible for submitting exceptional events demonstrations for exceedances that occur at all regulatory monitoring sites within the boundary of the state, including exceedances occurring at monitoring sites operated by local air quality agencies to whom a state has delegated relevant responsibilities or at regulatory monitoring sites operated by any other entity within the state, such as FLMs of Class I areas, other federal agencies and/or industrial facilities. Although the state is responsible, a local agency, an FLM, another federal agency or another entity operating a regulatory monitor with an event-influenced exceedance can develop a demonstration for submittal by the state. If a state disagrees with the local agency’s, FLM’s, other federal agency’s or other entity’s exceptional events claim, the state can decide not to act on or forward that submittal to the EPA. A state can request that operators of other regulatory monitors experiencing event-influenced exceedances prepare or assist in the preparation of demonstration analyses for ultimate submittal by the state.

Because some tribal air quality agencies also operate regulatory ambient air quality monitoring sites and submit these data to the EPA’s AQS database, as appropriate, these tribal agencies may also submit exceptional events demonstrations for exceedances that occur at their monitoring sites.

###### b. Proposed Changes

As indicated in section V.A of this proposal, because FLMs and other federal agencies may operate regulatory monitors and submit collected data to the EPA’s AQS database and these same monitors could be affected by emissions from exceptional events, the EPA proposes to allow FLMs and other federal agencies to prepare and submit exceptional events demonstrations and

data exclusion requests directly to the EPA. The EPA solicits comment on this proposed addition to the rule text, which appears at the end of this document. Based on comments received, the EPA may retain, modify or not include this provision in the final promulgated rule. This provision would apply only to FLMs and other federal agencies that manage land on which an exceptional event originates or that operate a monitor that has been affected by an event. The provision would allow such FLMs and other federal agencies to provide demonstrations directly to the EPA only after a discussion with the state in which the monitor is operated. This discussion might instead result in an agreement that the federal agency (or another party) will provide a draft demonstration document to the appropriate state air agency for adoption and submission by the state air agency to the EPA, as is currently allowed. Regardless of who ultimately submits the demonstration, the EPA encourages collaboration between the FLMs and other federal agencies and the appropriate state air agency during the event identification and demonstration development process. If the provision for direct submission to the EPA is included in the final action, demonstrations prepared by FLMs or other federal agencies would be required to meet all provisions in the Exceptional Events Rule, including the requirement for a public comment period on a prepared demonstration<sup>122</sup> and the requirements related to schedules and procedures for demonstration package submittal (see sections V.G.4, V.G.5 and V.G.6) that apply to state agencies that operate monitors.

##### 2. Aggregation of Events for NAAQS With Periods Longer Than 24 Hours and Demonstrations With Respect to Multiple NAAQS for the Same Pollutant

###### a. Current Situation

The EPA’s AQS database houses ambient air quality monitoring and related data. The data in AQS are maintained as individual reported measurements, which can range from 5-minute maximum concentrations per hour for SO<sub>2</sub>, to hourly data for ozone,

<sup>121</sup> *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule*. U.S. EPA, May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_highwinds\\_guide\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf) and *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*. U.S. EPA, May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_guidememo\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_guidememo_130510.pdf).

<sup>122</sup> A public comment opportunity is important prior to submission to the EPA because under the Exceptional Events Rule the EPA is not required to provide a public comment opportunity prior to concurring with an air agency’s request to exclude data. The EPA generally provides a public comment opportunity before we use air quality data, with or without such exclusions, in a final regulatory action. States typically provide an opportunity for public comment by posting draft demonstrations on a Web site. Federal agencies could do the same.

CO, NO<sub>2</sub>, SO<sub>2</sub> and some PM measurements to 24-hour measurements for lead and other particulate matter measurements. Air agencies identify and the EPA concurs with exceptional event-related data in AQS that are reported as individual measurements.

Some NAAQS have long averaging periods, such that multiple independent events may affect the period-average concentration of the NAAQS pollutant. In the aggregate, a clear causal relationship may exist between the events and an exceedance or violation, but no single event satisfies the clear causal relationship criterion because each event has too small of an effect on the longer-period metric to do so by itself. CAA section 319(b) and the 2007 Exceptional Events Rule do not clearly allow the aggregation of events for purposes of the clear causal relationship criterion, yet aggregation seems consistent with the intent of section 319(b). The EPA has not to date indicated that actual aggregation of events is permitted. However, Question 30 in the Interim Q&A document provided guidance that can be of some help in this situation. This guidance was that 24-hour concentrations of Pb, NO<sub>2</sub>, or SO<sub>2</sub> can be individually compared to the NAAQS level defined for a longer period, for purposes of meeting “but for” with respect to both the 24-hour NAAQS, if applicable, and for purposes of meeting “but for” with respect to the NAAQS with the longer averaging period. This guidance focused on the intention of a passage in the preamble to the 2007 Exceptional Events Rule addressing the PM<sub>2.5</sub> NAAQS in particular, and extended the approach of the 2007 preamble to other cases of NAAQS for the same pollutant that have different averaging periods. The practical effect of this approach is that several events that individually have effects too small to have a causal connection to a longer-period exceedance or violation might be excluded one-by-one, and the net effect of the exclusions may make a difference to compliance with the longer-period NAAQS. As guidance, however, the Interim Q&A document does not provide full certainty that an air agency may rely on the recommended approach.

As noted in section IV.B of this proposal, the 2007 Exceptional Events Rule requires that for data exclusion, among other requirements, an air agency must demonstrate that there would have been no exceedance or violation of the NAAQS “but for” the event. The “but for” criterion necessarily requires comparing the individual measurements in AQS to the averaging period of the

relevant NAAQS to determine whether an exceedance or violation occurred. When the averaging period for the NAAQS is the same as the measurement duration period, this comparison is relatively straightforward. For example, air agencies and the EPA can directly compare 1-hour ozone, 1-hour CO, 1-hour SO<sub>2</sub>, and 1-hour NO<sub>2</sub> measurements to the respective 1-hour NAAQS. This comparison becomes more complicated, however, when there is a difference between the pollutant measurement duration and the averaging time of the NAAQS, which is the case when comparing a 1-hour measurement to an 8-hour, 24-hour, 3-month or annual NAAQS (or in the case of 1-hour ozone the previously existing NAAQS). In fact, the EPA devoted Questions 29–31 in the Interim Q&A document to explaining how to make these complicated comparisons.<sup>123</sup> The Interim Q&A document also explained that because these comparisons are NAAQS-specific, air agencies should request and support the exclusion of a measured air concentration separately for each NAAQS that applies to the pollutant and the EPA will similarly provide separate concurrences. Under the 2007 Exceptional Events Rule provisions, this means, for example, that an air agency with several 24-hour measurements of event-influenced PM<sub>2.5</sub> data measuring 75 micrograms per cubic meter (µg/m<sup>3</sup>) would need to separately flag the data within AQS on a NAAQS-specific basis, and submit separate requests, analyses and demonstration components to support exclusion of the identified event-influenced data for the 1997 annual secondary PM<sub>2.5</sub> NAAQS of 15 µg/m<sup>3</sup>, the 2012 annual primary PM<sub>2.5</sub> NAAQS of 12 µg/m<sup>3</sup> and the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>. Depending on the outcome of the “but for” criterion with respect to each PM<sub>2.5</sub> NAAQS, it could be that the data would be excluded for purposes of determinations with respect to only some of these NAAQS.

This current situation can result in complicated demonstrations for air agencies seeking data exclusion from determinations with respect to multiple NAAQS for the same pollutant. This complexity may make it more difficult for the public to comment, and requires time for the EPA to review such a demonstration.

<sup>123</sup> *Interim Exceptional Events Rule Frequently Asked Questions*. U.S. EPA. May 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/eeer\\_qa\\_doc\\_5-10-13\\_r3.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/eeer_qa_doc_5-10-13_r3.pdf).

## b. Proposed Changes

The EPA is taking comment on proposed rule text allowing 24-hour concentrations of any NAAQS pollutant to be compared to a NAAQS level defined for a longer period as part of a weight of evidence showing for the clear causal relationship with respect to the NAAQS with the longer period. This approach would be more amenable to less quantified weight of evidence demonstrations, since only one day would be examined at a time.

The EPA is also proposing that for NAAQS with averaging or cumulative periods longer than 24 hours, events occurring on different days may be aggregated for the purpose of determining whether their collective effect has caused an exceedance or violation, without regard to whether the events are of the same type (e.g., stratospheric ozone intrusion followed by a wildfire). The EPA notes that such aggregation may be very difficult if the effects of the individual events on their individual days are not fully quantified. Proposed rule text for this change is provided for comment.

Finally, to simplify some demonstrations, the EPA is also taking comment on whether a successful demonstration with respect to any NAAQS for a given pollutant would suffice to qualify the data in question for exclusion with respect to all NAAQS for that pollutant. The EPA believes it is useful to invite public comment on this “approved for one NAAQS approved for all NAAQS for the same pollutant” concept.

The EPA will carefully consider the comments it receives on these concepts and may finalize all, some or none of the three proposals described in this section.

## 3. Exclusion of Entire 24-Hour Value Versus Partial Adjustment of the 24-Hour Value for Particulate Matter

### a. Current Situation

As indicated in Question 29 of the Interim Q&A document, we have advised air agencies preparing demonstrations to support requests to exclude PM<sub>2.5</sub> and PM<sub>10</sub> data obtained via monitor instruments that provide 1-hour measurements that they should flag all 24 1-hour values within a given event-affected day, even if the event did not last all these hours. If concurred upon, flagging all 1-hour values will ultimately result in the same available remaining data for regulatory analysis and calculation as would be the case had the 24-hour PM<sub>2.5</sub> or PM<sub>10</sub> measurement data been collected from filter-based (24-hour) monitoring

instruments.<sup>124</sup> Another reason we have taken the position that flagging all 24 1-hour values is appropriate is because flagging only peak or selected hours could result in the remaining 1-hour values still meeting the data completeness requirements because flagged and excluded data do not count against completeness even though they cannot be used in calculating an average concentration for a 24-hour period. Under the rules for data interpretation, exclusion of only the event-affected 1-hour concentrations could result in AQS calculating a seemingly valid 24-hour concentration that is actually highly uncertain because it is based on only a few hours and thus may be biased.<sup>125</sup>

#### b. Proposed Changes

The EPA solicits comment on codifying its current approach in the rule text to eliminate any regulatory uncertainty. If finalized, this modification to the data handling procedures will be made to occur automatically within AQS.

#### 4. Flagging of Data

While neither the preamble to nor the rule text contained within the 2007 Exceptional Events Rule discuss data handling within AQS, explaining certain AQS processes and functions will be useful to an understanding of the data flagging situation that has developed in implementing the requirements in 40 CFR 50.14(c)(2) and why we are proposing changes.

##### a. Current Situation

Within AQS, monitoring agencies can use two types of data validation, or data qualifier, codes related to exceptional events: The *Request Exclusion* flags (*R*) and the *Informational Only* flags (*I*).<sup>126</sup>

<sup>124</sup> Filter based instruments typically record a single value within a 24-hour period while continuous monitors typically collect 24 1-hour measurements. Because AQS can calculate a valid 24-hour average concentration with as few as 18 hours, it may be necessary to exclude hours not actually affected by the event to ensure the same data exclusion outcome as if the measurement had been made with a 24-hour filter.

<sup>125</sup> The form of the 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup> is 98th percentile averaged over 3 years. The form of the primary annual PM<sub>2.5</sub> NAAQS of 12 µg/m<sup>3</sup> is an annual mean averaged over 3 years. The form of the 24-hour PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup> is not to be exceeded more than once per year on average over 3 years. Biased concentrations can potentially skew the determination of the 98th percentile and/or the annual mean for PM<sub>2.5</sub> and the averages for PM<sub>2.5</sub> or PM<sub>10</sub> calculated to determine compliance with the relevant NAAQS.

<sup>126</sup> “Flag” is the common terminology for a data qualifier code in the EPA’s AQS. Unless explicitly noted, the process of “flagging” data refers to adding Request Exclusion (*R*) data qualifier codes to selected data in AQS. *R* flags are the only AQS flags that satisfy the 2007 Exceptional Events Rule requirement for initial data flagging. The current

The EPA has advised air agencies to use the *I* series flags when identifying informational data and the *R* series flags to identify data points for which the agency intends to request an exceptional events exclusion and the EPA’s concurrence. As an example, air agencies may currently use an *I* series flag to initially identify values they believe were affected by an event. Once the air agency collects additional supporting data, it may change the flag to an *R* series flag and submit an initial event description. Or, the air agency may find that additional information does not support flagging the data as an exceptional event, and the air agency may, therefore, delete the flag or retain the *I* series flag. Air agencies may also use the *I* series flags simply to note activities or conditions occurring on the data collection day that are unrelated to exceptional events or that do not result in an exceedance or violation of a NAAQS. Air agencies have previously indicated that they generally see little value in the use of *I* series flags.<sup>127</sup>

Flagging of event-influenced data has traditionally also involved associating a one- or two-character code with a monitored value within AQS indicating that the data have potentially been influenced by a particular type of exceptional event (e.g., “RT” is the character code used to request exclusion for data that have been influenced by wildfires in the U.S.). The 2007 Exceptional Events rule added a requirement to include a more detailed initial description of the particular event associated with such a character code. This description consists of text of variable length.

The EPA does not review or concur on the *I* series flags. Rather, an air agency must use an *R* flag to request data exclusion. The language at 40 CFR 50.14(c)(2), *Flagging of Data*, requires that an air agency notify the EPA of its intent to exclude one or more measured exceedances of an applicable NAAQS as being due to an exceptional event by placing a flag and an initial event description in the appropriate fields in AQS for the data record(s) of concern no later than July 1 of the calendar year following the year in which the flagged measurement occurred. Only *R* flags fulfill this requirement. This “general” schedule date of July 1 applies unless the data are associated with the initial area designations process for a new or

design of the AQS software is such that EPA can act/concur only on an *R* flag.

<sup>127</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, U.S. EPA, June 2012. Available in Docket No. EPA-HQ-OAR-2011-0887.

revised NAAQS in which case the specific schedule in § 50.14(c)(2)(vi) applies.

Air agencies have previously expressed concern that the timelines for event flagging and demonstration submittal are not always appropriate.<sup>128</sup> While the EPA has historically promulgated revised flagging and demonstration submittal schedules in the regulatory actions for new and revised NAAQS for those data years that might be used in the initial area designations process for those NAAQS, the EPA does not promulgate revised schedules for other regulatory actions such as clean data or attainment determinations. Rather, the EPA has relied upon the “general” flagging and demonstration submittal schedules in 40 CFR 50.14(c)(2) and (c)(3)(i). Meeting the requirement at 40 CFR 50.14(c)(2)(iii) to submit *R* flags and an initial description of the event “not later than July 1st of the calendar year following the year in which the flagged measurement occurred” can be difficult in the case of an annual standard where an air agency needs all 12 months of data to calculate an annual average and then needs 3 years of annual averages to identify whether or not the event-influenced data results in a violation of a 3-year design values. An air agency may not know that data influenced by an exceptional event caused the design value to become a NAAQS violation until 3 years after the event occurred.

Some air agencies have used and applied *I* and *R* flags in AQS inconsistently with this intended scheme, by including applying numerous *R* flags in AQS with no real intention to submit an exceptional events demonstration. Also, *R* flags may be set immediately before a demonstration is submitted or even as late as when the EPA needs to indicate in AQS our approval of a request for data exclusion. As a result, neither the presence nor the absence of these flags provide the EPA with an indication of anticipated exceptional events demonstrations.

##### b. Proposed Changes

As part of this action, the EPA proposes to revise the “general” schedule language contained within 40 CFR 50.14(c)(2) by removing the timelines associated with initial event flagging. The EPA also proposes to modify the associated data flagging process within AQS to correspond with

<sup>128</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, U.S. EPA, June 2012. Available in Docket No. EPA-HQ-OAR-2011-0887.

these proposed regulatory changes. These proposed changes would include eliminating the use of the current exceptional events data validation/data qualifier codes: The *Request Exclusion* flags (*R*) and the *Informational Only* flags (*I*). The one- or two-character event type codes would be retained. The EPA solicits comment on the approach that is discussed below in additional detail.

The EPA is proposing to change the definition and process for flagging exceptional event data. Flagging would in effect become the application of the one- or two-character event type and event description text as described below, along with a concurrent or subsequent request for data exclusion communicated to the EPA through other channels.

Because the flagging of data necessarily begins with the identification of an event, the EPA proposes to retain, with modifications, the AQS free-form text field for an initial event description. As is currently the practice, we request that air agencies use the “initial event description” to identify a unique, real-world event. We propose that this “initial event description” be expanded to contain a unique event name; the type of the event (e.g., high wind dust, volcanic eruption, other); a brief description of the event; and, to the extent known, the scope of the event in terms of geography and time (e.g., likely affected area using latitude and longitude and a radius of influence and beginning day/time and ending day/time).<sup>129</sup> AQS would also be modified to allow the air agency to associate specific AQS sites and potentially affected monitors and specific data points with a given event as so described. This will enable air agencies and the EPA to “flag” or add qualifier codes to selected data in a single step rather than adding this information or the necessary codes on a per entry basis. Historically, when events have influenced the concentrations at multiple monitors for multiple days, the air agency has added initial event descriptions and set flags on each monitored concentration, sometimes resulting in hundreds of identical individual entries. “Associating” monitors with an event defined in time and space will save resources.

Once an air agency has identified an event and created the initial event description within AQS, the agency should begin the process of requesting

<sup>129</sup> The EPA is proposing that air agencies select the “type of event” from a pre-set list of event types, which would likely consist of those event types currently identified by existing Informational and Request Exclusion flags within AQS.

exclusion for identified data, which will consist of two discrete operations: (1) Indicating in a separate communication to the EPA that specific ambient air quality measurements are affected by a defined event (see section V.G.5 related to Initial Notification of Potential Exceptional Event), and (2) requesting that these identified ambient air quality measurements be excluded from regulatory actions according to the terms of the revised Exceptional Events Rule and EPA guidance for other applications of air quality data. AQS would retain a field to allow the EPA to concur or not concur with a given request for exclusion for one or more of the data points associated with a described event, once review of the air agency’s request and demonstration is completed.

In addition to the proposed AQS modifications described above, the EPA is proposing to remove the “general” flagging schedule in 40 CFR 50.14(c)(2)(iii). This regulatory language currently requires that air agencies submit [*R*] flags and an initial description of the event by July 1 of the calendar year following the year in which the flagged measurement occurred or by the other deadlines identified with individual NAAQS. As noted earlier in this section, an air agency may not know that data influenced by an exceptional event caused a violation of a NAAQS until after the initial event flagging deadline has passed. The EPA proposes to remove and reserve the current language at 40 CFR 50.14(c)(2)(iii). Additional changes to the regulatory language in 40 CFR 50.14(c)(2) will be discussed in the next section.

The EPA notes that the recent ozone NAAQS action<sup>130</sup> also removed and reserved the subsequent sections at 40 CFR 50.14(c)(2)(iv) and (v), which addressed the submittal of exceptional events demonstrations that could affect regulatory determinations associated with initial area designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2010 Lead NAAQS and were made obsolete by the passage of time. The EPA will retain these removed and reserved sections as promulgated in the ozone NAAQS and proposes no additional changes to these sections.

## 5. Initial Notification of Potential Exceptional Event

### a. Current Situation

As the EPA acknowledged in the Interim Exceptional Events Implementation Guidance and in

<sup>130</sup> 80 FR 65292 (October 26, 2015).

discussions with stakeholders, the EPA understands that the initial identification of data affected by exceptional events and the subsequent preparation, submittal and review of demonstration packages is a resource intensive process both for the preparing air agency and the reviewing EPA Regional office.<sup>131</sup> Delays in processing and making decisions on submitted packages create regulatory uncertainty and potentially increase the workload for both the submitting air agency and the EPA. In addition, the backlog of pending actions makes selection of the best information to support new submittals potentially more uncertain. Further, air agencies and the EPA often face timelines by which they must make regulatory decisions that can be affected by the inclusion or exclusion of event-affected data. In the Interim Exceptional Events Implementation Guidance and through the EPA’s best practices discussions identified in section IV.E, the EPA committed to work with air agencies as they prepare complete demonstration packages and we developed some guidelines to increase the efficiency of the process.

One of the efficiency-increasing measures we suggested in the Interim Exceptional Events Implementation Guidance was the Letter of Intent. The guidance explained that the Letter of Intent was a voluntary process by which the submitting air agency notifies the reviewing EPA Regional office of the air agency’s intent to submit a demonstration for an identified exceptional event. The purpose of the letter was to promote early communication between the submitting air agency and the reviewing EPA Regional office. In the time since issuing the Interim Exceptional Events Implementation Guidance, several air agencies and the EPA Regional offices have successfully used this voluntary process to discuss expectations regarding specific exceptional events demonstrations.

### b. Proposed Changes

As part of the best practices for communications during the exceptional events process and to aid all agencies in resource planning and prioritization, the EPA proposes that air agencies and the EPA engage in regular communications

<sup>131</sup> *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*. Memorandum from Stephen D. Page, U.S. EPA Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X. May 10, 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_guidememo\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_guidememo_130510.pdf).



to identify those data that have been potentially influenced by an exceptional event, to determine whether the identified data affect a regulatory determination, and to discuss whether an air agency should develop and submit an exceptional events demonstration. In most instances, these discussions will be between individual air agencies and the reviewing EPA Regional office. In other cases, the EPA regional office, or an individual air agency within the purview of the EPA Regional office, may initiate and/or host a general discussion with all air agencies in the region followed by individual discussions, as needed. In still other cases, such as where large events cross state lines and when two or more states are pursuing exclusion for the same event(s), the EPA region or regions may initiate discussions with all potentially affected states/agencies to assist in coordinating states affected by regional events.

For purposes of this proposed action, the EPA is referring to these communications as the “Initial Notification of Potential Exceptional Event” (Initial Notification) process. The EPA has changed the name of this process from the Letter of Intent in recognition of the fact that effective communication may have multiple formats and does not necessarily consist of a formal, written letter to convey important information. As with the voluntary Letter of Intent, the ultimate purpose of the Initial Notification process is to initiate conversations between an air agency and the EPA if not already on-going, or engage in more detailed discussions if a process is currently in place, regarding specific data and whether the identified data are ripe for submittal as exceptional events. As stakeholders have repeatedly expressed and as the EPA acknowledges, the identification of data affected by exceptional events and the subsequent preparation, submittal and review of demonstration packages is a resource intensive process both for the

preparing air agency and the reviewing EPA Regional office.

However, in considering the exceptional events process, it is important to note that if these data do not have regulatory significance, then engaging in the development and review of an exceptional events demonstration is generally not an efficient use of an air agency’s or the EPA’s limited resources. The Initial Notification process will focus efforts on the relevant data and provide the EPA with the opportunity to convey to the affected air agency our initial thoughts regarding the identified event and analyses that may or may not be appropriate for inclusion in a demonstration, and, with respect to regulatory significance, which demonstrations the EPA will consider for review. We believe that this approach will help air agencies make the best use of their available resources.

As noted earlier, the Initial Notification could include any form of communication (e.g., letter, email, in-person meeting with an attendees’ list and discussion summary or phone conversation with follow-up email) that ultimately identifies the potential need to develop an exceptional events demonstration and communicates key information related to the data identified for potential exclusion. Where an air agency independently identifies event-affected data and the need to submit an exceptional events demonstration outside of its regular, on-going communications with the EPA Regional office, the air agency could prepare a letter or email communicating its Initial Notification. Generally, the EPA anticipates that air agencies would develop and provide an Initial Notification as soon as the agency identifies event-influenced data that potentially influence a regulatory decision or when an agency wants the EPA’s input on whether or not to prepare a demonstration.<sup>132</sup> The EPA further proposes that each Initial Notification would include the following components:

- *Unique event name (field in AQS)*—facilitates future communication and understanding between the submitting air agency and the reviewing EPA Regional office, particularly if an air agency has submitted multiple exceptional events demonstration packages.

- *Initial event description (field in AQS)*—provides a brief narrative of the event that could also include maps or graphs similar to what an air agency might include in the proposed conceptual model discussed in section V.G.6 of this proposed action; the event description would include a qualitative description of the event and, at a minimum, briefly describe the agency’s current understanding of interaction of emissions with the event, transport and meteorology (e.g., wind patterns such as strength, convergence, subsidence, recirculation) and pollutant formation in the area.

- *Affected regulatory decision*—provides a description of the regulatory action or actions potentially affected by the claimed event-influenced data and the anticipated timing of this action.

- *Proposed target date for demonstration submittal*—identifies the proposed target date by which the air agency would submit a demonstration package to the reviewing EPA Regional office.

- *Most recent design value including and excluding the event-affected data (optional)*—the air agency’s assessment of the most recent design value both with and without the identified event(s) is helpful when assessing regulatory significance. The EPA cannot calculate this value (and therefore may not be able to determine significance) if the air agency has flagged more data than it intends to include in an exceptional events demonstration.

- *Information specific to each monitored day*—see Table 5, which would be developed by the submitting air agency and generated from the initial event description in AQS (see discussion in section V.G.4).

TABLE 5—INITIAL NOTIFICATION INFORMATION SPECIFIC TO EACH MONITORED DAY

Agency/planning area	State	County	Event name in AQS	Type of event	NAAQS	Monitor AQS ID and site name	Date(s) of event	Monitor exceedance concentration

<sup>132</sup> The EPA recognizes that air agencies can immediately identify those events that result in an exceedance of a NAAQS with a short averaging time

(e.g., 1-hour, 8-hour or 24-hour standards) but may need additional time for an annual average standard. An air agency could also submit an

annual Initial Notification if annual submittal makes sense for resource planning or for recurring seasonal events.

The EPA anticipates promptly acknowledging an air agency's Initial Notification and then formally responding within 90 days of receipt via letter, email or in-person meeting with an attendees' list and discussion summary. We also anticipate having informal phone conversations with the air agency prior to this formal response. As previously discussed, the EPA will generally prioritize exceptional events determinations that affect near-term regulatory decisions.<sup>133</sup> Where the data are to be used in initial area designations, the EPA proposes to rely on the promulgated documentation submission schedule in Table 1 at § 50.14(c)(2)(vi). Where the data will influence another near-term regulatory decision, the EPA proposes to rely on the case-by-case timelines by which the air agency should submit the demonstration. For case-by-case demonstrations, the EPA's recommended date for demonstration submittal would consider the nature of the event, the anticipated timing of the regulatory decision, and would allow time for both an air agency's preparation of the demonstration and the EPA's review. The EPA may not be able to review and act on demonstrations submitted after the recommended submittal date. Additionally, the EPA will request in its response that, if the submitting air agency has not already identified the affected data within AQS, that it undertake this effort according to the process described in section V.G.4. If the data identified in the Initial Notification do not have regulatory significance (and there is no compelling reason for excluding data), then the EPA will indicate this in its correspondence back to the air agency and will discourage the air agency from devoting resources to developing a demonstration because the EPA will likely not review or act upon the submittal.

If after discussing the content of a submitted Initial Notification and/or receiving the EPA's response to the Initial Notification, the EPA acknowledges that identified data have regulatory significance (or some other compelling reason for excluding data), then the air agency should proceed with the development of a technical demonstration package that satisfies the requirements in 40 CFR 50.14 and accounts for any case-specific advice from the EPA and additional information in the EPA's guidance

<sup>133</sup> "Regulatory decisions" include findings as to whether the area has met the applicable NAAQS, classification determinations, attainment demonstrations, the development of Limited Maintenance Plans and clean data findings.

documents.<sup>134</sup> Although air agencies can submit demonstrations for events that do not affect a regulatory action, the EPA will likely not review or act on such submittals.

For these reasons described in this section and in section V.G.4, the EPA proposes to revise the language in 40 CFR 50.14(c)(2)(i) as follows: "A State shall notify EPA of its intent to request exclusion of one or more measured exceedances of an applicable ambient air quality standard as being due to an exceptional event by creating an initial event description and flagging the associated data that have been submitted to the AQS database and by engaging in the Initial Notification of Potential Exceptional Event process." Specific steps in the Initial Notification process are identified in rule text at the end of this document. The EPA solicits comment on the proposed rule text revision (in 40 CFR 50.14(c)(2)) to require an Initial Notification of Potential Exceptional Event, with a provision that the EPA can waive the Initial Notification requirement on a case-by-case basis. Alternatively, the EPA solicits comment on making the Initial Notification of Potential Exceptional Event a voluntary process.

Additional proposed revisions would continue at (ii): "The data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and EPA review, EPA notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database."

As noted in section V.G.4, the EPA is proposing to remove the "general" flagging schedule in 40 CFR 50.14(c)(2)(iii). The EPA seeks comments on these proposed changes to the language at 40 CFR 50.14(c)(2), which more clearly identify the process for flagging data in AQS and requesting exclusion of one or more measured exceedances of an applicable ambient air quality standard.

The EPA notes that the recent final rule to revise the ozone NAAQS also removed and reserved the subsequent sections at 40 CFR 50.14(c)(2)(iv) and

<sup>134</sup> *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*. Memorandum from Stephen D. Page, U.S. EPA Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X. May 10, 2013. Available at [http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents\\_guidememo\\_130510.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_guidememo_130510.pdf).

(v), which addressed the submittal of exceptional events demonstrations that could affect regulatory determinations associated with initial area designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2010 Lead NAAQS and were made obsolete by the passage of time. The EPA will retain these removed and reserved sections as promulgated in the ozone NAAQS and proposes no additional changes to these sections.

## 6. Submission of Demonstrations

### a. Current Situation

With the recent ozone NAAQS, the EPA proposed and promulgated changes to the current exceptional events regulatory language at 40 CFR 50.14(c)(2) and (3) to include finalizing exceptional events flagging and demonstration submittal schedules related to implementing the revised ozone standards and future revised NAAQS and removing obsolete regulatory language for expired exceptional events deadlines. Sections V.G.4 and V.G.5 discuss the current situation and additional proposed changes to 40 CFR 50.14(c)(2). This section discusses the current situation and proposed revisions to 40 CFR 50.14(c)(3).

As part of the recent final rule to revise the ozone NAAQS, the regulatory language at 40 CFR 50.14(c)(3)(i) now refers to a revised exceptional events flagging and demonstration submittal schedule for data that could be used in initial area designation decisions following promulgation of any future revised NAAQS. However, the language at 40 CFR 50.14(c)(3)(i) still requires air agencies to ". . . submit a demonstration to justify data exclusion to EPA not later than the lesser of, 3 years following the end of the calendar quarter in which the flagged concentration was recorded or, 12 months prior to the date that a regulatory decision must be made by EPA."

As identified in section V.G.4 of this proposal, air agencies have previously expressed concern that the timelines for event flagging and demonstration submittal are not always appropriate because an air agency may not know that data influenced by an exceptional event caused the design value exceedance until 3 years after the event occurred.<sup>135</sup> The EPA acknowledges that this scenario can occur.

<sup>135</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, U.S. EPA, June 2012. Available in Docket No. EPA–HQ–OAR–2011–0887.

In addition to establishing a general schedule for demonstration submittal, the regulatory language at 40 CFR 50.14(c)(3)(i) requires that “A State must submit the public comments it received along with its demonstration to EPA.” Although this language is included in 40 CFR 50.14(c)(3)(i), it refers to the regulatory language at 40 CFR 50.14(c)(3)(v), which requires the air agency to document, and submit with its demonstration, evidence that it followed the public comment process. Regarding this requirement to “document that the public comment process was followed,” neither the Exceptional Events Rule language in 40 CFR 50.14 nor the preamble to the promulgated 2007 Exceptional Events Rule specifies a minimum timeframe for public comment. Many air agencies have been posting draft demonstrations for public review on their Web sites. The EPA has reviewed several of these postings and identified 30-days as an often cited timeframe for public comment on a draft exceptional events demonstration submittal.

The current rule also provides at 40 CFR 50.14(c)(3)(iv) that the demonstration to justify data exclusion shall provide evidence that the event satisfies the definition of an exceptional event provided at 40 CFR 50.1(j); that there is a clear causal relationship between the monitored exceedance and the event that is claimed to have affected the air quality in the area; that the event is associated with a measured concentration in excess of normal historical fluctuations, including background; and that there would have been no exceedance or violation but for the event. Air agencies have found this section of the 2007 Exceptional Events Rule to be confusing because it contains a mix of statutory requirements and regulatory language without clearly identifying the components that the EPA expects to see in an exceptional events demonstration. As the EPA expressed in the Interim Exceptional Events Implementation Guidance, all parties would benefit from clear expectations regarding demonstration components.

The EPA further believes, and recommended in the Interim High Winds Guidance document, that each demonstration begin with a conceptual model, or narrative, describing the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance at the affected monitor(s). As described in the Interim High Winds Guidance document, the narrative conceptual model could include varying levels of detail depending on the event

complexity, but in all cases would provide a qualitative description of the event, interaction of the event-generated emissions with transport and meteorology (e.g., wind patterns such as strength, convergence, subsidence, recirculation) and pollutant formation in the area with the exceeding monitor. Because, in some cases, monitored data or technical analyses may seem to contradict the event claim, particularly the clear causal relationship, an air agency can use the conceptual model to explain, with a weight of evidence approach, why the majority of the data or analyses are consistent with the event’s impact on a measured exceedance or violation (for example, for a wildfire, why most of the meteorology would have indicated a lower ozone day without the fire emissions, even if the temperature were high). A useful conceptual model also includes (1) a description of the regulatory decision impacted by the exceptional event, (2) a summary table of the data requested for exclusion and (3) maps and/or summary tables of event-related information including location; size and extent; point and explanation of origin. A conceptual model can additionally include examples of media coverage of the event.<sup>136</sup> Since releasing the Interim High Winds Guidance document in 2013, the EPA has received several demonstrations that included a conceptual model. The EPA has found it very helpful to understand the event formation and the event’s influence on monitored pollutant concentrations before beginning to review the individual technical evidence to support the requested data exclusion.

#### b. Proposed Changes

For the previously mentioned reasons, the EPA is proposing and soliciting comment on the following changes to the regulatory language in 40 CFR 50.14(c)(3) regarding the submission of demonstrations:

- Removing the general schedule provisions in 40 CFR 50.14(c)(3)(i) for submitting demonstrations.
- Moving the language requiring a state to include the comments it received during the public comment period for the subject demonstration from 40 CFR 50.14(c)(3)(i) to 40 CFR 50.14(c)(3)(v).
- Modifying the language at 40 CFR 50.14(c)(3)(iv) to more clearly identify the required elements of an exceptional

events demonstration to include (1) a narrative conceptual model and (2) demonstrations and analysis that address the core statutory technical criteria [the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation (as indicated by the comparison to historical concentrations showing and other analyses), the event was a human activity that is unlikely to recur at a particular location or was a natural event, the event was not reasonably controllable or preventable].

- Modifying the language at 40 CFR 50.14(c)(3)(v) to identify that a demonstration submittal must include (1) documentation that the air agency conducted a public comment process on its draft exceptional events demonstration that was a minimum of 30 days, which could be concurrent with the EPA’s review, (2) any public comments received during the public comment period and (3) an explanation of how the air agency addressed the public comments.

To elaborate on removing the general schedule provisions in 40 CFR 50.14(c)(3)(i), the EPA proposes to remove the provision in 40 CFR 50.14(c)(3)(i) that requires air agencies to submit a demonstration “not later than the lesser of 3 years following the end of the calendar quarter in which the flagged concentration was recorded or 12 months prior to the date that a regulatory decision must be made by EPA.” In place of this language, the EPA proposes to rely on the promulgated documentation submission schedule in Table 1 at 50.14(c)(2)(vi) in those cases where the data are to be used in initial area designations. If the data could influence a regulatory determination other than initial area designations, the EPA proposes to rely on the case-by-case timelines established by the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process.

With respect to the public comment provisions for a developed demonstration, for the reasons stated previously, the EPA proposes to move the language requiring an air agency to include the comments it received during the public comment period for the subject demonstration from 40 CFR 50.14(c)(3)(i) to 40 CFR 50.14(c)(3)(v) to consolidate the required elements of the public comment process for exceptional events demonstrations within a single regulatory provision. The EPA also proposes to specify a minimum 30-day public comment process, which provides sufficient time for exchange between the reviewing public and the

<sup>136</sup> The EPA expects that air agencies could use some of the same information and tables in both the conceptual model and the Initial Notification of Potential Exceptional Event, which is discussed in section V.G.5 of this proposal.

air agency. Shorter comment periods may not provide necessary time for the public to research the identified event and associated supporting data while longer timeframes may not be possible where a near-term regulatory decision relies on an exceptional events decision. The EPA notes that in very limited cases where the air agency is relying on exceptional events claims as part of a near-term regulatory action, such as a demonstration for events in the third year of a 3-year design value that will be used in initial area designations for a new or revised NAAQS under a 2-year designation schedule, the public comment period could be concurrent with the EPA's review provided the submitting air agency sends any public comments and responses to the EPA by a specified date should comments be submitted. If an air agency receives public comment disputing the technical elements of a demonstration during a comment period that runs concurrent with the EPA's review and these comments result in the air agency's need to reanalyze or reassess the validity of a claimed event, a second public comment period may be necessary.

The EPA also proposes to revise the language at 40 CFR 50.14(c)(3)(iv) so that it more clearly identifies the required elements of an exceptional events demonstration. As previously described, the EPA proposes that each demonstration begin with a narrative conceptual model, which summarizes the event in question and provides context for required statutory technical criteria analyses. The EPA further proposes, consistent with other proposed changes in this action, that an air agency include in its demonstration to justify data exclusion evidence that the following statutory technical criteria are satisfied:

- The event was a human activity that is unlikely to recur at a particular location or was a natural event.
- The event was not reasonably controllable or preventable.
- The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation (supported in part by the comparison to historical concentrations and other analyses).

The EPA seeks comments on the identified proposed changes to the language at 40 CFR 50.14(c)(3)(i), (iv) and (v), which more clearly identify the required elements of an exceptional events demonstration.

The EPA notes that the recent final rule to revise the ozone NAAQS also removed and reserved the subsequent

sections at 40 CFR 50.14(c)(3)(ii) and (iii), which addressed the submittal of exceptional events demonstrations that could affect regulatory determinations associated with initial area designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2010 Lead NAAQS and were made obsolete by the passage of time. The EPA will retain these removed and reserved sections as promulgated in the ozone NAAQS and proposes no additional changes to this language.

#### 7. Timing of the EPA's Review of Submitted Demonstrations

##### a. Current Situation

Since promulgation of the Exceptional Events Rule in 2007, stakeholders have questioned the process by which the EPA reviews submitted demonstrations.<sup>137</sup> Specifically, stakeholders have expressed concern that the EPA has a backlog of submittals but acts only on EPA-prioritized packages. Stakeholders have stated that because the EPA has not acted on all submissions, the air quality values used for planning and regulatory purposes are higher than they would be if the effects of non-controllable emissions were removed from the data set. Air agencies have also noted that without feedback, they do not know the EPA's expectations regarding future submittals.

The EPA addressed these questions and comments in the Interim Exceptional Events Implementation Guidance. In Question 27 of the Interim Q&A document, the EPA identified the general process and timing for demonstration reviews. In this document, the EPA clarified the process by which it prioritizes submittals and indicated that we may not act on submittals with no regulatory significance. The guidance also presented the voluntary Letter of Intent concept as a mechanism to aid in planning and prioritization. Additionally, we stated that we intend to make a decision regarding concurrence with an air agency's request to exclude data as expeditiously as necessary following submittal of a complete package if required by a near-term regulatory action. We also indicated our intent to communicate with the submitting agency, as needed, during the demonstration review period.

<sup>137</sup> See comment letters in Docket ID No. EPA-HQ-OAR-2011-0887 for the July 2012 notice of availability for the Draft Exceptional Events Implementation Guidance, which the EPA has incorporated into the record for this action.

##### b. Proposed Changes

In this proposal, the EPA is clarifying some of our previous statements regarding the prioritization and submittal of demonstrations. As noted in several subsections within section V.G of this proposal, we also propose to codify in regulatory language approaches to increase the efficiency of preparing, submitting and reviewing exceptional events demonstrations. Although the EPA is not proposing to codify in regulatory language any changes pertaining to the timing of the EPA review process, the EPA offers the following discussion to clarify expectations and facilitate communications, which are at the center of timing-related issues.

As noted in the Interim Exceptional Events Implementation Guidance and in the EPA's best practices discussions described in section IV.E, the EPA is committed to working with air agencies as they prepare complete demonstration packages. The EPA encourages ongoing discussions between the reviewing EPA Regional office and the submitting air agency from the onset of the Initial Notification of Potential Exceptional Event process through official package submittal. Since renewing our focus on improved communications, the EPA has received positive feedback from engaged agencies that have used this approach. Additionally, these communications have resulted in decreased instances of submissions containing insufficient or unnecessary information.

In reviewing submitted demonstration packages, the EPA will generally give priority to exceptional events determinations that may affect near-term regulatory decisions, such as EPA action on SIP submittals, NAAQS designations and clean data determinations. The EPA intends to make a decision regarding event status expeditiously following submittal of a complete package if required by a near-term regulatory action. If during the review process the EPA identifies the need for additional information to determine whether the exceptional events criteria are met, the EPA will notify the submitting air agency and encourage the agency to provide the supplemental information. If the information needed is minor and a natural outgrowth of what was previously submitted, the EPA will not require the air agency to undergo an additional public notice-and-comment process. However, if the needed information is significant, the EPA may request that the air agency re-notice the demonstration before resubmitting it to the EPA, thus requiring an additional

EPA review following resubmittal. The EPA will work with air agencies on supplemental timeframes; however, the mandatory timing of the EPA actions may limit the response time the EPA allows. The EPA proposes to include as rule text a requirement for the air agency to submit additional information within 12 months. If additional information is not received in 12 months, then the EPA will consider the submitted demonstration inactive, and will not continue the review or take action. In effect, an air agency's lack of response within a 12-month period will "void" the submittal. In these cases, the EPA does not intend to issue a formal notice of deferral. If the air agency later decides to pursue the exceptional events claim after a 12-month period of inactivity, it may re-initiate the exceptional events process by submitting a new Initial Notification of Potential Exceptional Event followed by a new demonstration, which could simply be revising the original submittal to include the additional information previously requested by the EPA.

At the conclusion of the EPA's review, the EPA will make a determination regarding the status of a submitted exceptional events demonstration. The EPA's decision could result in concurrence, nonconcurrence or deferral.<sup>138</sup> In acting on a submitted demonstration covering multiple event days and/or multiple flags, the EPA could concur with part of a demonstration and nonconcur or defer other flagged values. If the EPA determines that the events addressed in an exceptional events demonstration are not anticipated to affect any future regulatory decision, the EPA could defer review of these events and notify the submitting agency if a subsequent review results in a determination that the events do affect a regulatory decision.<sup>139</sup> Formal mechanisms for deferral could include the EPA's indicating this decision by letter, by email to a responsible official or during a high-level meeting with an attendees' list and discussion summary.

<sup>138</sup> The EPA anticipates a reduced number of deferrals and/or nonconcurrences for demonstrations associated with the Initial Notification of Potential Exceptional Event process as discussed in section V.G.5 because the EPA and the affected air agency would have discussed issues/concerns prior to the EPA's decision on a submitted demonstration.

<sup>139</sup> Routine status calls between the reviewing EPA Regional office and air agencies could include an agenda item to review the status of all submitted demonstrations, including those that the EPA has deferred.

## 8. Dispute Resolution Mechanisms

Since promulgation of the 2007 Exceptional Events Rule and through the development of the Interim Exceptional Events Implementation Guidance, some interested parties have asked the EPA to identify a process by which submitting air agencies can formally dispute the EPA's decision regarding requests for additional information to support submitted demonstration packages and/or decisions regarding concurrence, nonconcurrence or deferral of submitted demonstration packages. While the EPA acknowledges the expressed concerns and desire for a formally identified dispute resolution process, the EPA also believes that several mechanisms currently exist that air agencies can use at various points in the exceptional events process. These mechanisms include engaging in early dialogue with the reviewing EPA Regional office, submitting requests for reconsideration to the official who made the determination if a request identifies a clear error or if the reviewing EPA regional office overlooked information submitted by the affected air agency, and/or elevating the concern within the EPA's chain of command. Additionally, air agencies can raise any unresolved event-related issues during the regulatory process that relies upon the claimed event-influenced data by participating in related public notice-and-comment processes and/or challenging in an appropriate court the regulatory decision subsequently made based in part on the EPA's exceptional events determination. These currently available dispute resolution approaches to address exceptional events decisions are consistent with the mechanisms available for other EPA actions. With exceptional events decisions, however, the air agency has opportunities to elevate concerns during two processes: the exceptional events determination and the subsequent regulatory action that relies on the exceptional events decision.

The EPA believes that the existing mechanisms identified above combined with the EPA's commitment to focus on communication and collaboration with the submitting air agency through the exceptional events demonstration process, and the clarifications that would be in effect with these proposed revisions to the 2007 Exceptional Events Rule and associated guidance, will avoid the need for a formal dispute resolution mechanism for exceptional events. Therefore, the EPA does not intend to address dispute resolution within these proposed rule revisions

and does not intend to respond to comments on this issue.

## VI. Mitigation

### A. Current Situation

Section 319(b)(3)(A) of the CAA identifies five principles for the EPA to follow in developing implementing regulations for exceptional events:

- (i) Protection of public health is the highest priority;
- (ii) Timely information should be provided to the public in any case in which the air quality is unhealthy;
- (iii) All ambient air quality data should be included in a timely manner in an appropriate federal air quality database that is accessible to the public;
- (iv) Each state must take necessary measures to safeguard public health regardless of the source of the air pollution; and
- (v) Air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

The regulatory requirements implementing (iii) and (v) of this part of the statute are found only in 40 CFR 50.14 while the regulatory requirements implementing (i) and (iv) are found only in 40 CFR 51.930, Mitigation of Exceptional Events. Both §§ 50.14(c)(1) and 51.930(a)(1) require states to provide notice of events to the public (the second of the five principles).

The language at 40 CFR 51.930 requires air agencies requesting data exclusion to "take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS" and at a minimum do each of the following:

- Provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed the NAAQS.
- Provide for public education concerning actions that individuals may take to reduce exposures to unhealthy levels of air quality during and following an exceptional event.
- Provide for the implementation of appropriate measures to protect public health from exceedances or violations of ambient air quality standards caused by exceptional events.

The EPA promulgated the existing requirements in 2007 after considering and proposing several approaches to implementing CAA section 319(b)(3)(A). Some of the proposed approaches would have established a more formal structure by which air agencies prepared and submitted to the EPA mitigation plans to protect public health during events. These plans would have

been subject to the EPA's approval and/or the approval of the exclusion of event-affected data would have been contingent on the approval of such a plan. Comments on these proposed options varied widely.<sup>140 141</sup>

In the final 2007 Exceptional Events Rule, "mitigation" measures<sup>142</sup> became part of the 2007 Exceptional Events Rule, but they were not incorporated into the criteria and processes by which data are excluded from use in regulatory determinations. There is no requirement to submit such measures to the EPA for either prospective or retrospective review and approval as a condition for approval for exclusion of event-affected data. Neither are air agencies required to notify the EPA of the measures an air agency plans to take or has taken. In the preamble to the 2007 Exceptional Events Rule, we stated that states should take "reasonable and appropriate measures" to protect public health related to the occurrence of an event and that states should determine what measures constitute those that are "reasonable and appropriate."<sup>143</sup> We did not clarify how measures should be determined to be "appropriate" measures.

The mitigation measures that the EPA sees states most commonly practicing are ones related to the requirement that air agencies "provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed the NAAQS." Often, these public notifications include public health alerts for high wind dust events or wildfires. We believe that other aspects of mitigation, including implementing appropriate measures to protect public health beyond notification, are also important in implementing the CAA guiding principle that "each State must take necessary measures to safeguard public health regardless of the source of the air pollution."

### B. Proposed Changes

Given the EPA's and the states' experience implementing the 2007 Exceptional Events Rule as indicated above, we consider it appropriate to

<sup>140</sup> The Treatment of Data Influenced by Exceptional Events; Proposed Rule, 71 FR 12592 (March 10, 2006).

<sup>141</sup> See Comments and Responses related to "Requirements for States To Provide Public Notification, Public Education, and Appropriate and Reasonable Measures To Protect Public Health" in Treatment of Data Influenced by Exceptional Events; Final Rule, 72 FR 13574–13576 (March 22, 2007).

<sup>142</sup> The term "mitigation" does not appear in CAA section 319(b). It appears in the title but not the text of 40 CFR 51.930.

<sup>143</sup> 72 FR 13574 (March 22, 2007).

consider possible changes to the mitigation-related rule components with the benefit of additional public input. We are seeking comment on approaches ranging from retaining the existing rule requirements at 40 CFR 51.930 to the various possible new components described in this section. We invite comment on these alternatives and on other concepts. We may make no change; we may adopt all of the described new components; or we may adopt only some features or variations of the described options. Note that we are not considering requiring all states to develop formal mitigation plans. We are seeking comment on the concept of only some states being required to develop mitigation plans for their particular "historically documented" or "known seasonal" exceptional events, defined below in section VI.B.1; on recommended elements for such mitigation plans described below in section VI.B.2; and on options for implementing mitigation plans described in section VI.B.3. Section VI.B.4 summarizes the EPA's potential options for mitigation elements for exceptional events purposes.

#### 1. Defining Historically Documented or Known Seasonal Events

The EPA seeks comment on whether an air agency should develop a mitigation plan for its particular type of "historically documented" or "known seasonal" exceptional events, if any. The EPA would consider "historically documented" or "known seasonal" exceptional events to include events of the same type and pollutant (e.g., high wind dust/PM or wildfire/ozone) that meet any of the following criteria: an event for which an air agency has previously submitted exceptional events demonstrations; an event that an air agency has previously flagged for concurrence in AQS (regardless of whether the air agency submitted a demonstration); or an event that has been the subject of local news articles, public health alerts or published scientific journal articles. The EPA would not require an air agency to develop a mitigation plan for the first event of a given type (e.g., if an area is prone to wildfires but has never experienced a high wind dust event, then it would not be expected to develop a mitigation plan for its first high wind dust event, but it would be expected to develop a mitigation plan for wildfires). A second event of a given type within a 3-year period would subject the area to "having a history" and, therefore, needing a mitigation

plan.<sup>144</sup> This option avoids plan development for a one-of-a-kind occurrence.<sup>145</sup> In defining "first" and "second" events, the EPA could consider events that affect the same AQCR, but not necessarily the same monitor.<sup>146</sup> For example, high wind dust events occur seasonally in the Phoenix, Arizona metropolitan area, which is part of the Maricopa Intrastate Air Quality Control Region (see 40 CFR 81.36). These events have influenced particulate matter concentrations at multiple monitors within the Maricopa Intrastate AQCR. Under this proposal, high wind dust events in Phoenix (i.e., the Maricopa Intrastate AQCR) are known events requiring a mitigation plan. On the other hand, a high wind dust event in Sedona, Arizona, part of the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270), would be a first event and not subject to the development of a mitigation plan. As a variation of this concept on which we also seek comment, the EPA could consider a first season of events as one of three required seasons of events, so that a mitigation plan would be required only when an event type persists across several years. For example, an area may not have previously experienced wildfires in the past 10 years, but then experiences multiple wildfires and multiple exceedances in a single wildfire season. If these multiple wildfires affect the same general geographic area and monitors in a relatively short period of time (e.g. 2–3 months), then they could be considered a single event for purposes of developing a mitigation plan and would not trigger the requirement for a mitigation plan.

#### 2. Mitigation Plan Components

The EPA solicits comment on the following three plan components that could be recommended or required in order to implement the mitigation principles found in section 319(b)(3)(A) of the CAA: Public notification and education; steps to identify, study and implement mitigating measures and provision for periodic revision of the mitigation plan (to include public

<sup>144</sup> A 3-year period is determined based on the submittal date of an exceptional events demonstration.

<sup>145</sup> Because the form of the NAAQS varies by pollutant, it is possible that multiple events in a 3-year period may not cause a NAAQS violation. An air agency that identifies multiple events of the same type (e.g., wildfire/ozone) in AQS, but prepares and submits a demonstration for only one of these events, would trigger the proposed requirement to develop a mitigation plan.

<sup>146</sup> Air Quality Control Regions are defined in 40 CFR part 81, subpart B, Designation of Air Quality Control Regions.

review of plan elements). This section discusses these elements in more detail. A mitigation plan should address actions that would be taken within a state's own territory for events that happen within its own territory or that of another jurisdiction.

a. Public notification to and education programs for affected or potentially affected communities. Air agencies could be required or encouraged to include in their mitigation plans steps to activate public notification and education systems whenever air quality concentrations exceed or are expected to exceed an applicable national ambient air quality standard. If possible, air agencies would notify the public of the actual or anticipated event at least 48 hours in advance of the event using methods appropriate to the community being served. Outreach mechanisms could include Web site alerts, National Weather Service alerts, telephone or text bulletins, television or radio campaigns or other messaging campaigns. Public notification and education programs could be encouraged or required to include some or all of the following actions to support the outreach system: adoption of methods for forecasting/detection, consultation with appropriate health department personnel regarding issuing health advisories and suggested actions for exposure minimization for sensitive populations (*e.g.*, remain indoors, avoid vigorous outdoor activity, avoid exposure to tobacco smoke and other respiratory irritants and, in extreme cases, evacuation or public sheltering procedures).

b. Steps to identify, study and implement mitigating measures, including approaches to address each of the following:

(i) Mandatory or voluntary measures to abate or minimize contributing controllable sources of identified pollutants. A state could be required to include or encouraged to consider full-time or contingent controls on event-related sources as well as non-event related sources. For example, these measures might include continuously operating control measures during an extreme event for identified sources that normally operate these same controls on an intermittent basis. It could also involve including work practices (*e.g.*, water spray for dust suppression) or contingent limits during extreme events on emissions from non-event related sources that, under non-event periods, have no or less stringent emissions limits or work practices.

(ii) Methods to minimize public exposure to high concentrations of identified pollutants.

(iii) Processes to collect and maintain data pertinent to the event (*e.g.*, to identify the data to be collected, the party responsible for collecting and maintaining the data and when, how and to whom the data will be reported).

(iv) Mechanisms to consult with other air quality managers in the affected area regarding the appropriate responses to abate and minimize impacts. Consultation could include collaboration between potentially affected local, state, tribal and federal air quality managers and/or emergency response personnel.

c. Provision for periodic review and evaluation of the mitigation plan and its implementation and effectiveness by the air agency and all interested stakeholders (*e.g.*, public and private land owners/managers, air quality, agriculture and forestry agencies, the public). For example, air agencies could be required to use this review process and to revise, if appropriate, and certify the mitigation plan every 3 years or every three events, whichever is longer. The air agency could be required to submit a summary and response to the comments received during the public plan review process to the EPA along with the recertification statement and/or revised mitigation plan. If the historically documented or known seasonal exceptional events continue to result in elevated pollutant concentrations above the relevant NAAQS, thus showing that the combination of the existing SIP and the existing mitigation plan does not effectively safeguard public health, the mitigation plan might need to be strengthened during this review.

If the EPA adopts requirements like those described above, it would not necessarily mean that all affected air agencies would have to prepare new plans. If an air agency has developed and implemented a contingency plan under 40 CFR part 51, subpart H, Prevention of Air Pollution Emergency Episodes, that meets the requirements of 40 CFR 51.152, and that includes provisions for events that could be considered "exceptional events" under the provisions in 40 CFR 50.14, then the subpart H contingency plan would likely satisfy the mitigation requirements described above. If the identified basic elements are included and addressed, including the element for public comment, then other types of existing mitigation or contingency plans may satisfy the possible mitigation plan requirement described above. For example, if an area has developed a natural events action plan or a high wind action plan covering high wind dust events, this plan likely would

satisfy mitigation elements for high wind dust events. Smoke management plans and/or forest management plans might also satisfy the mitigation elements for prescribed fires and wildfires. Most air agencies generally have sufficient, established processes that meet the public notification and education element, which can be easily adapted or modified to meet the mitigation elements proposed in this action. The EPA is requesting comment on how much time air agencies should be allowed to develop a plan.

### 3. Options for Implementing Mitigation Plans

The EPA is seeking comment on two options for tying the proposed mitigation plan components discussed in section VI.B.2 to the EPA review of exceptional events demonstrations. Option 1 includes the EPA's review for completeness but not substantive approval or disapproval, while Option 2 includes the EPA's approval of the substance of the mitigation plan. These options are discussed below in more detail, but neither option would require a mitigation plan to be included in a SIP or to be otherwise federally-enforceable.

Under both options, air agencies with historically documented or known seasonal exceptional events could submit the mitigation plan to the EPA in advance of an event, or submit a mitigation plan along with an exceptional events demonstration. The EPA would concur with a demonstration for the relevant event type only if a mitigation plan has passed the type of EPA review described in the option. Given that the air agency would have advance notification of the need to develop a plan, the air agency could develop and submit the mitigation plan in advance of any exceptional events demonstration so that the EPA could pre-review the mitigation plan and take faster action on an exceptional events submittal once one is submitted.

*Option 1:* Under this option, the EPA would review for inclusion of required elements as described above and to ensure that the development of the mitigation plan included a public comment process. We would not formally review the substance of the plan in the sense of approving the details of the specific measures and commitments in the plan.

*Option 2:* Under this option, EPA approval of the substance of the mitigation plan would be a precondition for EPA concurrence on an exceptional events demonstration. Because the EPA would approve the content, completeness and sufficiency of a mitigation plan, the EPA's disapproval

of the plan could result in the EPA's nonconcurrency on a current or future exceptional events demonstration.

### **VII. Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events That May Influence Ozone Concentrations**

#### *A. What is this draft guidance about and why is it needed?*

The Exceptional Events Rule contains the regulatory requirements and criteria necessary for the EPA's approval of the exclusion of air quality data from regulatory determinations related to NAAQS exceedances or violations. During the implementation of the 2007 Exceptional Events Rule, the EPA and stakeholders have identified a need for implementation guidance that provides an interpretation of and examples for addressing the regulatory requirements specific to the most common event types. One event type that has been identified by the EPA and stakeholders is wildfire influence on ozone concentrations. In 2013, the EPA finalized the Interim Exceptional Events Implementation Guidance documents (see section IV.D), which included the Interim High Winds Guidance document and an Interim Overview document that also committed to the preparation of a Draft Wildfire Ozone Guidance document. The EPA intends to address this need and commitment via the *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* ("Draft Wildfire Ozone Guidance document"), which accompanies this proposed rule and is also available for comment.

This Draft Wildfire Ozone Guidance document includes example analyses, conclusion statements and technical tools that air agencies can use to provide evidence that the wildfire event influenced the monitored ozone concentration. The Draft Wildfire Ozone Guidance document also identifies fire and monitor-based characteristics that might allow for a simpler and less resource-consuming demonstration package. The EPA has developed the Draft Wildfire Ozone Guidance document concurrently with the proposed Exceptional Events Rule revisions so that the Draft Wildfire Ozone Guidance reflects the proposed rule changes. Once finalized, this guidance will provide the EPA regional offices and air agencies with guidance on how to prepare and submit evidence to meet the Exceptional Events Rule requirements for monitored ozone exceedances caused by wildfires. The

guidance, when finalized, will not be an EPA rule, and in specific cases the EPA may depart from the guidance for reasons that the EPA will explain at the time of the action.

#### *B. What scenarios are addressed in the draft guidance?*

The EPA has prepared the Draft Wildfire Ozone Guidance document to provide assistance and example analyses for wildfire events that may influence ozone concentrations. Though many of the technical analyses included in the draft document may also be applied to prescribed fire events, the draft guidance document available for comment at this time does not provide guidance specific on how prescribed fire events can address all proposed rule requirements. Limiting the scope to wildfire events is intended to make the document easier to use for wildfire events. With this notice, the EPA invites comment on the content of this guidance document and whether it is appropriate to expand the scope of the guidance to include prescribed fire events. If commenters believe it is necessary to expand the scope of the EPA's final new guidance beyond the scope of the Draft Wildfire Ozone Guidance document, the EPA seeks comment on whether wildfire and prescribed fire events should be addressed in a single fire ozone guidance document or in separate guidance documents.

### **VIII. Environmental Justice Considerations**

The Exceptional Events Rule provides the criteria by which state, local and tribal air agencies identify air quality data they believe have been influenced by exceptional events, which by statutory definition are not reasonably controllable or preventable. Because these events are not reasonable to prevent or control, they can affect all downwind populations including minority and low-income populations. For this reason, in adding section 319(b) to the CAA, Congress identified as a guiding principle in developing regulations, "the principle that protection of public health is the highest priority." The 2007 Exceptional Events Rule at 40 CFR 50.14 requires air agencies to seek public comment on prepared exceptional events demonstrations prior to submitting them to the reviewing EPA regional office. The public can also comment on rulemakings that include decisions related to the exclusion of event-influenced data. The mitigation of exceptional events language at 40 CFR 51.930 also requires that air agencies

provide public notification and education programs related to events. To protect all people and communities, notably minority and low-income populations, air agencies should ensure that notifications and education programs are communicated using the language (e.g., English and Spanish) and media (e.g., radio and postings in local community centers) best suited to the target audience(s). Additionally, these proposed revisions are part of a public notice-and-comment rulemaking effort, which will include a public hearing. These opportunities for public input and education ensure that all those residing, working, attending school or otherwise present in areas affected by exceptional events, regardless of minority and economic status, are protected.

### **IX. Statutory and Executive Order Reviews**

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

#### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the PRA. The information being requested under these proposed rule revisions is consistent with current requirements related to information needed to verify the authenticity of monitoring data submitted to the EPA's AQS database, and to justify exclusion of data that have been flagged as being affected by exceptional events. OMB has previously approved the information collection activities for ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule and has assigned OMB control number 2060-0084.

#### *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. This action will not impose any requirements on small entities. Instead, the proposed rule revisions provide the criteria and increase the efficiency of the process by which state, local and tribal air agencies identify air quality data they believe



have been influenced by an exceptional event. The proposed rule revisions also clarify those actions that state, local and tribal air agencies should take to protect public health during and following an exceptional event. Because affected air agencies would have discretion to implement controls on sources that may need to be regulated due to anthropogenic contribution in the area determined to be influenced by an exceptional event, the EPA cannot predict the indirect effect of the rule on sources that may be small entities.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. The EPA believes, however, that this action may be of significant interest to states and to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management. Consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA consulted with representatives of state and local governments early in the process of developing this action to permit them to have meaningful and timely input into its development. A summary of the concerns raised during that consultation is provided in section IV of this preamble.

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

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA held public meetings attended by tribal

representatives and separate meetings with tribal representatives to discuss the revisions proposed in this action. The EPA also provided an opportunity for all interested parties to provide oral or written comments on potential concepts for the EPA to address during the rule revision process. Summaries of these meetings are included in the docket for this proposed rule. The EPA specifically solicits additional comment on this proposed action from tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & 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 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. The purpose of this proposed rule is to provide the criteria, and increase the efficiency of the process, by which state, local and tribal air agencies may identify air quality data they believe have been influenced by an exceptional event. The EPA does not expect these activities to affect energy suppliers, distributors or users.

#### *I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the section of the preamble titled “Environmental Justice Considerations.” This proposed action provides the criteria and increases the efficiency of the process by which state, local and tribal air

agencies identify air quality data they believe have been influenced by exceptional events, which, by statutory definition, are not reasonably controllable or preventable. These proposed regulatory provisions do, however, provide information concerning actions that state, local or tribal air agencies might take to uniformly protect public health once the EPA has concurred with an air agency's request to exclude data influenced by an exceptional event. The mitigation component of the proposed rule could ultimately provide additional protection for minority, low income and other populations located in areas affected by exceptional events. Therefore, the EPA finds that this proposed action would not adversely affect the health or safety of minority or low-income populations, and that it is designed to protect and enhance the health and safety of these and other populations.

#### **X. Statutory Authority**

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

#### **List of Subjects in 40 CFR Part 50**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 10, 2015.

**Gina McCarthy,**  
Administrator.

For the reasons set forth in the preamble, it is proposed that 40 CFR part 50 be amended as follows:

#### **PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS**

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Amend § 50.1 by:  
■ a. Revising paragraphs (j) and (k).  
■ b. Adding paragraphs (m), (n), (o), (p), (q) and (r).

The revisions and additions read as follows:

#### **§ 50.1 Definitions.**

\* \* \* \* \*

(j) *Exceptional event* means an event and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an

exceptional event. It does not include stagnation of air masses or meteorological inversions, a meteorological event involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance.

(k) *Natural event* means an event and its resulting emissions, which may recur, in which human activity plays little or no direct causal role. Anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions.

\* \* \* \* \*

(m) *Prescribed fire* is any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

(n) *Wildfire* is any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has been declared to be a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

(o) *Wildland* means an area in which human activity and development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

(p) *High wind dust event* is an event that includes the high-speed wind and the dust that the wind entrains and transports to a monitoring site.

(q) *High wind threshold* is the minimum wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event.

(r) *Federal land manager* means, consistent with the definition in 40 CFR 51.301, the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.

■ 3. Amend § 50.14, as amended on October 26, 2015, at 80 FR 65452, effective December 28, 2015, as follows:

- a. Revise paragraphs (a) and (b);
- b. Revise paragraphs (c)(1), (c)(2)(i) through (v), and (c)(3).

The revisions read as follows:

**§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.**

(a) *Requirements*—(1) *Scope*. (i) This section applies to the treatment of data showing exceedances or violations of any national ambient air quality standard for purposes of the following

types of regulatory determinations by the Administrator:

(A) An action to designate an area, pursuant to Clean Air Act section 107(d)(1), or redesignate an area, pursuant to Clean Air Act section 107(d)(3), for a particular national ambient air quality standard;

(B) The assignment or re-assignment of a classification category to a nonattainment area where such classification is based on a comparison of pollutant design values, calculated according to the specific data handling procedures in 40 CFR part 50 for each national ambient air quality standard, to the level of the relevant national ambient air quality standard;

(C) A determination regarding whether a nonattainment area has attained the level of the appropriate national ambient air quality standard by its specified deadline;

(D) A determination that an area has had only one exceedance in the year prior to its attainment deadline and thus qualifies for a 1-year attainment date extension, if applicable; and

(E) A determination under Clean Air Act section 110(k)(5), if based on an area violating a national ambient air quality standard, that the state implementation plan is inadequate to the requirements of Clean Air Act section 110.

(ii) A State, federal land manager or other federal agency may request the Administrator to exclude data showing exceedances or violations of any national ambient air quality standard that are directly due to an exceptional event from use in determinations by demonstrating to the Administrator's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.

(A) For a federal land manager or other federal agency to be eligible to initiate such a request for data exclusion, the federal land manager or other federal agency must:

(1) Either operate a regulatory monitor that has been affected by an exceptional event or manage land on which an exceptional event occurred that influenced a monitored concentration at a regulatory monitor; and

(2) Initiate such a request only after discussing such submittal with the State in which the affected monitor is located; and

(B) When initiating such a request, all provisions in this section that are expressed as requirements applying to a State shall, except as noted, be requirements applying to the federal land manager or other federal agency.

(2) A demonstration to justify data exclusion may include any reliable and

accurate data, but must specifically address the elements in paragraphs (c)(3)(iv) and (v) of this section.

(b) *Determinations by the Administrator*—(1) *Generally*. The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section.

(2) *Fireworks displays*. The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from fireworks displays caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Such data will be treated in the same manner as exceptional events under this rule, provided a State demonstrates that such use of fireworks is significantly integral to traditional national, ethnic, or other cultural events including, but not limited to, July Fourth celebrations that satisfy the requirements of this section.

(3) *Prescribed fires*. (i) The Administrator shall exclude data from use in determinations of exceedances and violations, where a State demonstrates to the Administrator's satisfaction that emissions from prescribed fires caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section.

(ii) In addressing the requirements set forth in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion:

(A) With respect to the requirement that a prescribed fire be not reasonably controllable, the State must either certify to the Administrator that it has adopted and is implementing a smoke management plan or the State must demonstrate that the burn manager employed the generally applicable basic smoke management practices identified in Table 2 to § 50.14. To make the latter demonstration, the State may rely on a statement or other documentation provided by the burn manager that he or she employed those practices. If an exceptional event occurs using the basic

smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected.

(B) With respect to the requirement that a prescribed fire be not reasonably preventable, provided the Administrator determines that there is no compelling evidence to the contrary in the record, the State may rely upon and reference a multi-year land or resource management plan for a wildland area with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or

to preserve endangered or threatened species through a program of prescribed fire, but also provided that the use of prescribed fire in the area has not exceeded the frequency indicated in that plan.

(iii) Provided the Administrator determines that there is no compelling evidence to the contrary in the record, in addressing the requirements set forth in paragraph (c)(3)(iv)(E) of this section regarding the human activity unlikely to recur at a particular location criterion for demonstrations involving prescribed fires on wildland, the State must

describe the actual frequency with which a burn was conducted, but may rely upon and reference an assessment of the natural fire return interval or the prescribed fire frequency needed to establish, restore, and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan with a stated objective to establish, restore, and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire.

TABLE 2 TO § 50.14—SUMMARY OF BASIC SMOKE MANAGEMENT PRACTICES, BENEFIT ACHIEVED WITH THE BSMP, AND WHEN IT IS APPLIED BEFORE, DURING OR AFTER IGNITION OF THE BURN<sup>a</sup>

Basic smoke management practice	Benefit achieved with the BSMP	When the BSMP is applied—before/during/after the burn
Evaluate Smoke Dispersion Conditions.	Minimize smoke impacts .....	Before, During, After.
Monitor Effects on Air Quality ..... Record-Keeping/Maintain a Burn/Smoke Journal.	Be aware of where the smoke is going and degree it impacts air quality ... Retain information about the weather, burn and smoke. If air quality problems occur, documentation helps analyze and address air regulatory issues.	Before, During, After. Before, During, After.
Communication—Public Notification	Notify neighbors and those potentially impacted by smoke, especially sensitive receptors.	Before, During.
Consider Emission Reduction Techniques.	Reducing emissions through mechanisms such as reducing fuel loading can reduce downwind impacts.	Before, During, After.
Share the Airshed—Coordination of Area Burning.	Coordinate multiple burns in the area to manage exposure of the public to smoke.	Before, During, After.

<sup>a</sup> Elements of these BSMP could also be practical and beneficial to apply to wildfires for areas likely to experience recurring wildfires.

(4) *Wildfires.* The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator’s satisfaction that emissions from wildfires caused a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Provided the Administrator determines that there is no compelling evidence to the contrary in the record, the Administrator will determine every wildfire occurring predominantly on wildland to have met the requirements identified in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably controllable or preventable criterion.

(5) *High wind dust events.* (i) The Administrator shall exclude data from use in determinations of exceedances and violations, where a State demonstrates to the Administrator’s satisfaction that emissions from a high wind dust event caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section

provided that such emissions are from high wind dust events.

(ii) The Administrator will consider high wind dust events to be natural events in cases where windblown dust is entirely from undisturbed natural lands or where all anthropogenic sources are reasonably controlled as determined in accordance with paragraph (b)(7) of this section.

(iii) The Administrator will accept a high wind threshold of a sustained wind of 25 mph for areas in the States of Arizona, California, Colorado, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming provided this value is not contradicted by evidence in the record at the time the State submits a demonstration.

(iv) In addressing the requirements set forth in paragraph (c)(3)(iv)(D) of this section regarding the not reasonably preventable criterion, the State shall not be required to provide a case-specific justification for a high wind dust event.

(v) With respect to the not reasonably controllable criterion of paragraph (c)(3)(iv)(D) of this section, dust controls on an anthropogenic source shall be considered reasonable in any case in which the controls render the

anthropogenic source as resistant to high winds as a natural undisturbed land area. The Administrator may determine lesser controls reasonable on a case-by-case basis.

(vi) For remote, large-scale, high-energy and/or sudden high wind dust events, such as “haboobs” in the southwest, the Administrator will generally consider a demonstration documenting the nature and extent of the event to be sufficient with respect to the not reasonable controllable criterion of paragraph (c)(3)(iv)(D) of this section.

(6) *Determinations with respect to event aggregation and multiple national ambient air quality standards for the same pollutant.* (i) Where a State demonstrates to the Administrator’s satisfaction that for national ambient air quality standards with averaging or cumulative periods longer than 24-hours the aggregate effect of events occurring on different days has caused an exceedance or violation, the Administrator shall determine such collective data to satisfy the requirements in paragraph (c)(3)(iv)(B) of this section regarding the clear causal relationship criterion and otherwise satisfies the requirements of this section.

(ii) The Administrator shall accept as part of a demonstration for the clear causal relationship in paragraph (c)(3)(iv)(B) of this section, a State's comparison of a 24-hour concentration of any national ambient air quality standard pollutant to the level of a national ambient air quality standard for the same pollutant with a longer averaging period.

(7) *Determinations with respect to the not reasonably controllable or preventable criterion.* (i) The Administrator shall determine that an event is not reasonably preventable if the State shows that reasonable measures to prevent the event were applied at the time of the event.

(ii) The Administrator shall determine that an event is not reasonably controllable if the State shows that reasonable measures to control the impact of the event on air quality were applied at the time of the event.

(iii) The Administrator shall assess the reasonableness of available controls for anthropogenic sources based on information available as of the date of the event.

(iv) Except where a State is obligated to revise its state implementation plan, the Administrator shall consider enforceable control measures implemented in accordance with a state implementation plan, approved by the EPA within 5 years of the date of a demonstration submittal, that address the event-related pollutant and all sources necessary to fulfill the requirements of the Clean Air Act for the state implementation plan to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to event-related emissions.

(v) The Administrator shall not require a State to provide case-specific justification to support the not reasonably controllable or preventable criterion for emissions-generating activity that occurs outside of the State's jurisdictional boundaries within which the concentration at issue was monitored. In the case of a tribe with treatment as a state status with respect to exceptional events requirements, the tribe's jurisdictional boundaries for purposes of requiring or directly implementing emission controls apply. In the case of a federal land manager or other federal agency submitting a demonstration under the requirements of this section, the jurisdictional boundaries that apply are those of the State or the tribe depending on which has jurisdiction over the area where the event has occurred.

(c) *Schedules and procedures*—(1) Public notification. (i) All States and,

where applicable, their political subdivisions must notify the public promptly whenever an event occurs or is reasonably anticipated to occur which may result in the exceedance of an applicable air quality standard.

(ii) [Reserved]

(2) *Initial notification of potential exceptional event.* (i) A State shall notify the Administrator of its intent to request exclusion of one or more measured exceedances of an applicable national ambient air quality standard as being due to an exceptional event by creating an initial event description and flagging the associated data that have been submitted to the AQS database and by engaging in the Initial Notification of Potential Exceptional Event process as follows:

(A) The State and the appropriate EPA regional office shall engage in regular communications to identify those data that have been potentially influenced by an exceptional event, to determine whether the identified data may affect a regulatory determination and to discuss whether the State should develop and submit an exceptional events demonstration according to the requirements in this section;

(B) For data that may affect an anticipated regulatory determination or where circumstances otherwise compel the Administrator to prioritize the resulting demonstration, the Administrator shall respond to a State's Initial Notification of Potential Exceptional Event with a due date for demonstration submittal that considers the nature of the event and the anticipated timing of the associated regulatory decision;

(C) The Administrator may waive the Initial Notification of Potential Exceptional Event process on a case-by-case basis.

(ii) The data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and the Administrator's review, the Administrator notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.

(iii) [Reserved]

(iv) [Reserved]

(v) [Reserved]

\* \* \* \* \*

(3) *Submission of demonstrations.* (i) Except as allowed under paragraph (c)(2)(vi) of this section, a State that has flagged data as being due to an exceptional event and is requesting

exclusion of the affected measurement data shall, after notice and opportunity for public comment, submit a demonstration to justify data exclusion to the Administrator according to the schedule established under paragraph (c)(2)(i)(B).

(ii) [Reserved]

(iii) [Reserved]

(iv) The demonstration to justify data exclusion must include:

(A) A narrative conceptual model that describes the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitor(s);

(B) A demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation;

(C) Analyses identified in Table 3 to § 50.14 comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times consistent with Table 3 to § 50.14 to support the requirement at paragraph (c)(3)(iv)(B) of this section. The Administrator shall not require a State to prove a specific percentile point in the distribution of data;

(D) A demonstration that the event was both not reasonably controllable and not reasonably preventable; and

(E) A demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event.

(v) With the submission of the demonstration containing the elements in paragraph (c)(3)(iv) of this section, the State must:

(A) Document that the public comment process was followed and that the comment period was open for a minimum of 30 days, which could be concurrent with the Administrator's review of the associated demonstration provided the State can meet all requirements in this paragraph;

(B) Submit the public comments it received along with its demonstration to the Administrator; and

(C) Address in the submission to the Administrator those comments disputing or contradicting factual evidence provided in the demonstration.

(vi) Where the State has submitted a demonstration according to the requirements of this section and the Administrator has reviewed such demonstration and requested additional evidence to support one of the elements in paragraph (c)(3)(iv) of this section, the State shall have 12 months from the date of the Administrator's request to submit such evidence. At the

conclusion of this time, if the State has not submitted the requested additional evidence, the Administrator will consider the demonstration to be

inactive and will not pursue additional review of the demonstration. After a 12-month period of inactivity, if a State desires to pursue the inactive

demonstration, it must reinitiate its request to exclude associated data by following the process beginning with paragraph (c)(2)(i) of this section.

TABLE 3 TO § 50.14. EVIDENCE AND ANALYSES FOR THE COMPARISON TO HISTORICAL CONCENTRATIONS

Historical concentration evidence	Types of analyses/supporting information	Required or optional?
1. Comparison of concentrations on the claimed event day with past historical data.	<p><i>Seasonal</i> (appropriate if exceedances occur primarily in one season, but not in others).</p> <ul style="list-style-type: none"> <li>Use all available seasonal data over the previous 5 years (or more, if available).</li> <li>Discuss the seasonal nature of pollution for the location being evaluated.</li> <li>Present monthly maximums of the NAAQS relevant metric (<i>e.g.</i>, maximum daily 8-hour average ozone or 1-hr SO<sub>2</sub>) vs monthly or other averaged daily data as this masks high values.</li> </ul> <p><i>Annual</i> (appropriate if exceedances are likely throughout the year).</p> <ul style="list-style-type: none"> <li>Use all available data over the previous 5 years (or more, if available).</li> </ul> <p><i>Seasonal and Annual Analyses.</i></p> <ul style="list-style-type: none"> <li>Provide the data in the form relevant to the standard being considered for data exclusion.</li> <li>Label “high” data points as being associated with concurred exceptional events, suspected exceptional events, other unusual occurrences, or high pollution days due to normal emissions.</li> <li>Describe how emission control strategies have decreased pollutant concentrations over the 5-year window, if applicable.</li> <li>Include comparisons omitting known or suspected exceptional events points, if applicable.</li> </ul>	<i>Required</i> seasonal and/or annual analysis (depending on which is more appropriate).
2. Comparison of concentrations on the claimed event day with a narrower set of similar days.	<ul style="list-style-type: none"> <li>Include neighboring days at the same location (<i>e.g.</i>, a time series of two to three weeks) and/or other days with similar meteorological conditions (possibly from other years) at the same or nearby locations with similar historical air quality along with a discussion of the meteorological conditions during the same timeframe.<sup>a</sup></li> <li>Use this comparison to demonstrate that the event caused higher concentrations than would be expected for given meteorological and/or local emissions conditions.</li> </ul>	<i>Optional</i> analysis.
3. Percentile rank of concentration when compared to annual data. <sup>b</sup>	<ul style="list-style-type: none"> <li>Provide the percentile rank of the event-day concentration relative to all measurement days over the previous 5 years to ensure statistical robustness and capture non-event variability over the appropriate seasons or number of years.<sup>c</sup></li> <li>Use the daily statistic (<i>e.g.</i>, 24-hour average, maximum daily 8-hour average, or maximum 1-hour) appropriate for the form of the standard being considered for data exclusion.</li> </ul>	<i>Required</i> analysis when comparison is made on an annual basis ( <i>see</i> item #1).
4. Percentile rank of concentration relative to seasonal data. <sup>b</sup>	<ul style="list-style-type: none"> <li>Provide the percentile rank of the event-day concentration relative to all measurement days for the season (or appropriate alternative 3-month period) of the event over the previous 5 years.</li> <li>Use the same time horizon as used for the percentile rank calculated relative to annual data, if appropriate.</li> </ul>	<i>Required</i> analysis when comparison is made on a seasonal basis ( <i>see</i> item #1).

<sup>a</sup> If an air agency compares the concentration on the claimed event day with days with similar meteorological conditions from other years, the agency should also verify and provide evidence that the area has not experienced significant changes in wind patterns, and that no significant sources in the area have had significant changes in their emissions of the pollutant of concern.

<sup>b</sup> The EPA does not intend to identify a particular historical percentile rank point in the seasonal or annual historical data that plays a critical role in the analysis or conclusion regarding the clear causal relationship.

<sup>c</sup> Section 8.4.2.e of appendix W (proposed revisions at 80 FR 45374, July 29, 2015) recommends using 5 years of adequately representative meteorology data from the National Weather Service to ensure that worst-case meteorological conditions are represented. Similarly, for exceptional events purposes, the EPA believes that 5 years of ambient air data, whether seasonal or annual, better represent the range of “normal” air quality than do shorter periods.

# Reader Aids

Federal Register

Vol. 80, No. 224

Friday, November 20, 2015

## CUSTOMER SERVICE AND INFORMATION

### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

**Laws 741-6000**

### Presidential Documents

Executive orders and proclamations **741-6000**

**The United States Government Manual 741-6000**

### Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.fdsys.gov](http://www.fdsys.gov).

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: [www.ofr.gov](http://www.ofr.gov).

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

67261-67620.....	2	72555-72898.....	20
67621-68242.....	3		
68243-68420.....	4		
68421-68742.....	5		
68743-69110.....	6		
69111-69562.....	9		
69563-69836.....	10		
69837-70148.....	12		
70149-70668.....	13		
70669-71680.....	16		
71681-71926.....	17		
71927-72326.....	18		
72327-72554.....	19		

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 2 CFR

200.....	69111
2205.....	71681
2300.....	69563
3474.....	67261

#### Proposed Rules:

3474.....	67672
-----------	-------

### 3 CFR

#### Proclamations:

9354.....	67615
9355.....	67617
9356.....	67619
9357.....	68237
9358.....	68239
9359.....	68241
9360.....	68413
9361.....	68415
9362.....	68417
9363.....	68419
9364.....	69835
9365.....	70147
9366.....	72321
9367.....	72323
9368.....	72325
9369.....	72552

#### Administrative Orders:

Memorandums:	
Memorandum of	
November 3, 2015.....	68743
Notices:	
Notice of November 5,	
2015.....	69561
Notice of November	
10, 2015.....	70663
Notice of November	
12, 2015.....	70667
Presidential	
Determinations:	
No. 2016-02 of	
November 13,	
2015.....	71927

#### Executive Orders:

13348 (Revoked by	
EO 13710).....	71679
13710.....	71679
13711.....	71923

### 5 CFR

#### Proposed Rules:

870.....	69623
----------	-------

### 7 CFR

301.....	72327
906.....	70669
925.....	68421
930.....	68424
944.....	68421

#### Proposed Rules:

920.....	68473
----------	-------

### 9 CFR

#### Proposed Rules:

54.....	70718
79.....	70718

### 10 CFR

72.....	71929
73.....	67264
431.....	69837
433.....	68749
851.....	69564

#### Proposed Rules:

26.....	72358
50.....	70610, 72358
52.....	70610, 72358
72.....	71982
73.....	72358
140.....	72358
170.....	68268
171.....	68268
429.....	68274, 69278, 69888,
	71984, 72373, 72608
430.....	68274, 69278, 71984,
	72373
431.....	69888, 72608

### 11 CFR

#### Proposed Rules:

110.....	72616
----------	-------

### 12 CFR

204.....	71681
208.....	70671
217.....	70671
225.....	70671
252.....	70671
Ch. VI.....	67277
600.....	68427
606.....	68427
611.....	67277
914.....	72327
917.....	72327
1003.....	69567
1236.....	72327
1239.....	72327
1710.....	72327
1720.....	72327

#### Proposed Rules:

327.....	68780
----------	-------

### 14 CFR

25.....	67621, 67623, 69567,
	72555, 72561
33.....	72561
35.....	72561
39.....	68429, 68432, 68434,
	68437, 69111, 69113, 69569,
	69571, 69573, 69838, 69839,
	69846, 71684, 72563, 72565,
	73569, 72573, 73576, 72579
71.....	68440, 68442, 70149,
	70150

95.....70674  
 97.....68758, 68759, 68761,  
 68763, 69578  
 1204.....70151  
**Proposed Rules:**  
 23.....68281  
 25.....72618  
 39.....67348, 68284, 68475,  
 68477, 69623, 69625, 69896,  
 69898, 69899, 69903, 71745,  
 71747, 71749, 71751, 73390,  
 73393, 73395, 73398, 73401,  
 72621  
 71.....70176, 70177  
 147.....72404

**15 CFR**

4.....68442, 70153  
 301.....68765  
 303.....68765  
 730.....69588, 70675  
 734.....69588  
 744.....69852, 70678

**16 CFR**

305.....67285  
 500.....71686  
 502.....71686  
 1109.....72342  
 1500.....72342

**Proposed Rules:**

305.....67351  
 1109.....72405  
 1112.....69144  
 1231.....69144  
 1500.....72405

**17 CFR**

200.....71388  
 227.....71388  
 232.....71388  
 239.....71388  
 240.....71388  
 249.....71388  
 269.....71388  
 270.....71388

**Proposed Rules:**

230.....69786  
 300.....68286

**18 CFR**

157.....67302  
 260.....67302  
 284.....67302

**Proposed Rules:**

35.....71755

**19 CFR**

101.....70154  
 103.....71690  
 113.....70154  
 133.....70154  
 161.....71690  
 175.....71690

**20 CFR**

435.....69563  
 437.....69563  
**Proposed Rules:**  
 30.....72296

**21 CFR**

1.....71934  
 11.....71934  
 16.....71934

25.....70679  
 106.....71934  
 110.....71934  
 114.....71934  
 117.....71934  
 120.....71934  
 123.....71934  
 129.....71934  
 150.....72581  
 179.....71934  
 211.....71934  
 866.....67313  
 872.....72585  
 880.....72587  
 890.....72589  
 1308.....69861, 70658, 70680

**Proposed Rules:**

101.....69905, 71990  
 1308.....70650  
 866.....71756

**22 CFR**

22.....72591  
 41.....67315, 69588  
 51.....72591

**23 CFR**

**Proposed Rules:**

771.....72624  
 774.....72624

**24 CFR**

91.....69864  
 570.....67626, 67634, 69864,  
 71936

**Proposed Rules:**

5.....72642  
 965.....71762  
 966.....71762

**25 CFR**

169.....72492  
 256.....69589

**Proposed Rules:**

30.....69161

**26 CFR**

1.....68243, 68244, 70680  
 54.....72192  
 602.....68244

**Proposed Rules:**

1.....68288, 68794, 71769,  
 72649

**29 CFR**

1982.....69115  
 2509.....71936  
 2590.....72192  
 4022.....70170

**Proposed Rules:**

29.....68908  
 30.....68908  
 2510.....72006  
 2560.....72014

**30 CFR**

**Proposed Rules:**

7.....72028  
 75.....72028

**32 CFR**

273.....68158  
 776.....68388

**Proposed Rules:**

208.....69166

**33 CFR**

100.....67635, 69873  
 117.....67316, 68444, 69602,  
 72592  
 138.....72342  
 147.....71940, 71942  
 165.....67317, 67638, 68445,  
 70687, 71693, 72356

**Proposed Rules:**

117.....67677  
 165.....72663

**34 CFR**

74.....67261  
 75.....67261  
 76.....67261  
 77.....67261  
 80.....67261  
 101.....67261  
 206.....67261  
 222.....67261  
 225.....67261  
 226.....67261  
 270.....67261  
 280.....67261  
 299.....67261  
 300.....67261  
 303.....67261  
 350.....67261  
 361.....67261  
 363.....67261  
 364.....67261  
 365.....67261  
 367.....67261  
 369.....67261  
 370.....67261  
 373.....67261  
 377.....67261  
 380.....67261  
 381.....67261  
 385.....67261  
 396.....67261  
 400.....67261  
 426.....67261  
 460.....67261  
 491.....67261  
 535.....67261  
 606.....67261  
 607.....67261  
 608.....67261  
 609.....67261  
 611.....67261  
 614.....67261  
 628.....67261  
 636.....67261  
 637.....67261  
 642.....67261  
 643.....67261  
 644.....67261  
 645.....67261  
 646.....67261  
 647.....67261  
 648.....67261  
 650.....67261  
 654.....67261  
 655.....67261  
 661.....67261  
 662.....67261  
 663.....67261  
 664.....67261  
 682.....67261  
 692.....67261  
 694.....67261  
 1100.....67261

**36 CFR**

242.....68245, 68249

**Proposed Rules:**

294.....72665

**37 CFR**

**Proposed Rules:**

42.....67680

**38 CFR**

17.....68447

**Proposed Rules:**

17.....68479, 69909  
 74.....68795

**39 CFR**

**Proposed Rules:**

3050.....68480

**40 CFR**

9.....72592  
 52.....67319, 67335, 67642,  
 67645, 67647, 67652, 68253,  
 68448, 68451, 68453, 68458,  
 68766, 68768, 69602, 69604,  
 69874, 69876, 69880, 70689,  
 71695  
 62.....70694  
 63.....72790  
 81.....67652, 68253  
 97.....69883  
 170.....67496  
 180.....68257, 68261, 68772,  
 70697, 71944, 71947, 72593  
 423.....67838  
 721.....70171, 72592

**Proposed Rules:**

49.....70179  
 50.....72840  
 51.....70179  
 52.....67681, 67682, 68481,  
 68484, 68486, 68807, 69172,  
 69627, 69915, 69925, 70179,  
 70718, 70721, 72406  
 60.....68808, 70179  
 62.....70727  
 70.....70179  
 71.....70179  
 81.....69173  
 82.....69458  
 147.....69629  
 171.....72029  
 180.....68289, 69080  
 258.....70180  
 260.....68490  
 261.....68490, 68491  
 262.....68490, 68491  
 263.....68490  
 264.....68490  
 265.....68490  
 266.....68491  
 268.....68490, 68491  
 270.....68490  
 273.....68490, 68491  
 279.....68490

**42 CFR**

405.....70298, 71388  
 409.....68624  
 410.....70298, 71388  
 411.....71388  
 412.....70298  
 413.....68968, 70298  
 414.....71388  
 416.....70298  
 419.....70298  
 424.....68624  
 425.....71388

447.....67576	<b>Proposed Rules:</b>	73.....68815	752.....69930
484.....68624	95.....68290	74.....68815	
495.....71388	1329.....70728		
<b>Proposed Rules:</b>	1355.....68290	<b>48 CFR</b>	<b>49 CFR</b>
447.....67377	1356.....68290	212.....72599	171.....71952
482.....68126	<b>46 CFR</b>	216.....72606	172.....71952
484.....68126	515.....68722	217.....72607	173.....71952
485.....68126	<b>Proposed Rules:</b>	225.....72599, 72607	174.....71952
	401.....69179	252.....72357, 72599	179.....71952
<b>43 CFR</b>	403.....69179	Ch. 3.....72150	<b>Proposed Rules:</b>
10.....68465	404.....69179	1817.....68778	622.....72624
		1852.....68778	
<b>44 CFR</b>	<b>47 CFR</b>	<b>Proposed Rules:</b>	<b>50 CFR</b>
<b>Proposed Rules:</b>	1.....67337	2.....72035	17.....70700
206.....70116	2.....68471, 71702	4.....72035	100.....68245, 68249
	15.....71702	9.....72035	300.....69884
<b>45 CFR</b>	27.....71731	12.....72035	622.....71973
144.....72192	73.....67337, 67344, 71731	19.....72035	635.....68265, 71974
146.....72192	74.....71702	52.....72035	648.....67664
147.....72192	87.....71702	215.....72669	660.....67664, 69138, 69885,
1235.....71681	90.....71702	217.....72671	71975
2510.....71681	<b>Proposed Rules:</b>	225.....72672, 72673	665.....68778
2520.....71681	Ch. I.....69630	234.....72671	679.....67346, 68267, 70717
2541.....71681	1.....67689, 68815, 69630	239.....72674	697.....69619
2543.....71681	4.....67689	241.....72675	
2551.....71681	25.....68815	252.....72673	<b>Proposed Rules:</b>
2552.....71681	27.....69630	722.....69930	648.....69179
2553.....71681	64.....72029	729.....69930	660.....72676
		731.....69930	679.....71650, 72408



---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List November 11, 2015

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.