FEDERAL REGISTER

Vol. 81 Tuesday,

No. 2 January 5, 2016

Pages 145–370

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.*

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*, 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.*

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.*

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*
Phone	**202–741–6000**

Contents

Federal Register

Vol. 81, No. 2

Tuesday, January 5, 2016

Agriculture Department
See Risk Management Agency

Coast Guard
RULES
Ballast Water Management Reporting and Recordkeeping, 173
PROPOSED RULES
Anchorage Regulations:
Delaware River; Philadelphia, PA, 194–196

Commerce Department
See Economics and Statistics Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Copyright Royalty Board
NOTICES
Determination of Rates and Terms:
Making and Distributing Phonorecords (Phonorecords III), 255–256
Public Broadcasting, 256–257
Satellite Radio and Preexisting Subscription Services, 255

Defense Department
See Engineers Corps

Economics and Statistics Administration
NOTICES
Meetings:
Commerce Data Advisory Council, 219–220

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Authority To Import and Export Natural Gas, etc.:
Pieridae Energy (USA) Ltd., et al., 228–230

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Port of Long Beach Deep Draft Navigation Project, Los Angeles County, CA, 228

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze, 296–352
NOTICES
Requests To Voluntarily Cancel Pesticide Registrations and Amend Registrations To Terminate Certain Uses, 236–238

Federal Accounting Standards Advisory Board
NOTICES
Insurance Programs, 239

Federal Aviation Administration
RULES
Airworthiness Directives:
Piper Aircraft, Inc., 145–147
Sikorsky Aircraft Corporation Helicopters, 147–150
PROPOSED RULES
Airworthiness Directives:
Airbus Helicopters, 191–193
NOTICES
Requests for Nominations:
National Parks Overflights Advisory Group Aviation Rulemaking Committee, 290–291

Federal Communications Commission
RULES
Hearing Aid-Compatible Mobile Handsets, 173–183
PROPOSED RULES
Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets:, 204–214

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 239

Federal Emergency Management Agency
NOTICES
Major Disaster Declarations:
Idaho, 246–247
Oklahoma, 247
Texas; Amendment No. 2, 246

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 230–231
Combined Filings, 234–236
Environmental Impact Statements; Availability, etc.:
Delfin LNG Project, 231–233
Records Governing Off-the-Record Communications, 233–234
Refund Effective Dates:
C.P. Crane, LLC, 231

Federal Maritime Commission
NOTICES
Agreements Filed, 239–240

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 240

Federal Motor Carrier Safety Administration
NOTICES
Commercial Driver's License Standards; Exemption Applications:
CRST Expedited, 291–292

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Proposed Endangered Status for Five Species From American Samoa, 214–215
NOTICES
Endangered Species Recovery Permit Applications, 249–251
Habitat Conservation Plans:
Operation, Repair, Maintenance, and Replacement of State Water Pipeline and Facilities From the Polonio Pass Water Treatment Plant, San Luis Obispo County to Lake Cachuma, Santa Barbara County, CA, 252–253

Food and Drug Administration
RULES
Effective Date of Requirement for Premarket Approval for Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair, 364–370
Obstetrical and Gynecological Devices:
Reclassification of Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair, 354–361
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Draft Guidance for Industry and Review Staff on Target Product Profile—A Strategic Development Process Tool, 240–242
Charter Renewals:
Food Advisory Committee, 242

Foreign-Trade Zones Board
NOTICES
Proposed Production Activities:
Canon Virginia, Inc., Subzone 20D, Newport News, VA, 220

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Advisory Committee on Minority Health, 242–243
Presidential Advisory Council on HIV/AIDS, 243–244

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Federal Properties Suitable as Facilities To Assist the Homeless, 247
Privacy Act; Computer Matching Program, 248–249

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
PROPOSED RULES
Dividend Equivalents From Sources Within the United States; Hearing Cancellation, 194

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Extrusions From the People's Republic of China, 223–224
Certain Frozen Warmwater Shrimp From Thailand, 222–223
Magnesium Metal From the People's Republic of China, 220–222

Labor Department
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 253–255

Library of Congress
See Copyright Royalty Board

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 292–293

National Institute of Standards and Technology
NOTICES
Meetings:
Genome in a Bottle Consortium—Progress and Planning Workshop, 226–227
National Conference on Weights and Measures, 224–226

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 244
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 245–246
National Cancer Institute, 244–245
National Institute of Allergy and Infectious Diseases, 246

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Bering Sea and Aleutian Islands Management Area; New Cost Recovery Fee Programs, 150–173
Inseason Adjustment to the 2016 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts, 184–188
Inseason Adjustment to the 2016 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts, 188–190
Fisheries Off West Coast States:
Pacific Coast Groundfish Fishery; 2015 Tribal Fishery Allocations for Pacific Whiting; Reapportionment Between Tribal and Non-Tribal Sectors, 183–184
PROPOSED RULES
Fisheries Off West Coast States:
Amendments to the Fishery Management Plans for Coastal Pelagic Species, Pacific Coast Groundfish, West Coast Highly Migratory Species, and Pacific Coast Salmon, 215–218
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Quantitative Assessment of Spatially-Explicit Social Values Relative to Wind Energy Areas—Outer Continental Shelf Offshore North Carolina, 227–228

Nuclear Regulatory Commission
NOTICES
Facility Operating and Combined Licenses:
Applications and Amendments Involving No Significant Hazards Considerations, etc., 257–278

Postal Regulatory Commission
NOTICES
New Postal Products, 278–279

Postal Service
NOTICES
Product Changes:
First-Class Package Service Negotiated Service Agreement, 280
Priority Mail and First-Class Package Service Negotiated Service Agreement, 279
Priority Mail Express, Priority Mail, and First-Class Package Service Negotiated Service Agreement, 280–281
Priority Mail Negotiated Service Agreement, 279–281

Risk Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 219

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 281
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 288–290
ICE Clear Credit, LLC, 286–287
National Securities Clearing Corp., 283–286
New York Stock Exchange, LLC, 281–283

Social Security Administration
NOTICES
Rate for Assessment on Direct Payment of Fees to Representatives in 2016, 290

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
PROPOSED RULES
Nondiscrimination on the Basis of Disability in Air Travel, 193–194

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Copayments for Medications Beginning January 1, 2017, 196–204

Separate Parts In This Issue

Part II
Environmental Protection Agency, 296–352

Part III
Health and Human Services Department, Food and Drug Administration, 354–361

Part IV
Health and Human Services Department, Food and Drug Administration, 364–370

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
39 (2 documents) 145, 147
Proposed Rules:
39.....191
382.....193
15 CFR
902.....150
21 CFR
884 (2 documents) 354, 364
26 CFR
Proposed Rules:
1.....194
33 CFR
151.....173
Proposed Rules:
110.....194
38 CFR
Proposed Rules:
17.....196
40 CFR
52.....296
47 CFR
20.....173
Proposed Rules:
20.....204
50 CFR
660.....183
679 (3 documents) 150, 184, 188
Proposed Rules:
17.....214
660.....215

Rules and Regulations

Federal Register
Vol. 81, No. 2
Tuesday, January 5, 2016

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8311; Directorate Identifier 2015–CE–039–AD; Amendment 39–18356; AD 2015–26–08]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Model PA–44–180 and PA–44–180T airplanes. This AD requires an inspection and, if necessary, modification of the emergency gear extension cable. This AD was prompted by a report of a misrouted emergency gear extension cable. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 20, 2016.

We must receive comments on this AD by February 19, 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:* 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 final rule, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com;* Internet: *www.piper.com*. You may review the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2015–4085.

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–2015–8311; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: *hector.hernandez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received recent reports of misrouted emergency gear extension cables on Piper Models PA–44–180 and PA–44–180T airplanes. This condition spans many years beginning in 2007 where one of the airplanes experienced the left-side copilot rudder pedal snagging on the emergency landing gear extension cable during taxi maneuvers. Piper Modification Kit 884333 (Piper Service Bulletin No. 1188, dated April 14, 2008) provides the parts and instructions to reroute the cable away from the pedal for airplanes in service and a production change was made to duplicate the kit configuration.

In 2009, there was a quality escape on the production aircraft (after issuance of SB 1188), which was addressed with Piper Service Bulletin No. 1213, dated March 24, 2010. Recently, there has been another quality escape reported of the cable being routed incorrectly, resulting in the issuance of Piper Service Bulletin 1213A, dated October 23, 2015 to more fully address the incorrect routing of the emergency gear extension cables.

Although the incidents occurred on the ground, the airworthiness concern is the potential for this rudder restriction to occur in flight at high angles of rudder deflection.

The FAA believes that a majority of the airplanes have already incorporated Service Bulletin 1188 and Service Bulletin 1213. However, the only way to mandate its incorporation is through AD action. In addition, the FAA believes that a large percentage of the airplanes that were manufactured after SB 1213 was issued could have the emergency gear extension cable routed incorrectly because the P-clamp that secures the cable could be installed on the inboard bolt just as easily as the outboard bolt (the type design configuration).

Piper is establishing a very robust assembly/inspection procedure going forward to ensure that the quality escape issue does not reoccur. The FAA has determined that this condition can be addressed by requiring:

- The modification in Service Bulletin 1188 for all Models PA–44–180 and PA–44–180T airplanes manufactured prior to April 14, 2008 (the date of SB 1188); and
- The inspection of the emergency gear inspection cable for correct routing of all Model PA–44–180 airplanes manufactured after April 14, 2008 (the date of SB 1188) following SB 1213A, dated October 23, 2015.

This condition, if not corrected, could result in restriction of the rudder movement at high angles of rudder deflection with consequent loss of control. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1213A, dated October 23, 2015. The service information describes procedures for inspection of the routing and security of the emergency gear extension cable and, if necessary, instructions to reroute the emergency gear extension cable. Piper considers compliance with this service bulletin mandatory.

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1188, dated April 14, 2008. The service information describes procedures to reroute and restrain the emergency gear extension cable. Piper considers compliance with this service bulletin mandatory.

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

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if the emergency gear extension cable is left routed incorrectly, it could allow the copilot's left rudder pedal to become entangled with the cable, resulting in a restriction of rudder movement at high angles of rudder deflection with consequent loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2015–8311 and Directorate Identifier 2015–CE–039–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 affects 415 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
Inspect the emergency gear extension cable for proper routing.	.5 work-hour × $85 per hour = $42.50.	Not applicable ...	$42.50	(Estimated $1,487.75. 35 airplanes)
Install Piper emergency gear extension modification kit.	2 work-hours × $85 per hour = $170.	$21	$191	(Estimated $72,580. 380 airplanes)

We estimate the following costs to do any necessary replacements that would be required based on the either the results of the inspection or other requirements. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reroute the emergency gear extension cable	2 work-hours × $85 per hour = $170	$21	$191

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

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):

2015–26–08: Amendment 39–18356; Docket No. FAA–2015–8311; Directorate Identifier 2015–CE–039–AD.

(a) Effective Date

This AD is effective January 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Model PA–44–180 Seminole airplanes, serial numbers (S/Ns) 44–7995001 through 44–8195026, 4495001 through 4496377, 4496379, 4496380, and 4496384 through 4496386; and Piper Aircraft, Inc. Model PA–44–180T Seminole airplanes, S/Ns 44–8107001 through 44–8207020, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2720, Rudder Control System.

(e) Unsafe Condition

This AD was prompted by a report of a misrouted emergency gear extension cable. We are issuing this AD to require an inspection and, if necessary, modification of the emergency gear extension cable. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with paragraphs (g)(1) through (g)(2) including all subparagraph's of this AD within the compliance times specified, unless already done.

(g) Actions

(1) *For Piper Model PA–44–180 Seminole airplanes serial numbers (S/N) 4496245 through 4496377, 4496379, 4496380, and 4496384 through 4496386:* Within 30 days after January 20, 2016 (the effective date of this AD), inspect the emergency gear extension cable for proper routing and appropriate attachment of the cable to the rudder pedal assembly following the Part 1 instructions in Piper Aircraft, Inc. Service Bulletin (SB) No. 1213A, dated October 23, 2015.

(i) If the inspection required in paragraph (g)(1) of this AD reveals a misrouted cable, before further flight, correct the emergency gear extension cable following the Part 2 instructions in Piper Aircraft, Inc. SB No. 1213A, dated October 23, 2015.

(ii) If the inspection required in paragraph (g)(1) of this AD reveals a correct installation following the Part 1 instructions in Piper Aircraft, Inc. SB No. 1213A, dated October 23, 2015, no further action is required.

(2) *For Piper Model PA–44–180 Seminole airplanes SNs 44–7995001 through 44–8195026, 4495001 through 4496244; and Piper Model PA–44–180T Seminole airplanes, SNs 44–8107001 through 44–8207020:* Within 30 days after January 20, 2016 (the effective date of this AD), install the Piper emergency gear extension cable modification kit, part number 88433–002, following the instructions in Piper Aircraft, Inc. SB No. 1188, dated April 14, 2008.

(h) 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 (k) 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.

(i) Related Information

For more information about this AD, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: *hector.hernandez@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) Piper Aircraft, Inc. Service Bulletin No. 1188, dated April 14, 2008.

(ii) Piper Aircraft, Inc. Service Bulletin No. 1213A, dated October 23, 2015.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com;* Internet: *www.piper.com*.

(4) You may review the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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 Kansas City, Missouri, on December 23, 2015.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32907 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0335; Directorate Identifier 2013–SW–021–AD; Amendment 39–18358; AD 2015–26–10]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, S–76B, and S–76C helicopters. This AD requires inspecting the main gearbox (MGB) lower housing jet bores for leaks, paint or caulk blistering, and liner protrusion. This AD was prompted by several reports of MGB low oil pressure warnings which were determined to be the result of unsecured jet bore liners that had protruded. The actions are intended to prevent failure of the MGB from loss of oil, which could result in subsequent loss of control of the helicopter.

DATES: This AD is effective February 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of February 9, 2016.

ADDRESSES: For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, Connecticut 06611; telephone 1–800–Winged–S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, Texas 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for or locating Docket No. FAA–2014–0335; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 2, 2014, at 79 FR 31231, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Sikorsky Model S–76A, S–76B, and S–76C helicopters with a MGB installed that has undergone certain repairs. The NPRM proposed to require, within 50 hours time-in-service (TIS), inspecting the MGB for leaks, paint or caulk blistering, and liner protrusion. If there is oil leakage or protrusion of a jet bore liner, the NPRM proposed to require replacing the MGB before further flight. The NPRM also proposed to require, within 1,500 hours TIS, replacing the MGB with an MGB that was not subject to the applicability of the NPRM unless it had been repaired in accordance with a later overhaul and repair procedure.

The NPRM was prompted by four reports of protruding jet bore liners on Sikorsky S–76 helicopters with a MGB, part number (P/N) 76351–09000 series, 76351–09500 series, and 76351–09600 series. During an overhaul of the MGB, the jet bore liner retaining pins were not adequately drilled into the liner, allowing the jet bore liner to move in the housing, because the overhaul and repair instruction (ORI) did not adequately describe procedures and housing wall thickness limitations for installing the retaining pins. Movement of the jet bore liner into the housing allows oil to leak between the liner and the housing, possibly resulting in loss of oil in the MGB, which could result in failure of the MGB and subsequent loss of control of the helicopter.

At the time we issued the NPRM, we understood these repairs had been made in accordance with Sikorsky ORI No. 76350–065, Revisions A through E. However, the incident MGBs had only been repaired in accordance with Sikorsky ORI No. 76350–065, Revision A or earlier. Sikorsky ORI 76350–065, Revisions B through F, resolve the unsafe condition by clarifying the retaining pin installation instructions. This AD now reflects that clarification.

Comments

After our NPRM (79 FR 31231, June 2, 2014) was published, we received comments from one commenter.

Request

Sikorsky stated the proposed requirement to overhaul the affected MGBs within 1,500 hours TIS is overly conservative because the daily visual inspection is adequate to ensure safety until the next overhaul period. Sikorsky further commented that the 1,500 hour compliance time would be burdensome to operators and not cost effective. When asked for additional information to support this comment, Sikorsky stated that its maintenance program has a major inspection, and not a MGB overhaul, every 1,500 hours. The major inspection does not require removal of the MGB. Overhaul of the MGB for Model S76A helicopters occurs every 3,250 hours and for Model S76B/C helicopters occurs every 3,750 hours.

We agree. We intended the proposed requirement to provide a terminating action that coincides with overhaul of the MGB. We incorrectly understood the 1,500-hour major inspection involved removing the MGB from the helicopter. We agree that due to the gradual loss of oil, safety is maintained with the repetitive inspections until the MGB is replaced or overhauled when specified in the maintenance program. We have revised paragraph (e)(2) of this AD to require replacement of the MGB ''within 3,750 hours TIS'' instead of ''within 1,500 hours TIS.''

Sikorsky also commented that limiting acceptable repairs to those performed in accordance with Sikorksy ORI 76350–065 Revision F was unnecessary because Revision B and subsequent revisions provide installation details that are structurally equivalent to Revision F. When asked for additional information to support this comment, Sikorsky stated the changes in Revision B clarified the pin retention instructions sufficiently to resolve the oil leakage issue. Although Revision F provides for the installation of an additional pin, Sikorsky stated that this is not a significant change. Sikorsky confirmed that all reports of oil leakage involved repairs using the procedures in Revision A or earlier.

We agree. We reexamined Sikorsky ORI No. 76350–065 and its revisions and found Revisions B through F structurally equivalent with only minor changes and improvements. We have changed paragraphs (a) and (e) of this AD to reference the appropriate revisions of Sikorsky ORI No. 76350–065.

FAA's Determination

We have reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. These changes are consistent with the intent of the proposals in the NPRM (79 FR 31231, June 2, 2014), and will not increase the economic burden on any operator nor increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Sikorsky issued Alert Service Bulletin (ASB) 76–66–50, Basic Issue, dated January 14, 2013 (ASB 76–66–50) for Model S–76A, S–76B, and S–76C helicopters with an MGB P/N 76351–09000 series, 76351–09500 series, and 76351–09600 series, which have been repaired in accordance with ORI No. 76350–065 or ORI No. 76350–065, Revision A. ASB 76–66–50 describes procedures for inspecting each MGB lower housing jet bore for leaking oil, paint or caulk blistering, and liner protrusion. If there is any liner protrusion or leaking oil between the

liner and the housing, the ASB requires replacing the MGB. If there is paint or caulk blistering, the ASB requires further inspecting for leaking oil by replacing the jet bore packing, performing a ground run of the main rotor for 30 minutes, and re-inspecting the jet bore for leaking oil.

This 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.

Other Related Service Information

We also reviewed Sikorsky ORI No. 76350–065, Revision B, dated June 10, 2011; Revision C, dated June 27, 2011; Revision D, dated January 20, 2012; Revision E, dated January 27, 2012; and Revision F, dated May 10, 2012. This service information describes procedures for repairing the retaining ring groove areas of the MGB jet bores and installing retaining pins in the jet bore liners.

Differences Between This AD and the Service Information

The ASB specifies compliance by a specific calendar date, while the compliance time in this AD is in hours TIS. The ASB does not specify a terminating action for the recurring inspections of the MGB jet bores; while this AD does specify a terminating action for the recurring inspections.

Costs of Compliance

We estimate that this AD affects 53 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per work-hour, inspecting the jet bore liners requires about 1.1 work-hours, for a cost per helicopter of $94 and a total cost to US operators of $4,982 per inspection cycle. If required, repairing a jet bore liner requires about 14 work-hours, and required parts cost $200, for a cost per helicopter of $1,390. If required, replacing the MGB requires about 134 work-hours, and required parts cost $994,000, for a cost per helicopter of $1,005,390.

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 to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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):

2015–26–10 Sikorsky Aircraft Corporation (Sikorsky): Amendment 39–18358; Docket FAA–2014–0335; Directorate Identifier 2013–SW–021–AD.

(a) Applicability

This AD applies to Sikorsky Model S–76A, S–76B, and S–76C helicopters with a main gearbox (MGB) part number (P/N) 76351–09000 series, 76351–09500 series, and 76351–09600 series installed that has been repaired in accordance with Sikorsky Overhaul and Repair Instruction (ORI) No. 76350–065, dated November 12, 1982 (ORI 76350–065), or ORI No. 76350–065, Revision A, dated September 21, 1984 (ORI 76350–065A), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an unsecured MGB lower housing jet bore liner. This condition may cause the liner to move out of place, allowing oil to leak from the MGB, resulting in MGB failure and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 9, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 50 hours time-in-service (TIS), and thereafter at intervals not to exceed 6 hours TIS, inspect each MGB lower housing jet bore (jet bore), as depicted in Figures 3 and 4 of Sikorsky S–76 Alert Service Bulletin 76–66–50, Basic Issue, dated January 14, 2013 (ASB 76–66–50), for liner protrusion or movement, paint or caulk blistering, or oil leakage.

(i) If there is any liner protrusion or movement, before further flight, replace the MGB with an MGB that has not been repaired in accordance with ORI 76350–065 or ORI 76350–065A, unless it has been subsequently repaired in accordance with Sikorsky ORI No. 76350–065, Revision B, dated June 10, 2011 (ORI 76350–065B); Sikorsky ORI No. 76350–065, Revision C, dated June 27, 2011 (ORI 76350–065C); Sikorsky ORI No. 76350–065, Revision D, dated January 20, 2012 (ORI 76350–065D); Sikorsky ORI No. 76350–065, Revision E, dated January 27, 2012 (ORI 76350–065E); or Sikorsky ORI No. 76350–065, Revision F, dated May 10, 2012 (ORI 76350–065F).

(ii) If there is any oil leakage or paint or caulk blistering, inspect the jet bore for liner protrusion and perform a leakage check by following the Accomplishment Instructions, Paragraphs 3.C.(1) through 3.C.(6)(a), of ASB 76–66–50.

(iii) If any moisture or droplets of MGB oil are visible on a jet bore after accomplishing the leakage check specified in paragraph 3.C.(6)(a) of ASB 76–66–50, repeat paragraphs 3.C(4) through 3.C(6) of ASB 76–66–50. If any moisture or droplets of MGB oil are still visible, before further flight, replace the MGB with an MGB that has not been repaired in accordance with ORI 76350–065 or ORI 76350–065A, unless it has been subsequently repaired in accordance with ORI 76350–065B, ORI 76350–065C, ORI 76350–065D, ORI 76350–065E, or ORI 76350–065F.

(2) Within 3,750 hours TIS, replace the MGB with an MGB that has not been repaired in accordance with ORI 76350–065 or ORI 76350–065A, unless it has been subsequently repaired in accordance with ORI 76350–065B, ORI 76350–065C, ORI 76350–065D, ORI 76350–065E, or ORI 76350–065F. This is terminating action for the repetitive inspections required by this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

Sikorsky Overhaul and Repair Instruction No. 76350–065, dated November 12, 1982; Revision A, dated September 21, 1984; Revision B, dated June 10, 2011; Revision C, dated June 27, 2011; Revision D, dated January 20, 2012; Revision E, dated January 27, 2012; and Revision F, dated May 10, 2012, which are not incorporated by reference, contain additional information about the subject of this AD. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, Texas 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) Sikorsky S–76 Alert Service Bulletin 76–66–50, Basic Issue, dated January 14, 2013.

(ii) Reserved.

(3) For Sikorsky service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, Connecticut 06611; telephone 1–800–Winged–S or 203–416–4299; email *sikorskywcs@sikorsky.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, Texas 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 Fort Worth, Texas, on December 23, 2015.

John Hardie,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–33013 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 140304192–5999–02]

RIN 0648–BE05

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; New Cost Recovery Fee Programs

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

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement cost recovery fee programs for the Western Alaska Community Development Quota (CDQ) Program for groundfish and halibut, and three limited access privilege programs: The American Fisheries Act (AFA), Aleutian Islands Pollock, and Amendment 80 Programs. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for the CDQ Program and limited access privilege programs. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. The Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), and other applicable laws.

DATES: Effective February 4, 2016.

ADDRESSES: Electronic copies of the Regulatory Impact Review (the Analysis) and the Categorical Exclusion prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to *OIRA_submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Federal exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act.

Statutory Authority

The primary statutory authority for this action is section 304(d) of the Magnuson-Stevens Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act specifies that the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege (LAP) program and community development quota (CDQ) program that

allocates a percentage of the total allowable catch (TAC) of a fishery to such program. Section 304(d)(2)(B) specifies that such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program.

Section 304(d)(2)(A)(i) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect fees to recover costs from any LAP program. Section 3 of the Magnuson-Stevens Act defines a ''limited access privilege'' as including ''an individual fishing quota.'' Section 3 of the Magnuson-Stevens Act defines ''individual fishing quota'' as ''a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).'' The Magnuson-Stevens Act and Federal regulations further define the terms ''permit,'' ''limited access system,'' ''total allowable catch,'' and ''person.'' These terms will be discussed in detail below.

Section 304(d)(2)(A)(ii) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect fees to recover costs from the CDQ Program for fisheries in which a percentage of the TAC of a fishery is allocated to the CDQ Program. Section 305(i) of the Magnuson-Stevens Act authorizes the CDQ Program and specifies the annual percentage of the TAC allocated to the CDQ Program in each directed fishery of the BSAI. Section 305(i) also specifies the method for further apportioning the TAC allocated to the CDQ Program to specific entities, called CDQ groups. NMFS previously implemented cost recovery fees for the amount of BSAI crab fishery TACs allocated to the CDQ Program under regulations implementing the Crab Rationalization Program (70 FR 10174, March 2, 2005, see regulations at § 680.44) under the authority of section 304(d)(2) of the Magnuson-Stevens Act. This final rule implements cost recovery fees under the authority of section 304(d)(2) of the Magnuson-Stevens Act for BSAI groundfish and halibut TACs allocated to the CDQ Program.

A more detailed description of the statutory authority can be found in the preamble of the proposed rule (80 FR 936, January 7, 2015), as well as in Section 1.1 of the Analysis prepared for this action.

Cost Recovery Fee Programs

Cost recovery is the process by which NMFS recovers the actual costs associated with the management, data collection, and enforcement (also referred to as program costs) of a LAP or CDQ program. NMFS determines the costs based on the costs described in section 304(d) of the Magnuson-Stevens Act, consistent with NOAA policy on cost recovery. LAP and CDQ Program costs are recovered annually through a fee paid by persons who hold a permit granting an exclusive harvesting privilege for a portion of the TAC in a fishery subject to cost recovery.

The cost recovery fees assessed cannot exceed the statutory limitation of 3 percent of the ex-vessel value of the fish subject to a cost recovery fee as specified in section 304(d) of the Magnuson-Stevens Act. Section 1.8 of the Analysis and the preamble to this proposed rule (80 FR 936, January 7, 2015) contain additional information on the costs that are subject to a cost recovery fee and current NOAA policy on the collection of cost recovery fees.

With this final rule, NMFS is implementing cost recovery fee programs for the AFA, Aleutian Islands Pollock, and Amendment 80 LAP Programs, and the CDQ Program. An effective cost recovery fee program requires calculating species ex-vessel values, using a standardized methodology to assess Program costs, assigning the appropriate fee to each person holding a permit, and ensuring that fees are submitted in full and on time. Below is a summary of the primary components of each cost recovery fee program (Tables 1 through 4). Each of these components is discussed in detail in the preamble to the proposed rule (80 FR 936, January 7, 2015), as well as the Analysis prepared for this action.

Cost Recovery Fees

Each calendar year, NMFS will determine the cost recovery fee that each Program must pay. The cost recovery fee for each Program will be based on costs incurred during the previous Federal fiscal year (from October 1 of the previous calendar year through September 30 of the current calendar year), and the ex-vessel value of the fish that are subject to a cost recovery fee during the current calendar year (from January 1 through December 31). The incurred costs that can be recovered under a cost recovery program are described in Section 1.8.3 of the Analysis and the preamble to the proposed rule.

NMFS will calculate cost recovery fees only for fish that are landed and deducted from the TAC in the fisheries subject to cost recovery under the action. NMFS will not calculate cost recovery fees for any portion of a permit holder's exclusive harvest privilege that was not landed and deducted from the TAC. The permit holder refers to the person who holds the exclusive harvest privilege in the specific fishery. These methods for assessing cost recovery fees on landed catch and the designation of the permit holder are consistent with the cost recovery fee programs already implemented and NOAA policy guidance.

NMFS will calculate the cost recovery fee as a percentage of the ex-vessel value of allocated fish species harvested by the participants in each program. The use of a standard ex-vessel price will provide a consistent methodology to assess fees on all fishery participants and reduce administrative costs that would be incurred by collecting ex-vessel data from each fishery participant. The methods used to determine a standard ex-vessel price vary depending on the specific program subject to a cost recovery fee. NMFS will use existing data sources to determine a standard ex-vessel price for pollock (the Commercial Operators Annual Report), and halibut and sablefish (IFQ Buyer Report). NMFS will require a new report from processors who receive Pacific cod to determine a standard ex-vessel price for Pacific cod (Pacific Cod Ex-vessel Volume and Value Report). NMFS will also require a new report from Amendment 80 vessel operators to determine standard ex-vessel prices from a range of other species subject to cost recovery (First Wholesale Volume and Value Report). These two new volume and value reports are due by November 10 of each year.

NMFS will determine a cost recovery fee percentage applicable to the species subject to cost recovery for each LAP and the CDQ Program. The cost recovery fee percentage is the percentage of the ex-vessel value of species used to determine a cost recovery fee that must be paid to NMFS. NMFS will publish the cost recovery fee percentage for each program in a **Federal Register** notice each year by December 1. NMFS will also send a fee liability notice to each designated representative of the person liable for a cost recovery fee by December 1 of each year. The cost recovery fee liability notice will include the total estimated fees due to NMFS from the person liable for the fee for that calendar year. The cost recovery fee will be due by December 31 of each year.

For the first year of fee collection, NMFS will begin assessing costs for these cost recovery programs starting on the effective date of this final rule. The costs assessed under the first year of

cost recovery fee program will be based on costs incurred by NMFS from the final rule effective date through September 30, 2016. NMFS will base the ex-vessel value of the fish used to determine the cost recovery fee on actual and estimated harvests from January 1, 2016, through December 31, 2016. NMFS will publish the cost recovery fee percentage for each Program in a **Federal Register** notice by December 1, 2016. NMFS will send each designated representative a fee liability notice by December 1, 2016. The cost recovery fee will be due on December 31, 2016.

Additional detail on how NMFS will calculate ex-vessel values, cost recovery fees, and the fee schedule is provided in Sections 1.7 and 1.10 of the Analysis and the preamble to the proposed rule (80 FR 936, January 7, 2015) and is not repeated here.

AFA Cost Recovery Fee Program

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA limits entry by vessels and processors into all sectors of the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. The AFA defines the various sectors of the Bering Sea pollock fishery, determines what vessels and processors are eligible to participate in each sector, establishes allocations of Bering Sea pollock total TAC to each sector as directed fishing allowances, and establishes excessive share limits for harvesting pollock. The provisions of the AFA were incorporated into the FMP and its implementing regulations under authority of the Magnuson-Stevens Act. The AFA cost recovery fee program will apply to participants in the AFA pollock fishery.

As required by section 206(b) of the AFA, NMFS allocates a specified percentage of the Bering Sea directed pollock fishery TAC to each of the three AFA fishery sectors: (1) 50 percent to catcher vessels delivering to inshore processors, called the ''inshore sector''; (2) 40 percent to catcher/processors and catcher vessels delivering to those catcher/processors, called the ''catcher/processor sector''; and (3) 10 percent to catcher vessels harvesting pollock for processing by motherships, called the ''mothership sector.''

Section 208 of the AFA specifies the vessels and processors that are eligible to participate in the inshore sector, the catcher/processor sector, and the mothership sector. Section 210 of the AFA authorizes the formation of fishery cooperatives in all sectors of the Bering Sea pollock fishery and provides flexibility to the Council and NMFS to govern the formation and operation of fishery cooperatives.

Under section 210(b), the AFA establishes additional qualifying criteria and operational restrictions on the formation and operation of cooperatives for the inshore sector. The AFA establishes a specific formula for making allocations of pollock to qualified inshore cooperatives. A catcher vessel with an AFA inshore endorsement may join an AFA inshore cooperative associated with an AFA inshore processor (AFA section 210(b); 50 CFR 679.4(l)(6)). For 2015, seven inshore cooperatives were formed by AFA eligible inshore catcher vessels and their partner inshore processors (*http://alaskafisheries.noaa.gov/sustainablefisheries/afa/15bsaicoopallocations.pdf*). Each inshore cooperative will be responsible for the payment of that cooperative's fee.

The catcher/processor sector has formed two cooperatives for managing the exclusive harvest allocation mandated for the catcher/processor sector under section 206(b) of the AFA—one cooperative for the catcher/processors and one cooperative for the catcher vessels harvesting pollock for processing by catcher/processors. These two cooperatives are associated through a joint agreement called the ''Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative'' to facilitate efficient harvest management and accurate harvest accounting between the participants in the catcher/processor sector. These two cooperatives jointly submit an annual cooperative report to the Council (see Cooperative Reports, NMFS Alaska Region Web site, *http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm*). The catcher/processor sector also formed one entity to represent the catcher/processor sector for the purposes of receiving and managing their transferable Chinook salmon prohibited species catch (PSC) allocation under a program to minimize Chinook salmon bycatch in the pollock fishery (see the final rule implementing Amendment 91 to the FMP, 75 FR 53026, August 30, 2010). This entity will be responsible for submitting the payment of the AFA catcher/processor fee under this rule.

All participants that harvest pollock allocated to the catcher/processor sector are members of the two cooperatives, except for one participant. Section 208(e)(21) of the AFA expressly limits the amount of harvest by the one participant in the catcher/processor sector who is not a member of a cooperative to 0.5 percent of the TAC apportioned to the catcher/processor sector, thereby providing an exclusive harvest privilege to all catcher/processor cooperative members. The participant that is not a member of a cooperative will not be subject to a cost recovery fee for its harvest of Bering Sea pollock under this rule because that vessel is not given an explicit allocation of pollock and is already subject to cost recovery fees under the Amendment 80 Program. Section 1.5.3 of the Analysis provides additional detail on allocations to the AFA catcher/processor sector.

The owners of all 19 catcher vessels eligible to deliver to a mothership in the Bering Sea pollock fishery have joined a single cooperative under section 208(c) of the AFA to coordinate harvests, the AFA Mothership Fleet Cooperative. This cooperative harvests the exclusive pollock allocation mandated for the mothership sector under section 206(b) of the AFA. The AFA Mothership Fleet Cooperative will be responsible for the payment of the AFA mothership cooperative fee.

NMFS recognizes that each AFA sector has slightly different management costs. This final rule establishes that NMFS will calculate fee percentage and fee liability separately for the catcher/processor sector, mothership sector, and inshore sector. NMFS estimates that annual fee liabilities for each sector will range from 0.23 percent to 0.72 percent of the ex-vessel value of Bering Sea pollock.

TABLE 1—SUMMARY OF THE AFA COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee?	Bering Sea pollock.
How is the standard price determined?	NMFS will calculate a standard price based on data from the Commercial Operators Annual Report (COAR) from the previous calendar year.

TABLE 1—SUMMARY OF THE AFA COST RECOVERY FEE PROGRAM ELEMENTS—Continued

Are there any additional reporting requirements for AFA cooperatives to determine the standard price?	No.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Bering Sea pollock from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, for each AFA cooperative or sector and multiply that amount by the standard price determined by COAR data to calculate a standard ex-vessel value for each AFA cooperative or sector.
Who is responsible for submission of the fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	AFA Catcher/Processor Sector (1): The designated entity representative for the catcher/processor sector under § 679.21(f)(8)(i)(C). AFA Mothership Sector (1): The designated representative for the AFA Mothership Fleet Cooperative. AFA Inshore Sector (7): The designated representative on each AFA Inshore Catcher Vessel Cooperative Permit application.
When are the standard prices published in the **Federal Register** and when are the fee liability notices sent?	The standard prices are published in the **Federal Register** by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: *http://www.alaskafisheries.noaa.gov.*

Aleutian Islands Pollock Cost Recovery Fee Program

This cost recovery fee program will apply to participants in the Aleutian Islands pollock fishery. The Aleutian Islands Pollock Program allocates the Aleutian Islands directed pollock fishery TAC to the Aleut Corporation, consistent with the Consolidated Appropriations Act of 2004 (Pub. L. 108–109), and its implementing regulations. Annually, prior to the start of the pollock season, the Aleut Corporation provides NMFS with the identity of their designated representative. This person will be responsible for the submission of all cost recovery fees. The Aleutian Islands pollock fishing regulations are at § 679.20(a)(5)(iii).

Prior to 2015, Aleutian Islands pollock was not harvested due to restrictions imposed by Steller sea lion protection measures. Therefore, prior to 2015, NMFS reallocated the Aleutian Islands pollock allocation to the AFA Program in the Bering Sea. Changes in Steller sea lion protection measures effective in 2015 allow for a directed pollock fishery to occur in the Aleutian Islands (79 FR 70286, November 25, 2014). However, NMFS does not know whether participants will be able to successfully harvest the Aleutian Islands pollock because there has not been an Aleutian Islands pollock fishery since 1999. NMFS will reallocate any Aleutian Islands pollock not harvested in the Aleutian Islands to the AFA Program in the Bering Sea. Any pollock that NMFS reallocates from the Aleutian Islands Pollock Program to the AFA Program will be subject to cost recovery fees under the provisions of the AFA Program.

NMFS estimates that the cost recovery fee percentage applicable to Aleutian Islands pollock will be the same percentage applicable to Bering Sea pollock harvested by the AFA Program (Section 1.8.6.5 of the Analysis). Based on the information in the Analysis, NMFS assumes that the Aleutian Islands Pollock and the AFA Programs have similar management costs and ex-vessel values. NMFS will assess and determine a fee percentage specifically for Aleutian Islands pollock if management requirements differ between the Aleutian Islands Pollock Program and the AFA Program. Estimates of recoverable costs will be determined once additional information on the management costs for the Aleutian Islands pollock fishery is available.

TABLE 2—SUMMARY OF THE ALEUTIAN ISLANDS POLLOCK COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee?	Aleutian Islands pollock.
How is the standard price determined?	NMFS will calculate a standard price based on data from the COAR from the previous calendar year. The standard price will be applied to all landings during a calendar year.
Are there any additional reporting requirements for the Aleut Corporation to determine the standard price?	No.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Aleutian Islands pollock from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by COAR data to calculate a standard ex-vessel value for the Aleut Corporation.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Aleut Corporation (1).
When are the standard prices published in the FEDERAL REGISTER and when are fee liability notices sent?	The standard prices are published in the FEDERAL REGISTER by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: *http://www.alaskafisheries.noaa.gov.*

Amendment 80 Cost Recovery Fee Program

This cost recovery fee program will apply to participants in the Amendment 80 fisheries. The Amendment 80 Program allocates groundfish fisheries TAC, other than Bering Sea pollock, to identified trawl catcher/processors in the BSAI. The Amendment 80 Program allocates a portion of the BSAI TACs of six species: Atka mackerel, Pacific cod, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. Amendment 80 vessel owners can harvest these species in cooperatives that receive an exclusive harvest privilege, or in an ''open access'' fishery that will not be subject to a cost recovery fee requirement.

All 27 vessels currently participating in the Amendment 80 Program and their vessel owners are members of cooperatives and are subject to a cost recovery fee. Each Amendment 80 cooperative is responsible for payment of any cost recovery fee, and each Amendment 80 cooperative will designate a person responsible for submitting its fee and provide NMFS with the identity of that person. NMFS estimates that annual fee liabilities for Amendment 80 cooperatives will range from 1.22 to 1.77 percent of the ex-vessel value of allocated species (Section 1.8.4.6 of the Analysis).

TABLE 3—SUMMARY OF THE AMENDMENT 80 COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee?	Amendment 80 species: BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI rock sole, and BSAI yellowfin sole.
How is the standard price determined?	NMFS will calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Ex-vessel Volume and Value Report. The standard price will be applied to all landings during a calendar year. NMFS will calculate a standard price for all other species other than Pacific cod from the First Wholesale Volume and Value Report. The standard price will be applied to all landings during a calendar year, except for BSAI rock sole. For BSAI rock sole, NMFS will calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year.
Are there any additional reporting requirements to determine the standard price?	Yes. Each Amendment 80 vessel owner that lands Amendment 80 species during a calendar year is required to submit a First Wholesale Volume and Value Report.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Amendment 80 species from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by the applicable volume and value report to calculate a standard ex-vessel value for each Amendment 80 cooperative.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Each Amendment 80 cooperative's designated representative listed on the Cooperative Quota (CQ) application (2).
When are the standard prices published in the FEDERAL REGISTER, and when are fee liability notices sent?	The standard prices are published in the FEDERAL REGISTER by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31 2016), and must be submitted online. Submittal forms are available online at: *http://www.alaskafisheries.noaa.gov.*

CDQ Cost Recovery Fee Program

This cost recovery fee program will apply to CDQ groups. The CDQ Program was implemented in 1992 to provide access to BSAI fishery resources to villages located in Western Alaska. Since the implementation of the CDQ Program, Congress has amended the Magnuson-Stevens Act to define specific provisions of the CDQ Program. Section 305(i) of the Magnuson-Stevens Act identifies 65 villages eligible to participate in the CDQ Program and the six CDQ groups to represent these villages. CDQ groups receive exclusive harvesting privileges of the TACs for a broad range of crab species, groundfish species, and halibut. This final rule establishes a cost recovery fee program only for groundfish and halibut because CDQ crab cost recovery fees are already collected under existing regulations. Each CDQ group will be subject to cost recovery fee requirements, and the designated representative of each CDQ group will be responsible for submitting payment for its CDQ group. This is consistent with the method NMFS uses to collect fees for the crab CDQ cost recovery program. NMFS estimates that annual fee liabilities for a CDQ group will range from 0.73 to 1.33 percent of the harvested ex-vessel value of CDQ groundfish and halibut.

TABLE 4—SUMMARY OF THE CDQ COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee?	BSAI halibut and groundfish species allocated to the CDQ Program: BSAI Arrowtooth Flounder, BSAI Atka mackerel, BSAI flathead sole, Bering Sea Greenland turbot, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI pollock, BSAI rock sole, BSAI sablefish, and BSAI yellowfin sole.
How is the standard price determined?	NMFS will calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Ex-vessel Volume and Value Report. The standard price will be applied to all landings during a calendar year. NMFS will calculate a standard price for all other species other than BSAI pollock, BSAI Pacific cod, BSAI sablefish, and BSAI halibut from the First Wholesale Volume and Value Report. The standard price will be applied to all landings during a calendar year, except for BSAI rock sole. For BSAI rock sole, NMFS will calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year. NMFS will calculate a standard price for BSAI pollock based on data from the COAR from the previous calendar year. The standard price will be applied to all landings during a calendar year. NMFS will calculate a standard price for BSAI sablefish and BSAI halibut from the IFQ Buyer Report. The standard price will be applied to all landings during a calendar year.

TABLE 4—SUMMARY OF THE CDQ COST RECOVERY FEE PROGRAM ELEMENTS—Continued

Are there any additional reporting requirements from CDQ groups to determine the standard price?	No.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of species subject to a CDQ cost recovery fee from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by the volume and value report, COAR Report, or IFQ Buyer Report applicable to that species to calculate a standard ex-vessel value for each CDQ group.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Each CDQ group's designated representative (6).
When are the standard prices published in the FEDERAL REGISTER and when are the fee liability notices sent?	The standard prices are published in the FEDERAL REGISTER by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: *http://www.alaskafisheries.noaa.gov.*

Response to Comments

NMFS published a proposed rule that describes in detail the statutory authority to implement cost recovery fee programs, the Programs affected by the implementation of a cost recovery fee program, and how NMFS will implement the new cost recovery fee programs, in the **Federal Register** on January 7, 2015 (80 FR 936). The 30-day comment period on the proposed rule ended February 6, 2015. NMFS received a total of three comment letters from three unique persons representing participants in programs that are subject to cost recovery under this final rule. The comment letters contained 24 substantive comments. A summary of the comments received and NMFS' responses follow.

Comments on NMFS' Costs Subject to Recovery

Comment 1: NMFS received several comments regarding the process for calculating costs subject to cost recovery. The issues raised in the comments include the following:

- Base fee liabilities on the incremental costs associated with management and enforcement of the specific LAP or CDQ Program.
- Do not assess costs attributed to the general management of the fisheries that cannot be directly attributed to the specific LAP or CDQ Program.
- Appropriately apportion costs among LAP and CDQ programs to ensure that costs applicable to one program are not attributed to another program.
- Do not include costs associated with deploying and debriefing observers in the cost recovery fee calculations since observer deployment and debriefing would have been implemented without the implementation of the LAP or CDQ programs.
- Provide detailed cost breakouts for each LAP and CDQ Program.

Response: Section 304(d)(2)(A) of the Magnuson-Stevens Act states that the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program and community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

As stated in the preamble to the proposed rule, NMFS intends to employ the same accounting methods for the cost recovery fee programs established by this rule as NMFS has consistently used in cost recovery fee programs in the Alaska Region (Halibut and Sablefish Individual Fishing Quota (IFQ) Program, Crab Rationalization Program, and the Central Gulf of Alaska Rockfish Program). This methodology to assess cost recovery fees is consistent with the Magnuson-Stevens Act and current NOAA policy (NOAA Technical Memorandum NMFS–F/SPO–86, November 2007). The costs described in Section 1.8.3 of the Analysis and the preamble to the proposed rule provide the best available description of the costs subject to cost recovery for each LAP program and the CDQ Program. As explained in in Section 1.8.3 of the Analysis, NMFS will only assess costs that can be directly attributed to the specific LAP or CDQ Program.

NMFS agrees that costs should be accurately attributed to each CDQ and LAP program. As noted in the preamble to the proposed rule, NMFS will capture the incremental costs of managing the fisheries of each CDQ or LAP program through an established accounting system that allows NMFS to track labor, travel, and procurement specific to that program. This process is described in Section 1.8.3 of the Analysis. This accounting system will allow NMFS to properly apportion costs among the CDQ and LAP programs.

NMFS agrees that certain categories of observer costs should not be included in the fee calculation. For example, many catcher/processors operating in the directed pollock and non-pollock fisheries in the BSAI were required to carry an observer prior to the implementation of the AFA or the Amendment 80 Programs. Costs associated with the debriefing and training of one observer will not be assessed or included in the fee calculation. However, NMFS required additional observer coverage for implementation of the AFA and the Amendment 80 Programs (Section 1.8 of the Analysis). These LAP programs required the deployment of two observers on board each AFA catcher/processor or Amendment 80 vessel. NMFS will assess fees for costs necessary to debrief and train the second observer because those costs are incurred as a direct result of the implementation of those LAP programs.

NMFS agrees that information on the costs used to determine the fee should be disclosed annually. NMFS will make publically available an annual report that provides information on how the cost recovery fee was estimated for that year. This report will be structured like the cost recovery fee reports that are currently generated for the Halibut and Sablefish IFQ Program and Crab Rationalization Program. An example of the Halibut and Sablefish Cost Recovery Fee report for 2013 is available at *https://alaskafisheries.noaa.gov/ram/fees/feerpt2013.pdf.*

Comment 2: The cost recovery regulations should be revised to more

clearly incorporate the Magnuson-Stevens Act's limitations on costs that may be recovered. To focus on truly recoverable costs, revise the regulations to incorporate the definition of ''direct program costs'' provided under the cost recovery rule established for certain Pacific Coast groundfish fisheries (78 FR 75269, December 11, 2013).

Response: This final rule already incorporates the section 304(d)(2)(B) Magnuson-Stevens Act limitation on the costs that may be recovered and clearly states that the fee percentage amount must not exceed 3 percent of the ex-vessel value of the species harvested under the Program. In this final rule at § 679.2, the definition of the fee percentage for each program limits the fee percentage to no greater than 3 percent. Additionally, the cost recovery regulations specific to each program state that the fee amounts must not exceed 3 percent, see this final rule at §§ 679.33(c)(1), 679.66(c)(1), 679.67(c)(1), and 679.95(c)(1).

NMFS' recoverable costs are limited by the Magnuson-Stevens Act. Section 304(d) of the Magnuson-Stevens Act states that the recoverable costs must be the actual costs directly related to the management, data collection, and enforcement of the CDQ or LAP programs. NMFS will use the accounting methods that have been developed for all other cost recovery programs in the North Pacific to determine the ''direct program costs'' that are recoverable, as described in the preamble to the proposed rule. NMFS made no changes to this final rule at §§ 679.33(c)(2)(ii), 679.66(c)(2)(ii), 679.67(c)(2)(ii), or 679.95(c)(2)(ii) because the direct program cost language is consistent with the Magnuson-Stevens Act, regulations implementing the other North Pacific cost recovery fee programs, and NOAA policy.

Comment 3: Explain the cause of the rapid increase in the Gulf of Alaska Rockfish Program cost recovery fee to 3 percent of its ex-vessel value. Ensure that a similar rapid and unanticipated increase in the fee percentage will not happen to the cost recovery fees for these CDQ and LAP programs.

Response: The preamble to the final rule that implemented the Gulf of Alaska Rockfish Program (Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska) stated that, given the relatively small value of the Rockfish Program relative to anticipated administrative costs, cost would likely exceed 3 percent of the ex-vessel value of the Rockfish Program, therefore, it would be likely that the costs recovery fee for the Rockfish Program would be 3 percent, the statutory limit established by the Magnuson-Stevens Act (76 FR 81263, December 27, 2011). Cost recovery fee percentages in the Rockfish Program have ranged from 1.4 percent in 2012 (the year the Rockfish Program cost recovery fee was implemented), to 3 percent in 2015 (the most recent year for which a cost recovery fee was assessed). NMFS attributes the increase in the fee percentage in 2015 primarily to a decrease in the ex-vessel value of rockfish, and to a lesser extent, an increase in NMFS' management and enforcement costs (80 FR 6053, February 4, 2015).

As stated in Section 1.8.4.6 (Amendment 80), Section 1.8.6.5 (AFA/Aleutian Islands pollock), and Section 1.8.5.5 (CDQ) of the Analysis, NMFS does not anticipate that the factors that led to the increase in the Rockfish Program cost recovery fee percentage are likely to exist in the CDQ and LAP programs subject to cost recovery under this rule. The referenced sections of the Analysis show that the CDQ and LAP Program fisheries have substantially higher ex-vessel values than the ex-vessel value of the Rockfish Program fishery. The Rockfish Program fishery ex-vessel value fell from about $14.3 million in 2012 to about $6.3 million in 2014. Section 1.8.4.6 (Amendment 80), Section 1.8.6.5 (AFA/Aleutian Islands pollock), and Section 1.8.5.5 (CDQ) of the Analysis state that NMFS does not expect future ex-vessel values or anticipated costs subject to cost recovery to change in a way that would result in a 3 percent cost recovery fee for these Programs.

Section 1.8.1 of the Analysis states that the Crab Rationalization Program has not experienced an increase in its fee percentage, but the Halibut and Sablefish IFQ Program has had an increase in its fee percentage over time. In the Crab Rationalization Program, the fee percentage declined over time due to a variety of factors, including (1) increasing TACs for various crab species, (2) increasing ex-vessel prices for various crab species, and (3) decreasing management costs. In the Halibut and Sablefish IFQ Program, the fee percentage has increased due to costs remaining fairly constant and ex-vessel value decreasing due to reduced harvests that have not been off-set by increases in ex-vessel prices.

Comments on the CDQ Cost Recovery Fee Program

Comment 4: NMFS' definition of a ''person'' as each CDQ group that is issued an annual CDQ allocation is consistent with the way that each CDQ group manages its allocations individually for all other purposes.

Response: NMFS agrees. Regulations at § 679.2 define a CDQ group as ''an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D).'' The six eligible CDQ groups are listed in Table 7 to 50 CFR part 679. Each CDQ group is responsible for a fee payment, and each CDQ group must designate a representative who is responsible for submitting a fee payment for that CDQ group (see regulations at § 679.33(a)).

Comments on the AFA Cost Recovery Fee Program

Comment 5: The Bering Sea pollock directed fishing allowance does not meet the Magnuson-Stevens Act's definition of individual fishing quota because it is not a permit. The directed fishing allowance does not allow any person ''to harvest a quantity of fish'' for that person's ''exclusive use.'' The directed fishing allowance is the amount of fish available to be harvested with a permit and therefore is a management restriction on a group of vessels rather than a permit. That is exactly how NMFS' regulation at § 679.20(a) describes the pollock directed fishing allowance.

Response: Section 3 of the Magnuson-Stevens Act defines an individual fishing quota as ''a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.'' According to § 679.2, a permit means documentation granting permission to fish.

The harvest specifications, with the AFA directed fishing allowance entitling the catcher/processor sector to harvest a quantity of fish for its exclusive use, is the individual fishing quota and documentation granting permission to fish. NMFS publishes harvest specifications each year in the **Federal Register** that allocate a specific percentage of the pollock TAC to the AFA sectors, called the directed fishing allowance, for exclusive use by eligible AFA permit holders (see the most recent example at Table 4, 80 FR 11919, March 5, 2015; corrected 80 FR 13787, March 17, 2015). The harvest specifications with the directed fishing allowance is a permit that authorizes the AFA sectors to harvest a portion of the pollock TAC each year.

Federal regulations at § 679.20(a)(5)(i)(A)(*4*) specify that the catcher/processor sector allocation is 40 percent of the directed fishing allowance that is allocated to AFA catcher/processors and AFA catcher

vessels that deliver to catcher/processors. The AFA catcher/processor sector has exclusive use of its directed fishing allowance because the catcher/processors that are eligible to participate are specified in the AFA, FMP, and associated regulations. The exclusive quantity of fish allocated to the AFA catcher processor sector is then harvested by those specified in the FMP and regulations according to contractual arrangement among the members of that sector.

Comment 6: The Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative (Cooperative Agreement) does not constitute a ''person.''

Response: Based on this public comment, NMFS realizes that the proposed rule was not sufficiently specific in explaining who the person is that receives the individual fishing quota and is therefore responsible for the cost recovery fee for the AFA catcher/processor sector.

Regulations at § 679.2 define a person as ''any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.'' A similar definition of a ''person'' is in section 3 of the Magnuson-Stevens Act.

As explained in response to Comment 5, the directed fishing allowance is an individual fishing quota. NMFS allocates the directed fishing allowance to the AFA catcher/processor sector. NMFS considers the AFA catcher/processor sector an entity and therefore a person under the Magnuson-Stevens Act. The AFA catcher/processor sector also (1) shares common ownership of vessels, (2) enters into contracts that allow the catcher/processors to harvest the catcher vessel allocation, (3) participates in incentive plan agreements to avoid Chinook salmon, and (4) submits one salmon avoidance report and one annual cooperative report for the AFA catcher/processor sector each year. The contracts establishing these relationships among members describe and provide for allocations of pollock and salmon to specific vessel owners and operators. Section 1.6.3.3 of the Analysis describes the harvest of catch in the AFA catcher/processor sector in greater detail, and the ability of the AFA catcher/processor sector members to precisely harvest the sector's exclusive pollock allocation.

Under Amendment 91 to the FMP, members of the AFA catcher/processor sector also formed one entity to represent the AFA catcher/processor sector for the purposes of receiving and managing their transferable Chinook salmon PSC allocation under the regulations at § 679.21(f)(8)(i)(C). The members of the AFA catcher/processor sector created a contract that, among other things, lists the vessel owners represented by the entity, and submitted an application to NMFS under § 679.21(f)(8)(ii). NMFS has approved the application for the entity representing the AFA catcher/processor sector. The contract also designates an entity representative and an agent for service of process. Currently, all eligible members of the AFA catcher/processor sector are represented by the entity. Entity participants cannot change during a fishing year. To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in § 679.21(f)(8)(ii)(F), by December 1.

NMFS has modified this final rule to clarify that the entity representative under § 679.21(f)(8) will be the designated representative responsible for submitting the cost recovery fee payment for the AFA catcher/processor sector. See Changes from the Proposed Rule, below, for a complete description of the changes NMFS made to this final rule in response to comments on the AFA catcher/process sector.

Comment 7: The pollock directed fishing allowance is allocated to AFA catcher/processor vessels rather than to the Cooperative Agreement. Even if the pollock directed fishing allowance qualifies as a ''permit'' and the catcher/processor sector's Cooperative Agreement constitutes a ''person,'' the asserted permit is not held by the alleged person.

Response: Each year, NMFS allocates the pollock directed fishing allowance to the AFA catcher/processor sector under Federal regulations § 679.20(a)(5)(i)(A)(*4*), as required by section 206(b)(2) of the AFA. Each year, NMFS also allocates Chinook salmon PSC to the AFA catcher/processor sector under Amendment 91 to the FMP and § 679.21(f). Once the catcher/processor sector receives the sector's pollock directed fishing allowance for exclusive harvest and the sector's Chinook salmon PSC allocation, the AFA catcher/processor sector members divide these allocations among themselves.

As explained in the response to Comment 5, the annual harvest specifications with the directed fishing allowance is an IFQ to the AFA catcher/processor sector. As explained in the response to Comment 6, the ''person'' who receives the exclusive harvest privilege for the purposes of cost recovery is the catcher/processor sector that is eligible to harvest pollock from that sector's directed fishing allowance defined in section 206(b)(2) of the AFA.

Comment 8: The Bering Sea pollock directed fishing allowance provided to the AFA sectors was not created under a limited access system and could not have been created under such a system because it went into effect during the moratorium on individual fishing quotas.

Response: In 2007, Congress adopted the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA, Pub. L. 109–479) to amend the Magnuson-Stevens Act. In the MSRA, Congress amended the Magnuson-Stevens Act to include language applicable to limited access systems and limited access programs.

In section 3(27) of the Magnuson-Stevens Act, Congress defined ''limited access system'' as ''a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.'' Although the AFA was adopted and implemented through the FMP before 2007, the AFA Program meets this definition of a limited access system. The AFA Program is a system that limits participation in the Bering Sea pollock fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulations. The AFA specified sector allocations and eligibility criteria for vessels to harvest pollock in each of the specified sectors (section 206 and section 208 of the AFA, 16 U.S.C. 1851 statutory note). The eligibility criteria and requirements in the AFA were incorporated into the FMP, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and the Fishery Management Plan for the Scallop Fishery Off Alaska (Amendments 61/61/13/8, respectively). NMFS manages the AFA Program through the FMPs and their implementing regulations (67 FR 79692, December 30, 2002).

NMFS is implementing the cost recovery program for the AFA under authority of section 304(d) of the Magnuson-Stevens Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act, which was adopted as part of the MSRA, authorizes and requires the

Secretary to collect a cost recovery fee for limited access privilege programs. In section 3(26) of Magnuson-Stevens Act, Congress defined the term ''limited access privilege'' and specifically included ''individual fishing quota.''

The AFA Program is a limited access privilege program because (1) NMFS issues a permit as part of a limited access system established by the AFA Program, (2) this permit allows the harvest of a quantity of pollock representing a portion of the TAC managed under the AFA Program, and (3) this permit is issued for exclusive use by a person, the AFA catcher/processor sector. Therefore, NMFS is implementing cost recovery fees for the AFA catcher/processor sector as authorized and required in section 304(d)(2) of the Magnuson-Stevens Act.

Further, the AFA does not prohibit the Secretary from imposing cost recovery requirements on participants in the AFA catcher/processor sector. Section 213(b) of the AFA states that, except for the measures required by this subtitle [subtitle II, Bering Sea Pollock Fishery], nothing in the subtitle shall be construed to limit the authority of the Council or the Secretary under the Magnuson-Stevens Act to approve conservation and management measures as part of a fishery management plan and to give effect to measures in those plans. Therefore, NMFS may implement the requirements of section 304(d) of the Magnuson-Stevens Act and establish a cost recovery program for participants in the AFA Program, including the AFA catcher/processor sector.

As for the moratorium on IFQ programs, section 303(d)(1)(A) of the 1996 Magnuson-Stevens Act (Section 108(e) of the Sustainable Fisheries Act, Pub. L. 104–297) prohibited the Council from submitting and the Secretary from approving or implementing before October 1, 2000, any plan amendment or regulations that created a new individual fishing quota program. On December 21, 2000, Congress extended the moratorium until October 1, 2002, in the Consolidated Appropriations Act of 2001 (Section 144(a), Pub. L. 106–554). The moratorium ended on October 1, 2002, and was not extended again by Congress.

During the moratorium on IFQ Programs, on October 21, 1998, Congress adopted the AFA and explicitly directed the Council and NMFS to implement, by January 1, 1999, the provisions of the AFA allocating a portion of the TAC of BSAI pollock to the catcher/processor sector (Section 206 of the AFA, Pub. L. 105–277, 16 USCA 1851 note). In the Consolidated Appropriations Act of 2001, the same Act where Congress extended the moratorium on IFQ programs, Congress also mandated that all BSAI groundfish management measures, which included the AFA management measures, in effect as of July 15, 2000, be extended through the end of 2001 (Section 209(c)(3), Pub. L. 106–554). On November 28, 2001, Congress made key provisions of the AFA permanent, including the pollock allocation to the catcher/processor sector, in section 211 of the Department of Commerce and Related Agencies Appropriation Act of 2002 (Pub. L. 107–77).

While the permanent AFA management program was under analysis and development, NMFS met the statutory deadlines in the AFA on an interim basis through several emergency interim rules starting in January 1999 (64 FR 3435, January 22, 1999) that were extended through the end of 2002 (67 FR 34860, May 16, 2002). The Secretary approved the FMP amendments implementing the AFA on February 27, 2002, and NMFS published final implementing regulations for the AFA on December 30, 2002, after the moratorium ended (67 FR 79692). The Administrator, Alaska Region, NMFS, determined that the FMP amendments were necessary for the conservation and management of the groundfish, crab, and scallop fisheries off Alaska and that they are consistent with the Magnuson-Stevens Act and other applicable laws (67 FR 79692, December 30, 2002).

By adopting the AFA in 1998, by mandating its implementation in 1999, and by making it permanent in 2001, Congress in effect adopted an exception to the moratorium on IFQ programs for the AFA. Further, NMFS did not adopt permanent regulations implementing the AFA until after the IFQ moratorium ended.

Comment 9: Imposing cost recovery on vessel owners in the AFA catcher/processor sector who voluntarily end ''a race for fish'' creates a disincentive to rationalize through private cooperation.

Response: The AFA, not the vessel owners in the AFA catcher/processor sector, ended the ''race for fish.'' As explained in response to Comment 8, the AFA, and the implementing FMP amendments and regulations, created a limited access privilege program. The AFA Program required a fixed allocation of pollock to specific vessels that are eligible to participate in the fishery. The AFA allocated 40 percent of the annual pollock TAC to catcher/processors and catcher vessels that harvest pollock for processing by catcher/processors and the AFA named the specific vessels that are eligible to harvest that allocation. Additionally, ending the race for fish resulted in substantial economic benefits to fishery participants (Section 1.5.3.1 of the Analysis).

Comment 10: If the Pacific whiting catcher/processor sector that currently operates off the west coast in the waters under the jurisdiction of the Pacific Fishery Management Council was not considered to be a LAP program prior to 2011, then why is the AFA catcher/processor sector considered a LAP program? NMFS should identify any material differences in management of the AFA catcher/processor sector today and the Pacific whiting catcher/processor sector prior to 2011.

Response: The primary material difference between the Pacific whiting fishery and the AFA catcher/processor sector is that the Pacific whiting fishery is not managed under the AFA. The AFA Program is a limited access privilege program because the AFA mandated allocations and specifically named eligible participants. The AFA and Federal regulations at § 679.20(a)(5)(i)(A)(*4*) allocate 40 percent of the directed fishing allowance to the AFA catcher/processor sector and AFA catcher vessels delivering to the catcher/processors. The AFA catcher/processor sector has exclusive use of its directed fishing allowance because the catcher/processors that are eligible to participate are specified in section 208(e) of the AFA and Federal regulations at § 679.4(l)(2), and the catcher vessels that are eligible to deliver to those catcher/processors are specified in section 208(b) of the AFA and Federal regulations at § 679.4(l)(3)(i)(A). The AFA catcher/processor sector manages its exclusive directed fishing allocation for the benefit of its members.

For a description of the management of the Pacific whiting catcher/processor sector that operates off the west coast in the waters under the jurisdiction of the Pacific Fishery Management Council, please see the proposed rule to establish a trawl rationalization program for the Pacific Coast groundfish fishery (75 FR 32994, June 10, 2010).

Comment 11: NMFS defines the person responsible for paying the cost recovery fee applicable to the AFA catcher/processor sector in the proposed rule at § 679.66(a)(1)(ii). This regulation should be revised to read ''the person designated as the representative of the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative.''

Response: Based on this and similar comments from the same commenter, regarding the person responsible for paying the cost recovery fee, NMFS has

modified this final rule to specify the AFA catcher/processor sector's designated representative responsible for paying the cost recovery fee. Under the Amendment 91 implementing regulations, the AFA catcher/processor sector has already designated an entity for the management of the Chinook salmon PSC that represents all the participants in the sector. Use of the entity representative resolves the confusion over who the designated representative is for the AFA catcher/processor sector that is responsible for submitting the cost recovery fee payment. NMFS has modified this final rule at § 679.66(a)(1)(ii) to clarify that the entity representative under § 679.21(f)(8)(i)(C) will be the designated representative responsible for submitting the cost recovery fee payment. See response to Comment 6 for additional information.

For the AFA catcher/processor sector, the proposed rule specified that the representative responsible for submitting the cost recovery payment for all Bering Sea pollock landings made under the authority of their cooperative is the person designated as the representative of the listed AFA catcher/processors and catcher vessels that deliver to them. However, the proposed rule did not include a mechanism for designating this representative to NMFS. Since public comments expressed concern with the appropriate representative for the AFA catcher/processor sector, NMFS modified this final rule to provide clarity. With this change, the AFA catcher/processor sector will use its existing entity and entity representative that the AFA catcher/processor sector has already designated with NMFS under the implementing regulations for Amendment 91 to submit the fee.

Comment 12: In the proposed rule at §§ 679.66(c)(2), 679.66(c)(2)(iii)(B), 679.66(c)(3)(i), and 679.66(c)(5)(iii), the references to a cooperative of listed AFA catcher/processors and catcher vessels delivering to catcher/processors should be revised to read ''the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative'' or, where appropriate, to the representative of that agreement. References to ''an AFA cooperative,'' ''an AFA cooperative representative,'' and ''cooperative'' in the proposed rule at § 679.66(c)(4) and (5)(i) should also include references to the Cooperative Agreement or, where appropriate, the agreement's representative.

Response: This final rule at § 679.66(c) governs the calculation of the AFA catcher/processor sector fee percentage and fee liability determination. In the proposed rule, NMFS had used cooperative as a general term applicable to the three AFA sectors. However, the use of the term cooperative for the AFA catcher/processor sector generated concern, as reflected in this public comment. Based on this and similar comments from the same commenter, NMFS has modified this final rule to specify that NMFS will calculate the AFA fee percentage for the AFA catcher/processor sector. NMFS changed §§ 679.66(c)(2) introductory text, 679.66(c)(2)(iii)(B), 679.66(c)(3)(i), 679.66(c)(4), and 679.66(c)(5)(i) and (iii) to add language specifying the entity representative for the AFA catcher/processor sector and stating that these paragraphs are applicable to the AFA catcher/processor sector. See response to Comments 6 and 11 for additional information on the entity representative for the AFA catcher/processor sector.

Comment 13: The definition of ''AFA fee liability'' at § 679.2 should be revised to mean ''the amount of money . . . owed to NMFS by an AFA cooperative or the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative . . . .''

Response: NMFS has changed the definition of ''AFA fee liability'' at § 679.2 in this final rule to clarify that the AFA fee liability means the amount of money for Bering Sea pollock cost recovery, in U.S. dollars, owed to NMFS by an AFA cooperative or AFA sector as determined by multiplying the appropriate AFA standard ex-vessel value of landed Bering Sea pollock by the appropriate AFA fee percentage. For consistency, NMFS also changed the definition of ''AFA fee percentage'' at § 679.2 in this final rule to clarify that the AFA fee liability applies to an AFA cooperative or AFA sector. See response to Comment 11 for additional detail.

Comment 14: Change the proposed rule at § 679.66(d) to add the representative of the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative as the designated representative for the AFA catcher/processor sector. Make this change at §§ 679.66(d)(3), 679.66(d)(3)(i), 679.66(d)(3)(ii), 679.66(d)(4), 679.66(d)(5), and 679.66(d)(6).

Response: This final rule at § 679.66(d) governs the underpayment of the cost recovery fee liability. In the proposed rule, NMFS used cooperative as a general term applicable to the three AFA sectors and their unique associations. However, the use of the term cooperative for the AFA catcher/processor sector generated a number of public comments from one commenter. NMFS agrees that the proposed rule language § 679.66(d) should be more specific regarding the designated representative for the AFA catcher/processor sector. However, NMFS disagrees that the appropriate designated representative for the AFA catcher/processor sector is the representative of the Cooperative Agreement.

Based on this and Comments 6, 11, 12, and 13, NMFS has modified this final rule to specify that the designated representative for the AFA catcher/processor sector is the entity representative defined at § 679.21(f)(8)(i)(C). NMFS changed this final rule at §§ 679.66(d)(3), 679.66(d)(3)(i), 679.66(d)(3)(ii), 679.66(d)(4), 679.66(d)(5), and 679.66(d)(6) to add language specifying the entity representative for the AFA catcher/processor sector and that these paragraphs are applicable to the AFA catcher/processor sector.

Comment 15: References to ''an AFA cooperative,'' ''an AFA cooperative representative,'' and ''cooperative'' in the proposed rule at §§ 679.66(e) and 679.66(f) should also include references to ''the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative'' or, where appropriate, the agreement's representative.

Response: This final rule at § 679.66(e) and (f) governs over payment and appeals, respectively. NMFS disagrees that the Cooperative Agreement is the appropriate entity for the AFA catcher/processor sector for reasons explained in the response to Comment 11. However, NMFS changed this final rule at § 679.66(e) and (f) to clarify that the designated representative is the appropriate person for activities regulated by § 679.66(e) and (f).

Comment 16: In § 679.66(g) Administrative Fees, the reference to the account drawn on to pay the ''CDQ fee liability'' should refer to the ''AFA fee liability.''

Response: NMFS removed paragraph (g) Administrative Fees from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. These paragraphs addressed administrative fees if the account drawn on to pay the cost recovery fee liability has insufficient funds to cover the transaction or if the account becomes delinquent. These paragraphs are not necessary because the Debt Collection Improvement Act of 1996, as explained in the Treasury Financial Manual Part 4, Chapter 4000, generally requires Federal agencies to

transfer any nontax debt to U.S. Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for debt collection services. After transfer, Fiscal Service takes appropriate action to service, collect, compromise, or suspend or terminate collection action on the debt. NMFS then renumbered paragraph (h) as paragraph (g) Annual report.

Comment 17: The regulations should clarify that the person designated as the representative of the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative is a representative of that agreement solely for purposes of payment of cost recovery fees.

Response: In this final rule at § 679.66(a)(1)(ii), the person responsible for submitting the cost recovery fee is the person designated as the representative of the entity representing the AFA catcher/processor sector under § 679.21(f)(8)(i)(C).

Comments on the Amendment 80 Cost Recovery Fee Program

Comment 18: Use the Commercial Operator's Annual Report (COAR) to determine the standard ex-vessel price for Amendment 80 species and remove the requirement that Amendment 80 cooperatives submit the First Wholesale Volume and Value Report. The new reporting requirement is burdensome, redundant, and will require additional costs for NMFS. These additional costs will result in additional fee liabilities for the Amendment 80 cooperatives. COAR data are adequate for determining the standard price for species covered by the First Wholesale Volume and Value Report and can be obtained with less cost.

Response: NMFS considered using COAR for all species and all CDQ and LAP programs that would be subject to the new cost recovery regulations (see Section 1.7.2.1 of the Analysis). NMFS selected using COAR data only for the AFA and Aleutian Islands Pollock Programs because these are single species fisheries. As noted in Section 1.7.2.2.1 of the Analysis, there is not substantial variation in the pollock ex-vessel price from year to year. Therefore, the standard ex-vessel price is unlikely to impact the cost recovery fee that any person would be required to pay. Also, because a single price is set for all Bering Sea AFA pollock landed and only pollock is used to determine the cost recovery fee, the amount of the pollock each person harvests determines the percentage of the cost recovery fee each AFA person must pay.

In contrast, the Amendment 80 and CDQ Programs are multispecies programs and the variation in the ex-vessel price of a species and the proportion of species harvested by an Amendment 80 cooperative or CDQ group can affect the total fee liability due. Section 1.7.2 of the RIR/FRFA and the preamble to the proposed rule show that the ex-vessel price of species covered by the Pacific Cod Ex-vessel Volume and Value Report and the First Wholesale Volume and Value Report can vary substantially from year to year, and this variation would have an impact on the fees that each person in these programs would be liable to pay. Using COAR data from the previous year may not reflect the ex-vessel prices that exist in the year that the catch subject to cost recovery occurs. Therefore, NMFS is requiring that Amendment 80 cooperatives submit a First Wholesale Volume and Value Report for species subject to a cost recovery fee for species other than BSAI halibut, BSAI Pacific cod, BSAI pollock, and BSAI sablefish. NMFS collects data on BSAI halibut and BSAI sablefish through existing data collection methods that provide more timely data than that provided by the COAR. NMFS will collect data for BSAI Pacific cod using a separate Pacific Cod Ex-vessel Volume and Value Report.

The First Wholesale Volume and Value Report allows NMFS to collect price and quantity data for the current year's fishery (as required under the Magnuson-Stevens Act) to determine the portion of the total cost recovery fee that each person is required to pay. NMFS must have this information to fulfill its obligation in assessing each person the required fee. The data collected from the First Wholesale Volume and Value Report is the minimum amount of information needed to determine each person's fee liability for Amendment 80 species and species other than BSAI halibut, BSAI Pacific cod, BSAI pollock, and BSAI sablefish.

NMFS agrees that collecting these data through the First Wholesale Volume and Value Report will increase the Amendment 80 sector cost recovery fee and increase the reporting burden on industry. NMFS considered implementing monthly reporting requirements for the First Wholesale Volume and Value Report similar to the IFQ program's Volume and Value Reports. However, to reduce the reporting burden and reduce the overall costs to the Amendment 80 participants, NMFS determined that an annual First Wholesale Volume and Value Report would provide sufficient information to collect the cost recovery fees and reduce administrative costs relative to a monthly reporting requirement. Overall, the cost that NMFS is likely to incur to maintain and process the First Volume Wholesale Volume and Value Report is only a small proportion of NMFS' total costs to manage the Amendment 80 and CDQ Programs.

Comment 19: There is no need to collect data to determine a standard ex-vessel price for rock sole harvests during the first quarter (January 1 through March 31), and a separate standard ex-vessel price for harvests for the remainder of the year. The intra-annual ex-vessel price fluctuations for rock sole have been limited in recent years due to the decline in the rock sole and roe market. The average annual rock sole prices are sufficient for the Amendment 80 sector to determine the standard ex-vessel price.

Response: Table 1–26 of the Analysis provides a summary of the estimated monthly rock sole ex-vessel prices. Table 1–26 shows that the difference in rock sole ex-vessel prices from the first quarter of a year relative to the rest of the year have declined. However, there is still a substantial difference in the estimated ex-vessel prices during the first quarter and the remainder of the year. Even in the most recent year of complete ex-vessel price data (2013), there was still a 20 percent variation in price between the first quarter of the year and the remainder of the year. Because this difference continues to persist, NMFS intends to collect ex-vessel data for rock sole for the first quarter and for all remaining quarters, as described in proposed rule.

If the price premium for rock sole in the first quarter of the year continues to decline, NMFS could consider modifying the First Wholesale Volume and Value Report in the future. The information collected in the First Wholesale Volume and Value Report will allow NMFS to monitor the rock sole ex-vessel prices and determine if a change in reporting is appropriate.

Comment 20: Clarify in this final rule the term harvested fish for Amendment 80 vessels. NMFS should only assess fees against fish that were retained and offloaded from the vessel.

Response: Section 304(d)(2)(B) of the Magnuson-Stevens Act states that a cost recovery fee ''shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program.'' This rule defines the fish harvested and subject to a cost recovery fee as all AFA Program, Aleutian Islands Pollock Program, Amendment 80 Program, or CDQ Program landings debited against that AFA cooperative or sector, Aleut Corporation, Amendment 80

cooperative, or CDQ group's allocations, respectively (see regulations at §§ 679.66(c)(5)(i) for AFA, 679.67(c)(5)(i) for Aleutian Islands pollock, 679.95(c)(5)(i) for Amendment 80, and 679.33(c)(5)(i) for CDQ).

For catcher/processor vessels that harvest fish subject to a cost recovery fee, NMFS uses information currently collected from at-sea scales and onboard observers to determine the amount and species composition of fish landed and debited from the applicable CDQ or LAP program allocation. Catcher/processors are not currently required to submit information on the weight and species composition of fish retained and offloaded. Establishing an offload reporting requirement and subsequent monitoring requirements would result in additional costs to NMFS. These costs would be included in the calculation of the cost recovery fee for the applicable CDQ or LAP program because NMFS would be requiring an offload report and monitoring requirement solely to monitor compliance with regulations necessary for CDQ or LAP program cost recovery. These additional costs are not necessary because information currently collected from at-sea scales and onboard observers provides a less costly independent source of information on the amount and species composition of fish harvested that are subject to a cost recovery fee. For catcher vessels, NMFS uses data from the processor receiving the fish (*i.e.,* a fish ticket) to determine the amount and species composition of fish subject to a cost recovery fee.

Comment 21: Grant the Amendment 80 Program the same exception to the requirement to pay the fee liability in full by December 31 as granted to the AFA catcher/processor sector. The Amendment 80 Program should receive a proportion of its quota that matches the proportion of fees paid by the deadline (*i.e.,* if an Amendment 80 cooperative pays only 80 percent of its fee liability, then NMFS would issue only 80 percent of the cooperative quota allocation to that cooperative). It would be appropriate and fair to grant this same exception because of difficulties associated with the timing of internal fee collection and unplanned increases in fees or decreases in fish values that may result in insufficient inseason fee collections from cooperative members.

Response: This final rule at § 679.66(d)(3)(ii) provides that if the AFA catcher/processor sector pays only a portion of its AFA fee liability, the Regional Administrator may release a portion of the Bering Sea pollock allocation equal to the portion of the fee liability paid.

Section 1.10.1.1, Section 1.10.3.1, and the Executive Summary of the Analysis and the preamble to the proposed rule explain that NMFS can release a percentage of the allocation of catch that is equal to the percentage of the cost recovery fee only for single species LAP programs. The Amendment 80 LAP Program is a multi-species LAP program. Withholding a portion of the allocation for an Amendment 80 cooperative would be complicated by the fact that each Amendment 80 species has a different ex-vessel value and members within the cooperative are allocated different amounts of Amendment 80 quota share. These allocations yield different amounts of Amendment 80 cooperative quota (CQ) when the Amendment 80 quota share is assigned to an Amendment 80 cooperative. Therefore, NMFS could not conclusively determine how much of a specific Amendment 80 species CQ allocation should be withheld.

For example, if an Amendment 80 cooperative paid only 90 percent of its fee liability, it is not clear what portion of the Amendment 80 CQ would match the percentage of the cost recovery fee paid. Making this determination would require assumptions and would risk NMFS withholding species that do not match the cooperative allocations associated with the unpaid cost recovery fee. Because of this uncertainty, NMFS will require full payment of the cost recovery fee for the Amendment 80 sector prior to releasing any of the cooperative's annual CQ. The cooperative contract should address the payment of the cost recovery fee and persons that do not meet the terms of the contract should be subject to penalties outlined in the contract.

Comment 22: The Analysis prepared for this action should be revised to include some additional information on how potential reductions to halibut PSC limits would affect the overall revenues and the potential cost recovery fee percent a CDQ or LAP program would have to pay in the future. Specifically, the Analysis prepared for this action should describe the potential impact of halibut PSC reductions on the cost recovery fee percentage paid by the Amendment 80 Program.

Response: Section 1.11 of the Analysis acknowledges that management actions recommended by the Council and implemented by NMFS could affect the total amount harvested by these LAP and CDQ programs. Future management measures applicable to LAP and CDQ programs could increase or reduce costs, or increase or reduce the ex-vessel value of fisheries subject to cost recovery. These future management actions could result in either an increase or a decrease in the cost recovery fee percentage applicable to LAP or CDQ programs.

The Council has recommended and NMFS is reviewing reduced halibut PSC limits applicable to the vessels participating in the LAP and CDQ programs covered by this action. On November 16, 2015, NMFS published a proposed rule to reduce halibut PSC limits (80 FR 71650). NMFS and the Council prepared a draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) to consider the impacts of that action. The draft EA/RIR/IRFA states that halibut PSC limit reductions could result in an increase in the cost recovery fee percentage due to the decreased harvests that may occur if halibut PSC limits constrain the ability of vessels to fish. We refer the reader to that EA/RIR/IRFA for additional details, see the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

As the commenter states, changes in the halibut PSC limits applicable to Amendment 80 cooperatives could reduce the amount of the TAC harvested in these fisheries, and therefore would affect the fee percentage that Amendment 80 vessels would pay. Reduced catch could be partially offset by an increase in prices, but the world market for these fish and the wide availability of substitute products indicate that an increase in price due to reduced supply is unlikely. Given the estimated cost recovery fee of 1.62 percent for the Amendment 80 Program, the value of the fishery would need to decrease by about 50 percent, assuming the agency costs remain constant, before the maximum 3 percent cost recovery fee limit is reached.

Comment 23: Clarify regulations at § 679.95(b)(2)(iii) and § 679.95(c)(5)(iii) to specify who will calculate the fee liability for each Amendment 80 cooperative, NMFS or the Amendment 80 cooperative representative. Regulations at § 679.95(b)(2)(iii) state that the Amendment 80 cooperative representative determines the fee liability. Regulations at § 679.95(c)(5)(iii) state that NMFS will determine the fee liability.

Response: NMFS determines the fee liability owed under each LAP or CDQ program. NMFS also determines the standard prices for landings under each program. Regulations at § 679.95(b) pertain to NMFS' determination of the Amendment 80 standard ex-vessel value. The comment is correct that the proposed rule at § 679.95(b)(2)(iii) incorrectly explained that an Amendment 80 cooperative

representative determines the Amendment 80 fee liability. The fee liability determination is in the regulations at § 679.95(c). These regulations explain that NMFS determines the fee liability. In response to this comment, NMFS changed this final rule at § 679.95(b)(2)(iii) to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS' determination of the Amendment 80 standard ex-vessel prices.

NMFS noticed this same error in the proposed rule at § 679.33(b)(2)(iii) that applies to the determination of the CDQ standard prices. NMFS changed this final rule at § 679.33(b)(2)(iii) to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS's determination of the CDQ standard prices.

Comment 24: Regulations at § 679.95(g) incorrectly contain a reference to pay the ''CDQ fee liability'' because this regulation applies to the Amendment 80 Program.

Response: NMFS removed paragraph (g) Administrative Fees from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. See response to Comment 16.

Changes From the Proposed Rule

This final rule includes changes to particular sections of the regulatory text and amendatory instructions published in the proposed rule.

NMFS removed paragraph (g) *Administrative fees* from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. These paragraphs addressed administrative fees if the account drawn on to pay the cost recovery fee liability has insufficient funds to cover the transaction or if the account becomes delinquent. These paragraphs are not necessary because the Debt Collection Improvement Act of 1996, as explained in the Treasury Financial Manual Part 4, Chapter 4000, generally requires Federal agencies to transfer any nontax debt to U.S. Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for debt collection services. After transfer, Fiscal Service takes appropriate action to service, collect, compromise, or suspend or terminate collection action on the debt. NMFS then renumbered paragraph (h) as paragraph (g) *Annual report.*

NMFS removed from paragraph (e), in §§ 679.33, 679.66, 679.67, and 679.95, the sentence that NMFS may deduct payment processing fees from any fees returned due to over payment. This additional sentence is not necessary because processing costs due to over payment are nominal with improvements in methods to collect fees.

In addition to these two changes, NMFS also made some non-substantive minor technical corrections to the regulatory text.

NMFS made substantive changes to this final rule in response to public comments. These changes improve the functioning of the cost recovery programs implemented with this final rule. All the specific regulation changes, and the reasons for making these changes, are contained under Response to Comments, above. This section provides a summary of the changes made to this final rule in response to public comment.

CDQ Cost Recovery Changes

- In this final rule at § 679.33(b)(2)(iii), NMFS corrected this paragraph to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS' determination of the CDQ standard prices in response to Comment 23.

AFA Cost Recovery Changes

- In this final rule at § 679.2, NMFS modified the definitions of AFA fee liability and AFA fee percentage to clarify that these terms apply to an AFA cooperative or AFA sector in response to Comment 13.
- In this final rule at § 679.66(a)(1)(ii), NMFS clarified that the entity representative under § 679.21(f)(8)(i)(C) will be the AFA catcher/processor sector's designated representative for submission of the cost recovery fee in response to Comment 11.
- In this final rule at § 679.66(d)(3), NMFS clarified that the AFA catcher/processor sector receives the Bering Sea pollock allocation and that the AFA catcher/processor sector entity representative under § 679.21(f)(8)(i)(C) submits the fee payment in response to Comment 14.
- To match the changes to § 679.66(a)(1)(ii), NMFS also changed this final rule as follows. These changes are discussed in detail in the responses to Comments 11, 12, 13, 14, and 15.
  - §§ 679.66(a)(2), (a)(3), (a)(4), (b)(1), (c)(4), (c)(5)(v), (d)(4), (d)(5), and (d)(6), (e), and (f) were changed to replace ''cooperative representative'' with ''designated representative;''
  - § 679.66(b)(2)(i), (c)(5)(i), (d)(5), (d)(6) and (e) were changed to add ''or AFA sector;'' and
  - § 679.66(c)(2) introductory text, (c)(2)(iii)(B), (c)(3)(i) and (c)(5)(iii) were changed to replace references to listed AFA catcher/processors and high seas catcher vessels that deliver to them with ''AFA catcher/processor sector.''

Amendment 80 Cost Recovery Changes

- In this final rule at § 679.95(b)(2)(iii), NMFS corrected this paragraph to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS' determination of the Amendment 80 standard ex-vessel prices in response to Comment 23.

OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Administrator, Alaska Region, NMFS, has determined that this final rule is necessary for the conservation and management of the groundfish and halibut fisheries and that it is consistent with the FMP, the National Standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. This final rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action.

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the United States Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis.

Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in

response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in this final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here.

Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published a proposed rule on January 7, 2015 (80 FR 936). An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on February 6, 2015. NMFS received three public comment letters, containing 23 separate comments on the proposed rule. These comments did not address the IRFA. The economic impacts of the rule were addressed in the comments by requesting that NMFS clearly define the costs that are subject to the rule. One comment specifically requested information on how BSAI halibut PSC reductions being considered by the Council and Secretary would impact the overall profitability of the Amendment 80 vessels, which are not considered small entities under the Small Business Administration Guidelines. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by the Action

This analysis considers the active fleet in 2013, which is the most recent year for which size, revenue, and affiliation data were all available. The only small entities directly regulated by this rule are the six CDQ groups—the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen's Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. Through the CDQ Program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, halibut quota, and halibut and crab PSC limits, to these six CDQ groups. These groups represent 65 villages and maintain a non-profit status. Each of the CDQ groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a ''small entity'' under the Small Business Administration's definition for ''small organization.'' The proceeds from the CDQ allocations must be used to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. Section 2.6 of the Analysis prepared for the proposed rule provides more information on these entities (80 FR 936, January 7, 2015).

All other entities that are directly regulated through this rule are not small entities under the SBA definitions. This action would regulate Amendment 80, AFA cooperatives, and AFA sectors, and the vessels that are harvesting exclusive harvest privileges under the Amendment 80 and AFA Programs; The Aleut Corporation; and processors and motherships that receive CDQ Pacific cod deliveries and trawl-caught Pacific cod. The SBA defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than $20.5 million (79 FR 33647, June 12, 2014). None of these entities are considered to be small entities based on the SBA's size standard.

Recordkeeping and Reporting Requirements

This action modifies recordkeeping or reporting requirements so that sufficient data are available to determine the cost recovery fee and standardized prices in the time frame required under the Magnuson-Stevens Act. No small entity is subject to additional reporting requirements. Shorebased processors will be required to submit ex-vessel Volume and Value Reports for all CDQ groundfish landings and all BSAI Pacific cod trawl landings. Each Amendment 80 catcher/processor will be required to submit a First Wholesale Volume and Value Report for all groundfish species, except Pacific cod, harvested under the Amendment 80 and CDQ programs. The information to be collected is described in Section 1.7.2.1 of the Analysis.

The only additional recordkeeping requirements for small entities are the bookkeeping skills necessary for the six CDQ groups to submit payment for their cost recovery fees. NMFS will calculate the fee amount that each CDQ group owes. The designated representative of each group is then required to ensure the timely submission of the fee payment.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

A FRFA must the outline steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The action is the implementation of the Magnuson-Stevens Act's mandatory cost recovery fees for LAP and CDQ programs.

No alternatives or options were identified that would have accomplished the action's objectives while reducing the potential economic impact on small entities relative to the preferred alternative. NMFS has determined that the minimum amount of data necessary to calculate the cost recover fees as mandated under the Magnuson-Stevens Act would be collected through volume and value reports. Collecting the minimum amount of data necessary from the fewest persons possible is beneficial to all entities.

The economic impact on directly regulated small entities is the implementation of a cost recovery fee mandated under the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that participants in limited access privilege programs and the CDQ Program pay up to 3 percent of the ex-vessel value of the fish they are

allocated to recover the actual costs that are directly related to the management, data collection, and enforcement of the programs specific costs that are incurred by the management agencies. Given the specific requirements of the Magnuson-Stevens Act to implement a cost recovery fee, no other alternatives would accomplish the stated objective. Each CDQ group is required to submit its own fee payment using a payment system approved by NMFS.

For all directly regulated entities NMFS considered and analyzed a range of specific options to determine standard prices for calculating standard ex-vessel value data, dates for volume and value report and fee submission, and other details of the fee collection process described in the Analysis. NMFS selected those options that would minimize the reporting burden and costs on small entities consistent with the stated objective when possible.

Specifically, NMFS considered options to use COAR data to determine standard prices and standard ex-vessel values for all species subject to cost recovery, but did not select that option for species other than BSAI pollock because it could impact the fee liability each person would be required to pay. NMFS did select options that minimized reporting requirements on small entities by using existing data sources (*e.g.,* COAR for BSAI pollock, and the IFQ buyer report for BSAI sablefish and BSAI halibut). NMFS also selected dates for the submission of reports that provided the most current data available to allow fee liabilities to be calculated on a timely basis. These dates would minimize the potential impact on small entities relative to other dates considered. NMFS will provide annual reports to the persons subject to the cost recovery fee and other interested stakeholders to help provide transparency in the fee liability determination.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved under the following OMB control numbers.

OMB Control No. 0648–0318

With this action, the payment and observer fee submittal (15 minutes) is removed from this collection and added to the new fee collection.

OMB Control No. 0648–0398

With this action, this IFQ Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648–0401

Public reporting burden per response is estimated to average eight hours for Cooperative Contract. This information collection is revised by adding to the Cooperative Contract the obligation of AFA cooperative members to ensure full payment of cost recovery fees.

OMB Contract No. 0648–0545

With this action, two forms—the Rockfish Volume and Value Report (two hours per response) and the payment and fee submittal (10 minutes per response) are removed from this collection.

OMB Control No. 0648–0565

Public reporting burden per response is estimated to average two hours for Application for Amendment 80 Cooperative Quota; the Cooperative Agreement is an attachment to this application. This information collection is revised by adding to the Cooperative Agreement the obligation of AFA cooperative members to ensure full payment of cost recovery fees.

OMB Control No. 0648–0570

With this action, the Crab Rationalization Program Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648–0711

This new information collection is created by combining all existing Alaska Region fee information collections with the observer fee submission. Public reporting burden per response is estimated to average one minute for cost recovery fee or observer fee submission; five minutes for value and volume report; and four hours for appeal of an incomplete payment of a cost recovery fee or observer fee.

Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'':
■ a. Revise entries for ''679.5(a)''; ''679.5(c), (e), and (f)''; ''679.5(d)''; and ''679.5(l)(7);
■ b. Add entries in alphanumeric order for ''679.5(u)'' and ''679.33'';
■ c. Revise entries for ''679.43''; ''679.45''; ''679.55''; and ''679.65'';
■ d. Add entries in alphanumeric order for ''679.66''; ''679.67''; ''679.85''; and ''679.95'';

■ e. Remove the entries for ''680.5(f)''; ''680.5(g)''; and ''680.5(m)'';
■ f. Add an entry in alphanumeric order for ''680.5(f), (g), and (m)''.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648–)
* * * *	* * *
50 CFR:	
* * * *	* * *
679.5(a)	–0213, –0269, and –0272.
* * * *	* * *
679.5(c), (e), and (f)	–0213, –0272, –0330, –0513, and –0515.
679.5(d)	–0213 and –0515.
* * * *	* * *
679.5(l)(7)	–0711.
* * * *	* * *
679.5(u)	–0206 and –0711.
* * * *	* * *
679.33	–0711.
* * * *	* * *
679.43	–0272, –0318, –0334, –0401, –0545, –0565, –0569, and –0711.
679.45	–0272, –0592, and –0711.
* * * *	* * *
679.55	–0206, –0272, and –0711.
* * * *	* * *
679.65	–0213, –0515, and –0633.
679.66	–0711.
679.67	–0711.
* * * *	* * *
679.85	–0545.
* * * *	* * *
679.95	–0711.
* * * *	* * *
680.5(f), (g), (m)	–0711.
* * * *	* * *

Title 50—Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.2, add definitions for ''AFA fee liability''; ''AFA fee percentage''; ''AFA pollock equivalent pounds''; ''AFA standard ex-vessel value''; ''AFA standard price''; ''Aleutian Islands pollock equivalent pounds''; ''Aleutian Islands pollock fee liability''; ''Aleutian Islands pollock fee percentage''; ''Aleutian Islands pollock standard ex-vessel value''; ''Aleutian Islands pollock standard price''; ''Amendment 80 equivalent pounds''; ''Amendment 80 fee liability''; ''Amendment 80 fee percentage''; ''Amendment 80 standard ex-vessel value''; ''Amendment 80 standard price''; ''CDQ equivalent pounds''; ''CDQ fee liability''; ''CDQ fee percentage''; ''CDQ standard ex-vessel value''; and ''CDQ standard price'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

AFA fee liability means the amount of money for Bering Sea pollock cost recovery, in U.S. dollars, owed to NMFS by an AFA cooperative or AFA sector as determined by multiplying the appropriate AFA standard ex-vessel value of landed Bering Sea pollock by the appropriate AFA fee percentage.

AFA fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the AFA fee liability for an AFA cooperative or AFA sector.

* * * * *

AFA pollock equivalent pounds means the weight recorded in pounds for landed AFA pollock and calculated as round weight.

AFA standard ex-vessel value means the total U.S. dollar amount of landed

Bering Sea pollock as calculated by multiplying the number of landed pounds of Bering Sea pollock by the appropriate AFA standard price determined by the Regional Administrator.

AFA standard price means the price, in U.S. dollars, for landed Bering Sea pollock, in AFA pollock equivalent pounds, as determined by the Regional Administrator.

* * * * *

Aleutian Islands pollock equivalent pounds means the weight recorded in pounds for landed Aleutian Islands pollock and calculated as round weight.

Aleutian Islands pollock fee liability means the amount of money for Aleutian Islands directed pollock cost recovery, in U.S. dollars, owed to NMFS by the Aleut Corporation as determined by multiplying the appropriate standard ex-vessel value of its landed Aleutian Islands pollock by the appropriate Aleutian Islands pollock fee percentage.

Aleutian Islands pollock fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Aleutian Islands pollock fee liability for the Aleut Corporation.

Aleutian Islands pollock standard ex-vessel value means the total U.S. dollar amount of landed Aleutian Islands pollock as calculated by multiplying the number of landed pounds of Aleutian Islands pollock by the appropriate Aleutian Islands pollock standard price determined by the Regional Administrator.

Aleutian Islands pollock standard price means the price, in U.S. dollars, for landed Aleutian Islands pollock, in Aleutian Islands pollock equivalent pounds, as determined by the Regional Administrator.

* * * * *

Amendment 80 equivalent pounds means the weight recorded in pounds for landed Amendment 80 species CQ and calculated as round weight.

Amendment 80 fee liability means the amount of money for Amendment 80 cost recovery, in U.S. dollars, owed to NMFS by an Amendment 80 CQ permit holder as determined by multiplying the appropriate standard ex-vessel value of landed Amendment 80 species CQ by the appropriate Amendment 80 fee percentage.

Amendment 80 fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Amendment 80 fee liability for an Amendment 80 CQ permit holder.

* * * * *

Amendment 80 standard ex-vessel value means the total U.S. dollar amount of landed Amendment 80 species CQ as calculated by multiplying the number of landed Amendment 80 equivalent pounds by the appropriate Amendment 80 standard price determined by the Regional Administrator.

Amendment 80 standard price means the price, in U.S. dollars, for landed Amendment 80 species, in Amendment 80 equivalent pounds, as determined by the Regional Administrator.

* * * * *

CDQ equivalent pounds means the weight recorded in pounds, for landed CDQ groundfish and halibut, and calculated as round weight.

CDQ fee liability means the amount of money for CDQ groundfish and halibut cost recovery, in U.S. dollars, owed to NMFS by a CDQ group as determined by multiplying the appropriate standard ex-vessel value of landed CDQ groundfish and halibut by the appropriate CDQ fee percentage.

CDQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the CDQ groundfish and halibut fee liability for a CDQ group.

* * * * *

CDQ standard ex-vessel value means the total U.S. dollar amount of landed CDQ groundfish and halibut as calculated by multiplying the number of landed CDQ equivalent pounds by the appropriate CDQ standard price determined by the Regional Administrator.

CDQ standard price means the price, in U.S. dollars, for landed CDQ groundfish and halibut, in CDQ equivalent pounds, as determined by the Regional Administrator.

* * * * *

■ 5. In § 679.5, add paragraph (u) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(u) *BSAI Cost Recovery Volume and Value Reports*—(1) *Pacific Cod Ex-vessel Volume and Value Report*—(i) *Applicability.* A shoreside processor designated on an FPP, or a mothership designated on an FFP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear must submit annually to NMFS a complete Pacific Cod Ex-vessel Volume and Value Report, as described in this paragraph (u)(1), for each reporting period for which the shorebased processor or mothership receives this Pacific cod.

(ii) *Reporting period.* The reporting period of the Pacific Cod Ex-vessel Volume and Value Report shall extend from January 1 to October 31 of the year in which the landings were made.

(iii) *Due date.* A complete Pacific Cod Ex-vessel Volume and Value Report must be received by NMFS no later than November 10 of the year in which the processor or mothership received the Pacific cod.

(iv) *Information required.* (A) The submitter must log in using his or her password and NMFS person ID to submit a Pacific Cod Ex-vessel Volume and Value Report. The User must review any auto-filled cells to ensure that they are accurate. A completed report must have all applicable fields accurately filled-in.

(B) *Certification.* By using the NMFS person ID and password and submitting the report, the submitter certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The submitter must complete and submit online to NMFS the Pacific Cod Ex-vessel Volume and Value Report available at *https://alaskafisheries.noaa.gov.*

(2) *First Wholesale Volume and Value Report*—(i) *Applicability.* An Amendment 80 vessel owner that harvests groundfish species, other than Pacific cod, must submit annually to NMFS a complete First Wholesale Volume and Value Report, as described in this paragraph (u)(2), for each reporting period for which the Amendment 80 vessel harvests groundfish species, other than Pacific cod.

(ii) *Reporting period.* (A) The reporting period of the First Wholesale Volume and Value Report for all species except rock sole shall extend from January 1 to October 31 of the year in which the landings were made.

(B) The first reporting period of the First Wholesale Volume and Value Report for rock sole shall extend from January 1 to March 31, and the second reporting period shall extend from April 1 to October 31.

(iii) *Due date.* A complete First Wholesale Volume and Value Report must be received by NMFS no later than November 10 of the year in which the Amendment 80 vessel received the groundfish species, other than Pacific cod.

(iv) *Information required.* (A) The Amendment 80 vessel owner must log

in using his or her password and NMFS person ID to submit a First Wholesale Volume and Value Report. The vessel owner must review any auto-filled cells to ensure that they are accurate. A completed report must have all applicable fields accurately filled-in.

(B) *Certification.* By using the NMFS person ID and password and submitting the report, the Amendment 80 vessel owner certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The Amendment 80 vessel owner must complete and submit online to NMFS the First Wholesale Volume and Value Report available at *https://alaskafisheries.noaa.gov.*

■ 6. In § 679.7, add paragraphs (c)(6), (d)(8), (k)(9), (l)(6), (o)(4)(vii), and (o)(9) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(6) For a shoreside processor designated on an FPP, or a mothership designated on an FFP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear to fail to submit a timely and complete Pacific Cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(d) * * *

(8) Fail to submit a timely and complete CDQ cost recovery fee submission form and fee as required under § 679.33.

* * * * *

(k) * * *

(9) Fail to submit a timely and complete AFA cost recovery fee submission form and fee as required under § 679.66.

(l) * * *

(6) Fail to submit a timely and complete Aleutian Islands pollock cost recovery fee submission form and fee as required under § 679.67.

* * * * *

(o) * * *

(4) * * *

(vii) Fail to submit a timely and complete Amendment 80 cost recovery fee submission form and fee as required under § 679.95.

* * * * *

(9) *First Wholesale Volume and Value Report.* For an Amendment 80 vessel owner to fail to submit a timely and complete First Wholesale Volume and Value Report as required under § 679.5(u)(2).

* * * * *

■ 7. Add § 679.33 to subpart C to read as follows:

§ 679.33 CDQ cost recovery.

(a) *Cost Recovery Fee Program for CDQ groundfish and halibut*—(1) *Who is Responsible?* The person documented with NMFS as the CDQ group representative at the time of a CDQ landing.

(i) Subsequent transfer, under § 679.31(c), of a CDQ allocation by a CDQ group does not affect the CDQ group representative's liability for noncompliance with this section.

(ii) Changes in amount of a CDQ allocation to a CDQ group do not affect the CDQ group representative's liability for noncompliance with this section.

(2) *Fee collection.* Each CDQ group that receives a CDQ allocation of groundfish and halibut is responsible for submitting the cost recovery payment for all CDQ landings debited against that CDQ group's allocations.

(3) *Payment*—(i) *Payment due date.* A CDQ group representative must submit all CDQ fee payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the CDQ groundfish and halibut landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the CDQ group representative.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *CDQ standard ex-vessel value determination and use*—(1) *General.* A CDQ group representative must use the CDQ standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *CDQ standard prices*—(i) *General.* Each year the Regional Administrator will publish CDQ standard prices for groundfish and halibut in the **Federal Register** by December 1 of the year in which the CDQ groundfish and halibut landings were made. The CDQ standard prices will be described in U.S. dollars per CDQ equivalent pound for CDQ groundfish and halibut landings made during the current calendar year.

(ii) *Effective duration.* The CDQ standard prices published by NMFS shall apply to all CDQ groundfish and halibut landings made during the current calendar year.

(iii) *Determination.* NMFS will calculate the CDQ standard prices for each CDQ fishery as follows:

(A) *CDQ halibut and CDQ fixed gear sablefish.* NMFS will calculate the CDQ standard prices for CDQ halibut and CDQ fixed gear sablefish to reflect, as closely as possible by port or port-group, the variations in the actual ex-vessel values of CDQ halibut and fixed-gear sablefish based on information provided in the IFQ Registered Buyer Ex-vessel Volume and Value Report described at § 679.5(l)(7). The Regional Administrator will base CDQ standard prices on the following information:

(*1*) Landed pounds of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group;

(*2*) Total ex-vessel value of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group; and

(*3*) Price adjustments, including retroactive payments.

(B) *CDQ Pacific cod.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) for CDQ Pacific cod.

(C) *CDQ pollock.* NMFS will use the standard prices calculated for AFA pollock described at § 679.66(b) for CDQ pollock.

(D) *Other CDQ groundfish including sablefish caught with trawl gear.* (*1*) NMFS will base all CDQ standard prices for all other CDQ groundfish species on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(*2*) NMFS will establish CDQ standard prices for all other CDQ groundfish species on an annual basis; except the Regional Administrator will establish a first CDQ standard price for rock sole for all landings from January 1 through March 31, and a second CDQ standard price for rock sole for all landings from April 1 through December 31.

(*3*) The average first wholesale product prices reported will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of those CDQ groundfish species.

(c) *CDQ fee percentage*—(1) *Established percentage.* The CDQ fee percentage for CDQ groundfish and halibut is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS will calculate and publish the CDQ fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the CDQ groundfish and halibut cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the CDQ Program for groundfish and halibut.

(ii) *Methodology.* NMFS will use the following equations to determine the fee percentage: $100 \times DPC/V$, where:

(A) DPC = the direct program costs for the CDQ Program for groundfish and halibut for the most recent Federal fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the CDQ standard ex-vessel value of the catch subject to the CDQ fee liability for the current year.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the CDQ fee percentage in a **Federal Register** notice by December 1 of the year in which the CDQ groundfish and halibut landings were made. NMFS will calculate the CDQ fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* NMFS will apply the calculated CDQ fee percentage to CDQ groundfish and halibut landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage.* The CDQ group representative must use the CDQ fee percentage applicable at the time a CDQ groundfish and halibut landing is debited from a CDQ group's allocation to calculate the CDQ fee liability for any retroactive payments for that CDQ species.

(5) *Fee liability determination for a CDQ group.* (i) Each CDQ group will be subject to a CDQ fee for any CDQ groundfish and halibut debited from that CDQ group's allocation during a calendar year.

(ii) The CDQ fee assessed to a CDQ group will be based on the proportion of the standard ex-vessel value of CDQ groundfish and halibut debited from a CDQ group's allocation relative to all CDQ groups during a calendar year as determined by NMFS.

(iii) NMFS will provide a CDQ fee liability summary letter to each CDQ group representative by December 1 of each year. The summary will explain the CDQ fee liability determination including the current fee percentage, and details of CDQ pounds debited from the CDQ group allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No CDQ group will receive its allocations of CDQ groundfish or halibut until the CDQ group representative submits full payment of that CDQ group's complete CDQ fee liability.

(2) If a CDQ group representative fails to submit full payment for its CDQ fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CDQ group representative stating that the CDQ group's estimated fee liability, as indicated by his or her own submitted information, is the CDQ fee liability due from the CDQ group.

(ii) Disapprove any application to transfer CDQ to or from the CDQ group in accordance with § 679.31(c).

(3) If a CDQ group fails to submit full payment by December 31 of each year, the Regional Administrator will not issue allocations of CDQ groundfish and halibut to that CDQ group for the following calendar year.

(4) Upon final agency action determining that a CDQ group representative has not paid the CDQ fee liability due for that CDQ group, the Regional Administrator may continue to not issue allocations of CDQ groundfish and halibut for that CDQ group for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the CDQ fee liability determined to be due by the final agency action will be returned to the CDQ group representative unless the CDQ group representative requests the agency to credit the excess amount against the CDQ group's future CDQ fee liability.

(f) *Appeals.* A CDQ group representative who receives an IAD for incomplete payment of a CDQ fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the CDQ Cost Recovery Fee Program for groundfish and halibut.

■ 8. In § 679.61,:

■ a. Revise paragraph (c)(1); and

■ b. Add paragraph (e)(1)(vi) to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(c) * * *

(1) *What is a designated representative?* The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative. Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, submitting all cost recovery fees, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

* * * * *

(e) * * *

(1) * * *

(vi) List the obligations of members of a cooperative, governed by this section, to ensure the full payment of all AFA fee liabilities that may be due.

* * * * *

■ 9. Add § 679.66 to subpart F to read as follows:

§ 679.66 AFA cost recovery.

(a) *Cost recovery fee program for AFA*—(1) *Who is responsible for submitting the fee?* (i) The person designated on the AFA inshore cooperative permit as the designated representative at the time of a Bering Sea pollock landing.

(ii) The person designated as the representative of the entity representing the AFA catcher/processor sector under § 679.21(f)(8)(i)(C) at the time of a Bering Sea pollock landing.

(iii) The person designated as the representative of the AFA mothership cooperative at the time of a Bering Sea pollock landing.

(2) *Responsibility.* (i) Subsequent transfer of AFA permits held by cooperative members does not affect the designated representative's liability for noncompliance with this section.

(ii) Changes in the membership in a cooperative, such as members joining or departing during the relevant year, or changes in the holdings of AFA permits of those members do not affect the designated representative's liability for noncompliance with this section.

(3) *Fee collection.* Each designated representative (as identified under paragraph (a)(1) of this section) is responsible for submitting the cost recovery payment for all Bering Sea pollock landings debited against the

AFA cooperative's or AFA sector's AFA pollock fishery allocation.

(4) *Payment*—(i) *Payment due date.* The designated representative (as identified under paragraph (a)(1) of this section) must submit all AFA fee payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than December 31 of the calendar year in which the Bering Sea pollock landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to each designated representative.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *AFA standard ex-vessel value determination and use*—(1) *General.* A designated representative must use the AFA standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *AFA standard price*—(i) *General.* Each year the Regional Administrator will publish the AFA standard price in the **Federal Register** by December 1 of the year in which the landings were made. The AFA standard price will be described in U.S. dollars per AFA pollock equivalent pound for Bering Sea pollock landings made by AFA cooperative or AFA sector members during the current calendar year.

(ii) *Effective duration.* The AFA standard price published by NMFS shall apply to all Bering Sea pollock landings made by an AFA cooperative or AFA sector member during the current calendar year.

(iii) *Determination.* NMFS will calculate the AFA standard price to reflect, as closely as possible, the standard price of Bering Sea pollock landings based on information provided in the COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base the AFA standard price on the following information:

(A) Landed pounds of Bering Sea pollock;

(B) Total ex-vessel value of Bering Sea pollock; and

(C) Price adjustments, including retroactive payments.

(c) *AFA fee percentages*—(1) *Established percentages.* The AFA fee percentages are the amounts as determined by the factors and methodology described in paragraph (c)(2) of this section. These amounts will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. These amounts must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS will calculate and publish AFA fee percentages for AFA inshore cooperatives, the AFA catcher/processor sector, and the AFA mothership cooperative according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentages:

(A) The catch to which the AFA pollock cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the AFA directed pollock fisheries.

(ii) *Methodology.* NMFS will use the following equations to determine the AFA fee percentage: $100 \times DPC/V$, where:

(A) DPC = the direct program costs for the directed AFA pollock fisheries for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the catch subject to the AFA fee liability for the current year.

(iii) Direct program costs will be calculated separately for:

(A) AFA inshore cooperatives;

(B) The AFA catcher/processor sector; and

(C) The AFA mothership cooperative.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the AFA fee percentages in a **Federal Register** notice by December 1 of the year in which the Bering Sea pollock landings were made. AFA fee percentages will be calculated separately for the AFA inshore cooperatives, the AFA catcher/processor sector, and the AFA mothership cooperative. NMFS will calculate the AFA fee percentages based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* NMFS will apply the calculated AFA fee percentages to all Bering Sea directed pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage.* A designated representative must use the AFA fee percentage applicable at the time a Bering Sea directed pollock landing is debited from an AFA pollock fishery allocation to calculate the AFA fee liability for any retroactive payments for that landing.

(5) *Fee liability determination.* (i) Each AFA inshore cooperative, the AFA mothership cooperative, and the AFA catcher/processor sector will be subject to an AFA fee liability for any Bering Sea pollock debited from its AFA pollock fishery allocation during a calendar year.

(ii) The AFA fee liability assessed to an AFA inshore cooperative will be based on the proportion of the AFA fee liability of Bering Sea pollock debited from that AFA inshore cooperative's AFA pollock fishery allocation relative to all AFA inshore cooperatives during a calendar year as determined by NMFS.

(iii) The AFA fee liability assessed to the AFA catcher/processor sector will be based on the standard ex-vessel value of Bering Sea pollock debited from the sector's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(iv) The AFA fee liability assessed to the AFA mothership cooperative will be based on the proportion of the standard ex-vessel value of Bering Sea pollock debited from the cooperative's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(v) NMFS will provide a fee liability summary letter to each designated representative by December 1 of each year. The summary will explain the AFA fee liability determination including the current fee percentage and details of Bering Sea pollock pounds debited from the AFA pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No AFA inshore cooperative will receive its AFA pollock fishery allocation until the cooperative's designated representative submits full payment of the cooperative's AFA fee liability.

(2) The AFA mothership cooperative will not receive its AFA pollock fishery allocation until the cooperative's designated representative submits full payment of that cooperative's AFA fee liability.

(3) The AFA catcher/processor sector will not receive its Bering Sea pollock allocation until the entity's designated representative defined at § 679.21(f)(8)(i)(C) submits full payment of the AFA fee liability at the time of a Bering Sea pollock landing, except the Regional Administrator may release to the AFA catcher/processor sector a portion of the AFA catcher/processor sector's Bering Sea pollock allocation

that is equal to the portion of the fee liability submitted by the entity's designated representative.

(4) If the designated representative fails to submit full payment for the AFA fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator, at any time thereafter, may send an IAD to the designated representative stating that the estimated fee liability, based on the information submitted by the designated representative, is the AFA fee liability due from the designated representative.

(5) If the designated representative fails to submit full payment for the AFA fee liability by the date described at paragraph (a)(4) of this section, the Regional Administrator will not issue a Bering Sea pollock allocation to that AFA cooperative or AFA sector for the following calendar year, except as provided in paragraph (d)(3) of this section.

(6) Upon final agency action determining that the designated representative has not submitted the AFA fee liability payment, the Regional Administrator may continue to not issue a Bering Sea pollock allocation for that AFA cooperative or AFA sector for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the AFA fee liability determined to be due by the final agency action will be returned to the designated representative unless the designated representative requests the agency to credit the excess amount against a cooperative's or sector's future AFA fee liability.

(f) *Appeals.* The designated representative who receives an IAD for incomplete payment of an AFA fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the AFA Cost Recovery Fee Program.

■ 10. Add § 679.67 to subpart F to read as follows:

§ 679.67 Aleutian Islands pollock cost recovery.

(a) *Cost recovery fee program for Aleutian Islands pollock*—(1) *Representative.* The person identified as the representative, designated by the Aleut Corporation, at the time of an Aleutian Islands pollock landing is responsible for submitting all cost recovery fees.

(2) *Fee collection.* The designated representative (as identified under paragraph (a)(1) of this section) is responsible for submitting the cost recovery payment for all Aleutian Islands pollock landings made under the authority of Aleut Corporation.

(3) *Payment.* (i) *Payment due date.* The designated representative (as identified under paragraph (a)(1) of this section) must submit all cost recovery fee payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Aleutian Islands pollock landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the designated representative of the Aleut Corporation.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Aleutian Islands pollock standard ex-vessel value determination and use*—(1) *General.* The designated representative of the Aleut Corporation must use the Aleutian Islands pollock standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *Aleutian Islands pollock standard price*—(i) *General.* Each year the Regional Administrator will publish the Aleutian Islands pollock standard price in the **Federal Register** by December 1 of the year in which the landings were made. The Aleutian Islands pollock standard price will be described in U.S. dollars per Aleutian Islands pollock equivalent pound for Aleutian Islands pollock landings during the current calendar year.

(ii) *Effective duration.* The Aleutian Islands pollock standard price published by NMFS shall apply to all Aleutian Islands pollock landings during the current calendar year.

(iii) *Determination.* NMFS will calculate the Aleutian Islands pollock standard price to reflect, as closely as possible, the standard price of Aleutian Islands pollock landings based on information provided in the COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base Aleutian Islands pollock standard price on the following information:

(A) Landed pounds of Aleutian Islands pollock;

(B) Total ex-vessel value of Aleutian Islands pollock; and

(C) Price adjustments, including retroactive payments.

(c) *Aleutian Islands pollock fee percentage*—(1) *Established percentage.* The Aleutian Islands pollock fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS will calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the Aleutian Islands pollock cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Aleutian Islands directed pollock fishery.

(ii) *Methodology.* NMFS will use the following equations to determine the fee percentage: $100 \times DPC/V$, where:

(A) DPC = the direct program costs for the Aleutian Islands directed pollock fishery for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the catch subject to the Aleutian Islands pollock fee liability for the current year.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the fee percentage in a **Federal Register** notice by December 1 of the year in which the Aleutian Islands pollock landings were made. NMFS will calculate the Aleutian Islands pollock fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* NMFS will apply the calculated Aleutian Islands pollock fee percentage to all Aleutian Islands pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage.* The designated representative must use the Aleutian Islands pollock fee percentage applicable at the time an Aleutian Islands pollock landing is debited from the Aleutian Islands directed pollock fishery allocation to calculate the Aleutian Islands pollock fee liability for any retroactive payments for that pollock.

(5) *Fee liability determination.* (i) The Aleut Corporation will be subject to a fee for any Aleutian Islands pollock debited from the Aleutian Islands directed pollock fishery allocation during a calendar year.

(ii) NMFS will provide a fee liability summary letter to the Aleut Corporation by December 1 of each year. The summary will explain the fee liability determination including the current fee percentage, and details of Aleutian Islands pollock pounds debited from the Aleutian Islands directed pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) The Aleut Corporation will not receive its Aleutian Islands directed pollock fishery allocation until the Aleut Corporation's designated representative submits full payment of the Aleut Corporation's cost recovery fee liability.

(2) If the Aleut Corporation's designated representative fails to submit full payment for Aleutian Islands pollock fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may at any time thereafter send an IAD to the Aleut Corporation's designated representative stating that the estimated fee liability, based on the information submitted by the designated representative, is the Aleutian Islands pollock fee liability due from the Aleut Corporation.

(3) If the Aleut Corporation's designated representative fails to submit full payment by the Aleutian Islands pollock fee liability payment deadline described at paragraph (a)(3) of this section, the Regional Administrator will not issue the Aleutian Islands directed pollock fishery allocation to the Aleut Corporation for that calendar year.

(4) Upon final agency action determining that the Aleut Corporation has not paid its Aleutian Islands pollock fee liability, the Regional Administrator may continue to not issue the Aleutian Islands directed pollock fishery allocation for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the Aleutian Islands pollock fee liability determined to be due by the final agency action will be returned to the Aleut Corporation unless its designated representative requests the agency to credit the excess amount against the cooperative's future Aleutian Islands pollock fee liability.

(f) *Appeals.* A representative of the Aleut Corporation who receives an IAD for incomplete payment of an Aleutian Islands pollock fee may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the Aleutian Islands Pollock Cost Recovery Fee Program.

■ 11. In § 679.91:

■ a. Revise paragraphs (b)(4)(vii) and (h)(3)(xiv); and

■ b. Add paragraph (h)(3)(xx) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(b) * * *

(4) * * *

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that includes terms that list:

(A) How the Amendment 80 cooperative intends to catch its CQ; and

(B) The obligations of Amendment 80 QS holders who are members of an Amendment 80 cooperative to ensure the full payment of Amendment 80 fee liabilities that may be due.

* * * * *

(h) * * *

(3) * * *

* * * * * * *	
(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify: (A) How the Amendment 80 cooperative intends to catch its CQ; and (B) The obligations of Amendment 80 QS holders, who are members of an Amendment 80 cooperative, to ensure the full payment of Amendment 80 fee liabilities that may be due.
* * * * * * *	
(xx) Is there a requirement that an Amendment 80 cooperative pay Amendment 80 cost recovery fees?	Yes, see § 679.95 for the provisions that apply.

* * * * *

■ 12. Add § 679.95 to subpart H to read as follows:

§ 679.95 Amendment 80 Program cost recovery.

(a) *Cost recovery fee program for Amendment 80*—(1) *Who is responsible?* The person designated as the Amendment 80 cooperative representative at the time of an Amendment 80 CQ landing must comply with the requirements of this section, notwithstanding:

(i) Subsequent transfer of Amendment 80 CQ or Amendment 80 QS held by Amendment 80 cooperative members;

(ii) Non-renewal of an Amendment 80 CQ permit; or

(iii) Changes in the membership in an Amendment 80 cooperative, such as members joining or departing during the relevant year, or changes in the amount of Amendment 80 QS holdings of those members.

(2) *Fee collection.* Each Amendment 80 cooperative representative is responsible for submitting the cost recovery payment for Amendment 80 CQ landings made under the authority of its Amendment 80 CQ permit.

(3) *Payment*—(i) *Payment due date.* An Amendment 80 cooperative representative must submit all Amendment 80 fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Amendment 80 CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the Amendment 80 CQ permit holder.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Amendment 80 standard ex-vessel value determination and use*—(1) *General.* An Amendment 80 cooperative representative must use the Amendment 80 standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *Amendment 80 standard prices*—(i) *General.* Each year the Regional Administrator will publish Amendment 80 standard prices in the **Federal Register** by December 1 of the year in which the Amendment 80 species landings were made. The standard prices will be described in U.S. dollars per Amendment 80 equivalent pound for Amendment 80 species landings made by Amendment 80 CQ permit holders during the current calendar year.

(ii) *Effective duration.* The Amendment 80 standard prices published by NMFS will apply to all Amendment 80 species landings made by an Amendment 80 CQ permit holder during that calendar year.

(iii) *Determination.* NMFS will calculate the Amendment 80 standard prices for Amendment 80 species based on the following information:

(A) *Pacific cod.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1).

(B) *Amendment 80 species other than Pacific cod.* (*1*) The Regional Administrator will base Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(*2*) The Regional Administrator will establish Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on an annual basis; except the Regional Administrator will establish a first Amendment 80 standard price for rock sole for all landings from January 1 through March 31, and a second Amendment 80 standard price for rock sole for all landings from April 1 through December 31.

(*3*) The average first wholesale product prices reported on the First Wholesale Volume and Value reports, specified in § 679.5(u)(2), will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of Amendment 80 species other than Pacific cod.

(c) *Amendment 80 fee percentage*—(1) *Established percentage.* The Amendment 80 fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS will calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the Amendment 80 cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Amendment 80 Program.

(ii) *Methodology.* NMFS will use the following equations to determine the fee percentage: $100 \times DPC/V$, where:

(A) DPC = the direct program costs for the Amendment 80 Program for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the landings subject to the Amendment 80 fee liability for the current year.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the Amendment 80 fee percentage in a **Federal Register** notice by December 1 of the year in which the Amendment 80 landings were made. NMFS will calculate the Amendment 80 fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* NMFS will apply the calculated Amendment 80 fee percentage to Amendment 80 CQ landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage.* The Amendment 80 CQ permit holder must use the Amendment 80 fee percentage applicable at the time an Amendment 80 species landing is debited from an Amendment 80 CQ allocation to calculate the Amendment 80 fee liability for any retroactive payments for that Amendment 80 species.

(5) *Fee liability determination for an Amendment 80 CQ permit holder.* (i) Each Amendment 80 CQ permit holder will be subject to a fee liability for any Amendment 80 species CQ debited from an Amendment 80 CQ allocation between January 1 and December 31 of the current year.

(ii) The Amendment 80 fee liability assessed to an Amendment 80 CQ permit holder will be based on the proportion of the standard ex-vessel value of Amendment 80 species debited from an Amendment 80 CQ permit holder relative to all Amendment 80 CQ permit holders during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to each Amendment 80 CQ permit holder by December 1 of each year. The summary will explain the fee liability determination including the current fee percentage, and details of Amendment 80 species CQ pounds debited from Amendment 80 CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No Amendment 80 cooperative will receive its Amendment 80 CQ until the Amendment 80 CQ permit holder submits full payment of an applicant's complete Amendment 80 fee liability.

(2) If an Amendment 80 CQ permit holder fails to submit full payment for its Amendment 80 fee by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the Amendment 80 cooperative's representative stating that the Amendment 80 CQ permit holder's estimated fee liability, based on information submitted by the Amendment 80 cooperative's representative, is the Amendment 80 fee liability due from the Amendment 80 CQ permit holder.

(ii) Disapprove any application to transfer Amendment 80 CQ to or from the Amendment 80 CQ permit holder in accordance with § 679.91(g).

(3) If an Amendment 80 cooperative representative fails to submit full payment by the Amendment 80 fee payment deadline described at paragraph (a)(3) of this section:

(i) The Regional Administrator will not issue a Amendment 80 CQ permit to that Amendment 80 cooperative for the following calendar year; and

(ii) The Regional Administrator will not issue Amendment 80 CQ based on the Amendment 80 QS held by the members of that Amendment 80 cooperative to any other CQ permit for that calendar year.

(4) Upon final agency action determining that an Amendment 80 CQ permit holder has not paid his or her Amendment 80 fee, the Regional Administrator may continue to not issue an Amendment 80 CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the

final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the Amendment 80 fee determined to be due by the final agency action will be returned to the Amendment 80 cooperative unless the Amendment 80 cooperative's representative requests the agency to credit the excess amount against the Amendment 80 CQ permit holder's future Amendment 80 fee.

(f) *Appeals.* An Amendment 80 cooperative representative who receives an IAD for incomplete payment of an Amendment 80 fee may appeal under the appeals procedures set out a 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the Amendment 80 Cost Recovery Fee Program.

[FR Doc. 2015–33096 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2012–0924]

RIN 1625–AB68

Ballast Water Management Reporting and Recordkeeping

AGENCY: Coast Guard, DHS.

ACTION: Final rule; information collection approval.

SUMMARY: The Coast Guard announces that it has received approval from the Office of Management and Budget for an information collection request associated with ballast water management reporting and recordkeeping requirements in a final rule we published in the **Federal Register** on November 24, 2015. In that rule, we stated we would publish a document in the **Federal Register** announcing the effective date of the collection-of-information related sections. This rule establishes February 22, 2016, as the effective date for those sections.

DATES: The amendments to §§ 151.2060(b) through (f) and 151.2070, published November 24, 2015 (80 FR 73105), are effective February 22, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Regina Bergner, Environmental Standards Division (CG–OES–3), U.S. Coast Guard; telephone 202–372–1431, email *Regina.R.Bergner@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Viewing Documents Associated With This Rule

To view the final rule published on November 24, 2015 (80 FR 73105), or other documents in the docket for this rulemaking, go to *www.regulations.gov,* type the docket number, USCG–2012–0924, in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' in the first item listed. Use the following link to go directly to the docket: *http://www.regulations.gov/#!docketDetail;D=USCG-2012-0924*.

Background

On November 24, 2015, the Coast Guard published a final rule that amends the ballast water management reporting and recordkeeping requirements. 80 FR 73105. The final rule delayed the effective date of 33 CFR 151.2060(b) through (f) and § 151.2070 because these sections contain collection-of-information provisions that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. On December 4, 2015, the OMB approved the collection assigned OMB Control Number 1625–0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters. Accordingly, we announce that 33 CFR 151.2060(b) through (f) and 151.2070 are effective February 22, 2016. The approval for this collection of information expires on December 31, 2018.

This document is issued under the authority of 33 U.S.C. 1231.

Dated: December 30, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015–33137 Filed 1–4–16; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 07–250; FCC 15–155]

Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modernizes its wireless hearing aid compatibility rules. The Commission adopts these rules to ensure that people with hearing loss have full access to innovative handsets and technologies.

DATES: Effective February 4, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Wireless Telecommunications Bureau, (202) 418–1883, email *Michael.Rowan@fcc.gov,* or Eli Johnson, Wireless Telecommunications Bureau (202) 418–1395, email *Eli.Johnson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order in WT Docket Nos. 15–285 and 07–250; FCC 15–155, adopted November 19, 2015, and released on November 20, 2015. This summary should be read with its companion document, the Notice of Proposed Rulemaking summary published elsewhere in this issue of the **Federal Register**. The full text of the Fourth Report and Order is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete item is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Fourth Report and Order

I. Introduction

1. After review of the record and consideration of both the requirements of section 710 as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) and the previous actions taken in this proceeding, the Commission revises the scope of the wireless hearing aid compatibility rules largely as proposed in the 2010 *Further Notice of Proposed Rulemaking (FNPRM),* 75 FR 54546, Sept. 8, 2010. Specifically, the Commission broadens the scope of the wireless hearing aid compatibility rules, which have until now covered only handsets that are used with CMRS networks meeting specified characteristics enabling frequency reuse and seamless handoff. The Commission now extends the scope to cover handsets (that is, devices with a built-in speaker held to the ear in any of their ordinary uses) used with any terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected Voice over Internet Protocol (VoIP) services provided through pre-installed software applications. In doing so, the

Commission establishes a comprehensive hearing aid compatibility requirement that ensures consumers with hearing loss will have access to the same rapidly evolving voice technology options available to other consumers. To ensure testability under the currently approved technical standard, the Commission will require compliance only to the extent these handsets are used in connection with voice communication services in bands covered by Commission-approved standards for hearing aid compatibility. Section 20.19(a) is limited to mobile handsets consistent with the scope of ANSI Standard C63.19, and remains so under the expanded scope. The Commission therefore affirms that cordless telephones remain subject to section 68.4 of the Commission's rules, including the hearing aid compatibility requirements applicable to telephones under Part 68, and are not affected by the change in scope.

2. While the Commission has taken steps previously to bring such emerging voice services under the rules, these steps are necessary to complete the process. The *Third Report and Order* adopted a technical standard that can be applied to test VoLTE, Wi-Fi-based calling, and other IP-based voice capabilities for hearing aid compatibility, and indicated an expectation that handsets that support covered CMRS voice communications services over IP-based air interfaces such as LTE would indeed be subject to the hearing aid compatibility requirements as a result. The *Third Report and Order* did not expand the scope provision of the rule beyond covered CMRS, or clarify the extent to which the new IP-based voice technologies and air interfaces constituted covered CMRS services. Consistent with the provisions of the CVAA that expressly extend section 710 to both interconnected and non-interconnected VoIP services, adopting the expanded scope will ensure that the wireless hearing aid compatibility requirements apply to handsets used for such services regardless of how the services are classified for other regulatory purposes, and without regard to the network architecture over which the services are provided. The Commission thus resolves any uncertainty regarding the extent to which IP-based voice services covered by the 2011 ANSI Standard are also within the scope of the hearing aid compatibility rules.

3. Its actions also ensure that the hearing aid compatibility rules cover modes of voice communications access that are increasingly available to the public as well as those that may develop in the future. For example, the expanded scope will cover handsets that enable voice communications through VoIP software applications installed by the manufacturer or service provider regardless of whether the calling functionality provides interconnection to the public switched telephone network. It will also cover advances in voice technology that have rendered obsolete some of the current rule's limitations on scope, such as provisions that apply hearing aid compatibility requirements only to services that involve frequency reuse and cell site handoff. Unlike the current scope, the expanded scope will also apply to a voice communications service over Wi-Fi that does not utilize an in-network switching facility that enables reuse of frequencies and seamless hand-off.

1. Statutory Analysis of Expanded Scope

4. The Commisson first finds that section 710, as amended by the CVAA, provides authority to require hearing aid compatibility in any device that meets the Commission's definition of handset and that is used in whole or in part for the delivery of services within the new scope of the rule. The CVAA expressly extended section 710 to cover mobile devices used with advanced communications services, including interconnected and non-interconnected VoIP services, to the extent that such devices are designed to provide two-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone. Thus, as amended by the CVAA, section 710 clearly supports expanding the scope of section 20.19 to cover the full range of handsets used to provide consumers with voice communications services, including IP-based services and voice communications software.

5. Similarly, the CVAA amendments to section 710 confirm the Commission's prior determination that obligations should extend to cover a broad range of mobile handsets, and not merely those used exclusively as telephones. For example, these amendments make clear that covered devices used with public mobile services and private radio services include devices used ''in whole or in part'' to provide those services. While the Commission has recognized that engineering hearing aid compatibility for multi-use handsets may require adjustments to non-voice-communication features, the statute provides that equipment must meet hearing aid compatibility standards without any specific limitation based on non-communication adjustments. The Commission reaffirms that the hearing aid compatibility rules apply to a multi-use handset that can function as a telephone even though it may serve additional purposes or have another primary intended purpose.

6. The Commission further finds that, in deciding whether to extend the scope of the wireless hearing aid compatibility obligations, the Commission must determine whether the statutory criteria for lifting the wireless exemption are satisfied, as it did in 2003 when it first modified the exemption for wireless telephones. The Commission examines each of the four criteria for lifting the exemption below, and determine that each criterion has been satisfied. The Commission finds that (1) individuals with hearing loss would be adversely affected absent the expansion of the rule's scope; (2) compliance with the Commission's hearing aid compatibility rules for the handsets within the expanded scope is technologically feasible; (3) compliance would not increase costs to such an extent that such equipment could not be successfully marketed; and (4) in consideration of these factors, and the costs and benefits of the rule change, expanding the scope of the hearing aid compatibility rules beyond covered CMRS is in the public interest.

7. The Commission emphasizes that the Commission's analysis of the four criteria for lifting the exemption is not restricted to voice communications services that are deployed in the 698 MHz to 6 GHz band, and that the Commission finds that the criteria for lifting the exemption are met for such services in any frequency band, including frequencies outside the band covered by the ANSI 2011 Standard. Consistent with prior Commission determinations, however, the Commission retains the current restriction in the scope of the rule to the 698 MHz to 6 GHz band at this time, so that compliance under the rule is required only for operations in spectrum bands for which there is an approved technical standard. As new frequencies are deployed for comparable voice services and standards for them approved, however, incorporating such frequencies into the rule early in their deployment will better facilitate access to handsets using such frequencies when they are rolled out to the public. For example, the Incentive Auction scheduled to begin in early 2016 will involve new, flexible-use licenses in the 600 MHz Band that are suitable for providing mobile broadband services. The Commission expects that the

technical standards needed for any such frequencies will be developed in timely fashion. To the extent that a manufacturer believes that compliance is not technically feasible or would prevent marketability for devices used with a future public mobile service—such as one that operates in the 600 MHz Band—the manufacturer may apply for a waiver under section 710(b)(3) for the applicable ''new telephones, or telephone associated with a new technology or service.'' By addressing the statutory exemption as it applies to additional frequencies now, the Commission ensures that it need not engage in a similar statutory analysis each time ANSI adopts a revision to cover an additional frequency range, which will help to expedite incorporation of such revisions into the rules and therefore speed the testing and offering of new hearing aid-compatible technologies to consumers. The Commission's determinations in this Fourth Report and Order should remove any doubt that, as new frequencies are deployed for comparable voice services and corresponding hearing aid compatibility standards are developed, the Commission intends to incorporate them into the Commission's requirements. This will advance the Commission's goal that the Commission's rules provide people who use hearing aids and cochlear implants with continuing access to the most advanced and innovative technologies as they develop.

8. *Adverse Effect on People with Hearing Loss.* In the *FNPRM,* the Commission proposed to find that failure to extend hearing aid compatibility requirements broadly to handsets used for voice communications with members of the public or a substantial portion of the public, including those operating over new and developing technologies, would have an adverse effect on people with hearing loss and deny such consumers an opportunity to use advanced functionalities and services becoming commonplace in society. The Commission further suggested that the inability to access such innovative technologies as they develop would have an adverse effect on individuals with hearing loss, and that a broad scope could address that concern by encouraging manufacturers to consider hearing aid compatibility at the earliest stages of the product design process.

9. Consumer Groups and ASHA comment that people with hearing loss who use hearing aids need access to mobile phone services just like every other American, including at home, work, school, and in emergency situations, and that updated regulations can help to ensure that these people can be fully integrated into society. TIA comments that manufacturers have made gains to enhance access by deaf or hard of hearing individuals to new technologies and hearing aid-compliant products, while CTIA contends that the current rules for hearing aid compatibility have been highly effective in ensuring that a wide variety of compliant wireless handsets are available to the public.

10. Consistent with the Commission's proposed findings, the Commission concludes that failure to adopt the expanded scope would adversely affect people with hearing loss. Absent the amended scope, mobile VoIP services would be covered only to the extent that they were determined to both satisfy the definition of CMRS and involve the use of ''an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.'' Those limitations, the Commission finds, would materially impede the ability of people with hearing loss to use many advanced devices and networks, and the Commission notes that ongoing innovation would likely amplify this harmful impact over time. If handsets encompassing these emerging technologies are not broadly made hearing aid-compatible, consumers with hearing loss who use hearing aids or cochlear implants could be left without full access to new technologies and networks that are used increasingly by members of the public to communicate with one another at home, at work, and as they travel, including for communications in critical emergencies. The Commission notes that mobile technologies generally are increasingly important to members of the public. According to the National Center for Health Statistics, the percentage of adults living in households with only wireless telephones has been steadily increasing with about 44.1 percent of adults (about 106 million adults) living in wireless-only households as of the last six months of 2014; in addition, as of the last six months of 2014, 54.1 percent of all children (nearly 40 million children) lived in households that only used wireless telephones. Having access to emerging IP-based voice technologies such as High Definition Voice may prove particularly important to individuals with hearing loss. In addition, as these emerging handsets evolve to encompass a wide and growing range of computing and other functions, a lack of hearing aid-compatible handsets may force individuals with hearing loss to choose between limiting their voice communications or limiting their access to many of the other features that these new handsets offer.

11. In broadening the scope of the rule, the Commission is mindful that it is important to ensure hearing aid-compatible access to handsets, voice technologies, and networks not only once they are established but also as they develop in the future. The Commission anticipates ongoing innovation in mobile voice technologies that will lead to more services for consumers to communicate that do not use the North American Numbering Plan or involve the cellular system architecture reflected in the current rule. By making clear that hearing aid compatibility requirements apply not only to currently available technologies such as VoLTE but to all mobile terrestrial services that enable two-way, real-time voice communications among members of the public, the Commission ensures that new consumer devices—that might be developed or emerge in the future—will be covered as technical standards become available, regardless of regulatory classification or network architecture, unless a waiver is granted. The Commission expects manufacturers to take hearing aid compatibility into account during the early stages of product development.

12. *Technological Feasibility.* In the *FNPRM,* the Commission sought comment on whether handsets that are currently on the market or are planned for introduction that fall within the coverage of the proposed rule, but are not covered by the existing rule, would meet the existing ANSI standard or a similar performance standard, for frequency bands and air interfaces that are not addressed by the existing standard. Given that hearing aid compatibility standards were already being met for handsets that operate on a variety of 2G and 3G air interfaces over two frequency bands, the Commission stated that, absent evidence to the contrary, it was likely that such standards could be met for handsets not within the class of covered CMRS but that provide similar services. The Commission further indicated that commenters arguing that compliance was not feasible should provide specific engineering evidence related to a defined class of handsets.

13. TIA comments that the Commission should not expand the application of the hearing aid compatibility requirements beyond the scope of consumer wireless handsets with CMRS functionality until there is a better understanding of the obstacles

in making the products and expanding services, and argues that issues relating to applying the rules to VoLTE and Wi-Fi with CMRS capability illustrate that emerging technologies create new and previously unanticipated technical challenges.

14. The Commission concludes that it is technologically feasible to manufacture newly covered handsets so they meet the minimum ratings for hearing aid compatibility under the current technical standard or, to the extent they may be deployed in frequencies not addressed under the 2011 ANSI Standard, under a similar performance standard. Since the Commission proposed its analysis in 2010, subsequent developments have only confirmed that compliance with the hearing aid compatibility requirements will generally be feasible for consumer mobile voice technologies. Indeed, manufacturers are already successfully testing and rating VoLTE operations for both T- and M-rating compliance, and they are also successfully testing and rating CMRS-enabled voice communications over Wi-Fi (hereinafter ''Wi-Fi Calling'') for M-rating compliance, demonstrating empirically that compliance in those areas is technologically feasible. In addition, OET's Laboratory Division issued guidance in October 2013 describing the technical parameters related in part to testing VoLTE and Wi-Fi Calling functionalities for both M-ratings and T-ratings, and did not identify any challenges related to technological feasibility. While the 2013 guidance did observe that the equipment needed to test for T-coil compliance for Wi-Fi Calling ''may not be readily available'' and therefore excluded such operations from the testing obligation, nothing in the record suggests that the availability of testing equipment remains a challenge, and perhaps more significantly, this limitation does not bear on technological feasibility.

15. The Commission finds that any technical challenges to achieving hearing aid compatibility in handsets will not differ significantly from those that manufacturers have already addressed in achieving hearing aid compatibility in the broad range of mobile handsets noted above. Indeed, because the specifications for new air interface technologies (such as the Fifth Generation or 5G wireless technology) will now be developed with the expectation that hearing aid compatibility requirements will apply, the Commission anticipates that the need to meet such requirements will be taken into account early in the design process, which should help to ensure that compatibility for such technologies is feasible. The Commission notes that industry commenters have provided no example of developing technology within the adopted scope for which achieving hearing aid compatibility was found to be infeasible, and the Commission knows of no reason that consumer handsets that operate over systems within the expanded scope could not achieve these ratings. As the Commission noted in 2010, to the extent the Commission is presented with the rare case of a new technology that cannot feasibly meet the requirements, or cannot do so in full, section 710 expressly provides for a waiver.

16. *Marketability.* In the *FNPRM,* the Commission stated that based on the number of hearing aid-compatible models that were already being successfully marketed across multiple air interfaces and frequency bands, it anticipated, in the absence of convincing evidence to the contrary, that other telephones offering similar capabilities and meeting the same or comparable compliance standards could also be successfully marketed. The Commission sought comment on this statement and on whether there is any class of handsets for which the cost of achieving compliance would preclude successful marketing. The Commission sought comment on whether, for reasons of technological infeasibility or prohibitive costs, any rule provisions could not be applied to any class of handsets.

17. Generally, aside from the impact relating to satellite phones, commenters did not address in detail whether compliance would increase costs to such an extent that equipment could not be successfully marketed. TIA argues that an open-ended application of the rules to other types of wireless handsets with voice capability but which are not typically held to the ear would, among other matters, impose undue financial burdens. HIA comments that in terms of costs, compatibility with other devices is already a factor in hearing aid design, and thus does not anticipate that a ''to the ear'' standard it supports would impose additional costs on its members.

18. In order to expand the scope of section 20.19, the Commission must also find that compliance would not increase costs to a degree that would prevent successfully marketing of the equipment. As discussed above in the Commission's analysis of technological feasibility, manufacturers already offer numerous hearing aid-compatible handsets with differing features and physical characteristics over a variety of air interfaces, including a number of models certified as hearing aid-compatible over LTE. Further, while Iridium and Inmarsat raise concerns about the impact of hearing aid compatibility requirements on the marketability of satellite phones, no commenter raises any concerns about marketability with respect to handsets and operations within the expanded scope the Commission adopts in this Fourth Report and Order. Considering the absence of anything in the record demonstrating compliance costs that would depart materially from the costs for handsets that already comply, the Commission anticipates that handsets offering comparable voice communications capabilities to the public will similarly be marketable. The Commission therefore finds that requiring hearing aid compatibility for handsets newly within the scope of the requirements will not undermine their marketability. To the extent the Commission is presented with the rare case of a new technology for which compliance would increase costs to the extent that the technology could not be successfully marketed, section 710 expressly provides that the Commission may waive the requirements.

19. *Public Interest.* In the *FNPRM,* the Commission proposed to find that expanding the scope of the hearing aid compatibility requirements to reach handsets using new technologies would serve the public interest. In seeking comments on this proposal, the Commission stated that its policy ''is to encourage manufacturers to consider hearing aid compatibility at the earliest stages of the product design process.'' The Commission further stated that the Hearing Aid Compatibility Act makes clear that consumers with hearing loss should be afforded equal access to communications networks to the fullest extent feasible. The Commission stated that commenters should address the proposed finding that further modification of the exemption to reach handsets using new technologies is in the public interest.

20. Consumer Groups argue that there are millions of Americans with hearing loss, technological innovations help people with disabilities, and they need access to their mobile phones in different settings. ASHA and Lintz note the importance of wireless phones to those who suffer from hearing loss.

21. The Commission concludes, in light of the consideration of the costs and benefits to all telephone users, that applying the hearing aid compatibility requirements to all handsets and services within the expanded scope, including current and emerging IP-based voice services, will serve the

public interest. Most notably, an expanded scope will ensure that the country's approximately 36 million individuals with hearing loss have access to the advances in communications and related technology that are becoming increasingly essential to participation in our society. The expanded scope makes it more likely that individuals with hearing loss will have access to the latest technology in mobile handsets since technological innovations will generally have to be considered in the design stage for the handsets. The Commission further finds that enabling access to the full—and growing—range of handsets available to all other consumers will provide both social and economic benefits to consumers with hearing loss. Access to mobile handsets with innovative technologies as they develop can benefit not just an employee with hearing loss who uses his or her own mobile phone but the employer and co-workers as well, by facilitating the full participation and valuable input of employees with hearing loss who otherwise may be restricted in their ability to fully communicate with their colleagues. Members of the public will also generally benefit from being able to communicate with people with hearing loss as fully and robustly as possible. The Commission also notes that the wireless industry's comments demonstrate broad support for covering advanced services. For example, in its comments to the 2010 *FNPRM,* TIA supports ''expand[ing] the scope of the hearing aid compatibility rules to advanced communications technologies'' guided by the Commission's Policy Statement and consistent with section 710 of the Act. For these reasons, the Commission finds that expanding the scope of section 20.19 as discussed herein advances the public interest.

22. *Public Safety and Private Enterprise Networks.* The Commission declines, at this time, to extend the hearing aid compatibility rules to handsets used exclusively with services that are not available to the public, such as services over public safety or private enterprise networks (meaning those networks that are designed and deployed to meet a business's specific communications needs). For example, the Commission does not extend hearing aid compatibility requirements to state, local, and Tribal public safety radio systems used by police, fire, or emergency medical personnel for dispatch and emergency response. Consistent with this determination, the Commission further clarifies that the incorporation of a VoIP functionality operating over Wi-Fi in a public safety or private enterprise device does not bring the device under the expanded scope of the rule. Rather, The expanded scope will cover only devices used with the provision of a service available to the public or a substantial portion of the public.

23. In the past, the Commission's decisions to lift the exemption for devices used with some wireless services, and particularly the Commission's determination that doing so is in the public interest, have been based in part on the Commission's findings that these devices and services have become part of the mass market for communications. Generally, handsets for network services such as public safety or private enterprise networks are designed for a specialized market with a limited set of users. Based on the record before us, there is little evidence on the extent that these specialized public safety and private enterprise devices would satisfy the criteria of technical feasibility and marketability. Rather, the record supports the Commission's tentative conclusion in the *FNPRM* that the different market circumstances for public safety or private enterprise networks and the absence of an existing universe of hearing aid-compatible handsets would increase the burden of meeting the hearing aid compatibility requirements. In addition, although the Commission recognizes there are benefits to ensuring accessibility to public safety or private enterprise devices, the record reflects that the typical weight, shape, and other aspects of the physical design of public safety and private enterprise devices are such that the radios conventionally are not held up to the ear but rather used with audio that emanates from a loudspeaker with adjustable volume control rather than from a telephone earpiece. As such, the Commission finds that these devices are generally not comparable in their typical use to the wireless handsets covered by the hearing aid compatibility obligations. The Commission also finds that the public interest requires that the Commission proceeds with caution in order to avoid requirements that may discourage, delay, or increase the cost of equipment where public safety or critical infrastructure operations are directly at stake. Taking these factors into consideration, the record precludes us from finding that the benefit associated with expanding the rule to public safety and private enterprise networks would outweigh the cost. Accordingly, the Commission finds, at this time, that the statutory requirements are not met in order to expand the scope of the hearing aid compatibility rules to include these devices. The Commission continues to be sensitive to the needs of those individuals with hearing loss, however, and will consider re-visiting this issue if it comes to the Commission's attention that the benefits associated with expanding the rule come to outweigh the costs.

24. *Non-terrestrial Networks.* Based on the existing record, the Commission is unable to find that the statutory criteria for lifting the hearing aid compatibility exemption have been satisfied for radio communication devices operating over non-terrestrial networks, such as those operating in the MSS. As Iridium has explained, MSS handsets operate at significantly higher power levels than mass market devices and must communicate with stations over a dramatically greater distance than comparable terrestrial technologies. Iridium also notes that lower sales volumes, in-house product development, and longer product development and marketing cycles due to infrequent product replacements pose additional impediments to achieving hearing aid compatibility. Even if such challenges could be overcome, the record supports the conclusion that each MSS provider would need to develop its own solution, and the Commission is concerned that the increased costs associated with complying with the rules in those circumstances, and the MSS industry's need to recover those costs over a relatively limited market, would prevent the successful marketing of MSS handsets or discourage further innovation in such handsets. Further, because MSS providers offer a specialized service over customized technology to a small customer base that is focused on government, critical infrastructure, and other large enterprise users, and not the public at large, the Commission finds that extending hearing aid compatibility requirements to the MSS raises concerns similar to those noted above regarding public safety and private enterprise networks. Indeed, the Commission found last year that these characteristics justified not extending to MSS the text-to-911 requirements that the Commission otherwise imposed broadly on CMRS providers and all other providers of interconnected text-messaging applications. Although there could be benefits to individuals with hearing loss from extending the scope of the hearing aid compatibility rules to cover such

devices and services, the current differences between MSS and terrestrial services, as well as concerns and uncertainty regarding the marketability and technological feasibility of hearing aid-compatible MSS devices, do not allow us at this time to make the determinations necessary to lift the exemption for these devices. The Commission will reevaluate in the future whether the MSS should remain exempt from the scope of the hearing aid compatibility rules.

2. Voice Capability Provided Through Software

25. *Background.* When the Commission first promulgated hearing aid compatibility rules, applications that enable voice communications through third-party software did not exist. If a digital handset enabled voice communications, it could do so only through the native voice capabilities of the service provider's network technology relying on a voice coder-decoder (codec) embedded in the hardware. Today, mobile voice communications can be enabled in a variety of ways, including: Applications pre-installed by the manufacturer, its operating system software partner, or a service provider; applications downloaded by the end user from the manufacturer's store; or applications that the end user obtains from an independent source. While third-party voice applications may rely on a voice codec built into the operating system or hardware of the device, they may also use their own proprietary codec. While seeking comment in the 2010 *FNPRM* on expanding the scope of the hearing aid compatibility rules beyond covered CMRS, the Commission also sought comment on how its hearing aid compatibility rules should address circumstances where voice capability may be enabled on a handset by a party other than the manufacturer.

26. AT&T, ATIS, Consumer Groups, CTIA, MetroPCS, Motorola, TIA, and T-Mobile agree that manufacturers and service providers should not be required to ensure compliance for voice communication capabilities added to a handset by consumers or third parties after original purchase. In connection with this argument, AT&T, CTIA, and TIA cite section 2(a) of the CVAA, which they claim limits liability for certain third-party activities, as support for exempting them from compliance responsibility for third party actions. These commenters oppose subjecting manufacturers and service providers to testing requirements for third party applications unless the manufacturer and service provider have themselves affirmatively incorporated the application into a device, arguing, in the main, that manufacturers and providers lack control over third party applications installed in the device by someone else. In contrast, HIA argues that hearing aid compatibility should be ensured both ''at the time of sale'' and upon ''installation of a voice feature.'' As an alternative approach, Consumer Groups urge the Commission to require manufacturers and service providers to include provisions in their licensing agreements or contracts with software application developers to ensure that software maintains the hearing aid compatibility of a device.

27. *Discussion.* After consideration of the record, the Commission agrees with those commenters that argue against applying the hearing aid compatibility requirements to voice applications added by consumers after their purchase of the device. The record demonstrates that testing a device for hearing aid compatibility for all possible applications is infeasible at this time because manufacturers and service providers are unable to predict what third-party software a consumer may choose to install. The Commission believes it would create incentives to restrict the open development of new voice applications if the Commission holds manufacturers and service providers responsible for hearing aid compatibility compliance for all third-party voice applications. Certifying a handset for hearing aid compatibility does not require testing software-based voice functions except to the extent that such software applications are installed by the manufacturer or service provider, or at their direction, for use by a consumer over a given air interface. The Commission requires that, when testing a device's operations over a given air interface, manufacturers must ensure the hearing aid compatibility of all voice communication functionality they provide over that interface whether such functionality is provided through software, hardware, or both. The Commission declines to limit responsibility to the subset of such software installed prior to certification, as suggested by TIA. Such a restriction would not ensure compatibility of software that manufacturers or service providers install after certification, and the Commission sees no reason not to require compatibility of such software. Because, under the Commission's approach, manufacturers and service providers need only ensure the compatibility of the software-based voice operations that are installed by the manufacturer or service provider or at their direction, and such operations are necessarily within their control, the Commission finds that testing any software-based voice functionality is technically feasible, not unduly burdensome, and beneficial to consumers with hearing loss who may wish to use such operations.

28. Previously, the Commission has permitted manufacturers and service providers to obtain hearing aid compatibility certification for handsets that are capable of supporting additional voice capability without testing for such operations, including the operations addressed above, but has required them to disclose to consumers that not all of the handsets' operations have been tested and rated for hearing aid compatibility. While the Commission now establishes a requirement to test and rate software applications installed under the circumstances specified above in order to obtain hearing aid compatibility certification, the Commission finds it appropriate to provide a period of time during which manufacturers may continue to certify handsets based on disclosure rather than testing. The Commission anticipates that implementing the requirement to test and rate software-based voice functionality will require additional guidance on testing parameters, the development of new systems capable of testing the applicable codec/air interface combinations, as well as coordination between manufacturers, service providers, and third-party application providers. Given these implementation issues, the Commission provides that during the transition period for applying deployment benchmarks, manufacturers may continue to obtain hearing aid compatibility ratings for a device's operation on a given air interface without testing and rating software-enabled voice functions, as long as they disclose to consumers that certain operations have not been tested and rated for hearing aid compatibility, consistent with the disclosure required in section 20.19(f)(2)(i). The Commission notes again that ANSI ASC C63®-EMC, at its November 2015 meeting, formally approved a project to revise the ANSI C63.19 standard for hearing aid compatibility to address a number of topics, including some technologies not covered in the current version of the standard. The application of the transition period to software-based voice operations reflects, in part, the Commission's expectation that industry groups will work through the standards process to finalize all necessary guidance well before the end

of the transition period. If manufacturers and service providers come to conclude that such guidance is not available sufficiently far in advance of the transition date to allow parties to come into compliance, they may seek an extension of the transition deadline by petitioning the Commission for a waiver of this regulatory deadline under the Commission's waiver rules (*e.g.,* sections 1.3 and/or 1.925, as appropriate). As part of its review of any petitions to waive this regulatory deadline, the Commission will consider possible impacts on consumers with hearing loss.

3. Transition Period for Applying Existing Deployment Benchmarks

29. *Background.* To ensure that a wide selection of digital wireless handset models is available to consumers with hearing loss, the Commission's hearing aid compatibility rules require both manufacturers and service providers to meet defined benchmarks for deploying hearing aid-compatible wireless handsets. Specifically, manufacturers and service providers are required to offer minimum numbers or percentages of handset models that meet the technical standards for compatibility with hearing aids operating in modes for acoustic coupling (M-rating) and inductive coupling (T-rating). These benchmarks apply separately to each air interface for which the manufacturer or service provider offers handsets.

30. In the 2010 *FNPRM,* the Commission sought comment on the appropriate transition period before applying these hearing aid compatibility deployment benchmarks to lines of handsets that are ''outside the subset of CMRS that is currently covered by section 20.19(a).'' In this regard, the Communications Act, as amended by the CVAA, directs the Commission to ''use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.''

31. In their comments, Clearwire, CTIA, T-Mobile, and Motorola support a two-year transition as adequate for many handsets to come into compliance with existing benchmarks. RWA, Blooston, and RTG support longer time frames of up to an additional 12 months for small, rural, and/or Tier III service providers who, these commenters contend, do not have the same access to new handsets as Tier I providers. While it did not propose any specific time period, HIA states that the transition period should be no longer than the minimum amount of time needed for a new product design cycle.

32. *Discussion.* Based on the record in this proceeding, the Commission finds it in the public interest to adopt a January 1, 2018 transition date (for manufacturers and Tier I carriers) and an April 1, 2018 transition date (for other service providers) for applying section 20.19's deployment benchmarks and related requirements to newly covered air interfaces, *i.e.,* those air interfaces that operate outside the former scope of the hearing aid compatibility rules due to either regulatory status or network architecture issues. The Commission will begin enforcing the benchmarks for these newly covered air interfaces once the applicable transition period expires. After the transition is complete, the M- and T-rating deployment benchmarks for handsets supporting any newly covered operations will be the same as those used for currently covered operations in handsets, and the Commission will apply the same benchmark requirements (including the *de minimis* rules) to all handsets, including newly covered operations, that a manufacturer or a service provider offers. In this regard, the Commission notes that TIA argues that the Commission should extend the *de minimis* exception to handsets offered over air interfaces that a manufacturer or service provider is phasing out of its portfolio. This comment appears to go to the exception's operation generally and not to its application after a possible transition, and therefore it is outside the scope of the *FNPRM.*

33. The Commission finds that a January 1, 2018 transition date is appropriate for both manufacturers and Tier I service providers. When the Commission adopted its initial hearing aid compatibility rules in 2003, it gave manufacturers and Tier I carriers 24 months to comply with acoustic coupling requirements. Similarly, in 2012, OET and WTB adopted a 24-month transition period for covered CMRS operations that use frequency bands and air interfaces that can be tested under the 2011 ANSI Standard. As discussed above, the Commission finds that any challenges related to technical feasibility and marketability will not be significantly different for newly covered handsets than for handsets that are currently being made hearing aid-compatible under the rule. The Commission finds that a similar transition period provides adequate time to adjust handset portfolios to ensure compliance with the benchmarks that apply independently to each air interface, regardless of whether the voice communications functionality is network-based or software-based. This transition period affords manufacturers a reasonable amount of time to implement requirements to test and rate software-based voice functionality. Although HIA argues that the transition period should be limited to the length of a typical product design cycle, the Commission has previously determined that two years is an appropriate period to accommodate the typical handset industry product development cycle, and the record in this proceeding further supports that conclusion. The Commission finds that a January 1, 2018 transition date for manufacturers and Tier I service providers is an appropriate timetable to account for any issues of technical feasibility and marketability.

34. The Commission affords an additional three months for non-Tier I service providers to meet the deployment benchmarks and related requirements for handsets newly subject to the hearing aid compatibility rules. In allowing additional time until the April 1, 2018 transition date, the Commission recognizes that non-Tier I service providers often have difficulty obtaining the newest handset models. While some commenters argue that the transition period should be longer in certain instances, the record does not demonstrate a need for an even greater transition period for non-Tier I service providers nor any reason to depart from prior hearing aid compatibility transitions in which the Commission afforded non-Tier I providers an additional three months beyond the transition period provided to Tier I service providers.

35. Given that many manufacturers and service providers began meeting benchmarks in 2014 for handsets with operations over the additional air interfaces and frequency bands covered by the 2011 ANSI Standard, including in the case of the LTE air interface, the Commission anticipates that these parties will continue to meet existing benchmarks during the transition. The Commission finds this expectation reasonable for any IP-based voice services, including VoLTE and Wi-Fi Calling, given that affected parties are already meeting deployment benchmarks for VoLTE operations, and the record reflects that manufacturers and service providers are in some cases already widely complying with hearing aid compatibility requirements.

36. The Commission notes that, due to a lack of testing equipment availability, manufacturers are currently permitted to obtain certification of handset models for inductive coupling capability under

the 2011 ANSI Standard without testing and rating any present VoLTE or Wi-Fi Calling operations, subject to a disclosure that such handsets have not been tested and rated for all of their operations. The Commission emphasizes that, at the January 1, 2018 transition date, parties will need to meet requirements to test and rate for inductive coupling capability, including for VoLTE and Wi-Fi Calling if such services are included in the handset, in order to certify such handsets as hearing aid-compatible and meet applicable deployment requirements. During the transition, however, the Commission will continue the interim process permitting disclosure instead of inductive coupling testing and rating for VoLTE and Wi-Fi Calling when used to provide CMRS-based voice services. The Commission notes that some newer VoLTE-enabled handsets have been tested and rated for inductive coupling capability. The record reflects an industry understanding that the current process allowing for disclosure instead of testing and rating for inductive coupling capability in all modes of operation is temporary. Indeed, the industry has had notice for over a year that Commission staff are reassessing how long the Commission should use the current process as testing equipment and protocols become increasingly available. Thus, the Commission finds that the January 1, 2018 transition date is a reasonable point in time at which the Commission will require full inductive coupling testing and rating of handsets with VoLTE and Wi-Fi Calling functionality before certifying these handsets so manufacturers and service providers can meet their deployment benchmarks.

II. Procedural Matters

A. Final Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the rules considered in the *FNPRM* in WT Docket 07–250. The Commission sought written public comments on the *FNPRM* in this docket, including comment on the IRFA. Because the Commission amends its rules in the Fourth Report and Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to the Commission's rules, or statements made in preceding sections of this Fourth Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, the Fourth Report and Order

38. Until now, the hearing aid compatibility rules have generally been limited only to handsets used with two-way switched voice or data services classified as Commercial Mobile Radio Service (CMRS), and only to the extent they are provided over networks meeting certain architectural requirements that enable frequency reuse and seamless handoff. In the Fourth Report and Order, the Commission expands the scope of these rules to cover the emerging wireless technologies of today and tomorrow. The rules adopted here eliminate uncertainty about the scope of the Commission's hearing aid compatibility requirements and ensure that emerging voice services will be covered regardless of their classification for other regulatory purposes and without restriction to a particular network architecture. The rules now extend to handsets (those mobile device that contain a built-in speaker and are typically held to the ear in any of their ordinary uses) used with any terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including through the use of pre-installed software applications. The Commission also adopts a transition period that ensures industry stakeholders will be able to comply with these rules while continuing to innovate and invest. By expanding the scope of the Commission's rules to those consumer mobile devices that are typically held to the ear, are heavily relied on for voice communications, and operate in bands covered by approved standards—and only where compliance is technically feasible—we target the Commission's efforts to those situations where Commission action can make a significant impact and best serve the public interest. In this regard, the Commission has been mindful of its obligation to expand hearing aid compatibility requirements only in those instances where the record supports the necessary statutory findings mandated by the Hearing Aid Compatibility Act. This action will require that future technologies comply with the Commission's hearing aid compatibility rules, ensuring that consumers with hearing loss are not always trying to catch up to technology and providing industry with additional regulatory certainty.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

39. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

40. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

41. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

42. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This

industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees. Thus, under this size standard, the majority of firms can be considered small.

43. *Part 15 Handset Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, the Commission will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees. Thus, under this size standard, the majority of firms can be considered small.

44. *Wireless Telecommunications Carriers (except satellite).* The Census Bureau defines this category as follows: ''This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.'' The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite). In this category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. According to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. The Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

45. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in one of three categories. The first refers to whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). This type of ISP is classified by the Commission in the category of Wired Telecommunications Carriers. Wired Telecommunications Carriers comprise establishments primarily engaged in operating or providing access to transmission facilities or infrastructure that they own and/or lease for the transmission of voice, data, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or on a combination of technologies. Establishments in this industry use the wired telecommunications network facilities to provide a variety of services, such as wired telephony services, including VoIP services, wired cable audio and video programming distribution, and wired broadband Internet services. By exception, establishments providing satellite distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers have an SBA small business size standard under which an establishment having 1,500 or fewer employees is small. The second type of ISP is classified in the category of Wireless Telecommunications Carriers (except satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this service have spectrum licenses and provide services using that spectrum, such as cellular phone services, wireless Internet access, and wireless video services. The size standard for Wireless Telecommunications Carriers (except satellite) is the same as for Wired Telecommunications Carriers. The third type of ISP is classified under All Other Telecommunications. This industry comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry. The SBA size standard for this industry states that all establishments in this category whose annual receipts are $32.5 million or less are small.

46. For purpose of this rulemaking, the Commission is concerned only with those ISPs that are classified either in the category of Wireless Communications Carriers (except satellite) or are classified in the category of All Other Telecommunications. The type of handsets which are the subject of the proposed rulemaking herein is primarily, if not exclusively, concerned with wireless handsets. ISPs which are classified under Wired Telecommunications are not relevant in the context of this particular rulemaking.

47. United States census data for 2007 show that there were 1,383 Wireless Telecommunications Carriers (except satellite) firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) telephony services. Of these, an estimated 261 have 1,500 or fewer

employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless telecommunications carriers can be considered small.

48. With regard to the category of All Other Telecommunications, U.S. Census data for 2007 state that 2,383 firms were operational during that year. Of that number, 2,346 had annual receipts of less than $25 million. The Commission estimates that the majority of ISP firms in this category are small entities.

49. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' VoIP services over wireless technologies could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $27.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 354 had annual receipts of under $25 million. The Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. The current hearing aid compatibility regulations impose a number of obligations on covered CMRS providers and the manufacturers of handsets used with those services, including: (1) Requirements to deploy a certain number or percentage of handset models that meet hearing aid compatibility standards, (2) ''refresh'' requirements on manufacturers to meet their hearing aid-compatible handset deployment benchmarks in part using new models, (3) a requirement that service providers offer hearing aid-compatible handsets with varying levels of functionality, (4) a requirement that service providers make their hearing aid-compatible models available to consumers for testing at their owned or operated stores, (5) point of sale disclosure requirements, (6) requirements to make consumer information available on the manufacturer's or service provider's Web site, and (7) annual reporting requirements.

51. The Fourth Report and Order expands the scope of the hearing aid compatibility rules to cover handsets used with any terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including through the use of pre-installed software applications and other Internet Protocol (IP)-based technologies. After the transition period, the rules the Commission adopts will extend to providers of wireless voice communications among members of the public or a substantial portion of the public using equipment that contains a built-in speaker and is typically held to the ear, and to the manufacturers of such equipment, the same hearing aid compatibility rules that currently apply to a defined category of CMRS. The Commission also clarifies that testing a handset for hearing aid compatibility does not require testing software voice functions except to the extent that such functionality is installed by the manufacturer or service provider or at their direction, for use by a consumer over a given interface. The Commission provides that the existing deployment benchmarks and related requirements will apply to newly covered handsets and air interfaces beginning January 1, 2018, with an additional three months allowed for handsets offered by non-Tier I service providers. The Commission further provides that, during this transition period, manufacturers may continue to obtain a hearing aid compatibility rating for a handset's operation on a given interface without testing software-enabled voice functions provided they meet applicable disclosure requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.''

53. In adopting the Fourth Report and Order, the Commission expands the scope of the wireless hearing aid compatibility rules to cover handsets used with any terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including through the use of pre-installed software applications. The change in scope ensures that handsets with emerging voice technologies are subject to hearing aid compatibility requirements. At the same time, the new scope eases burdens on manufacturers and service providers, including small entities, by permitting handsets already certified to continue to be treated as hearing aid-compatible without any need for recertification after the expanded scope of the hearing aid compatibility rules goes into effect. The new scope also eases burdens for small entities by applying the same *de minimis* exception rules when the existing M- and T-rating deployment benchmarks begin to apply to all handsets, including newly covered operations, that a manufacturer or a service provider offers.

54. The Commission adopts a transition period in order to reduce burdens on small entities and others. The Commission finds it in the public interest to adopt a January 1, 2018 transition date (for manufacturers and Tier I carriers) and an April 1, 2018 transition date (for other service providers) for applying section 20.19's deployment benchmarks and related requirements to newly covered operations. Some commenters support longer time frames of up to an additional 12 months for small, rural, and/or Tier III service providers who, these commenters contend, do not have the same access to new handsets as Tier I providers. The Commission considered this alternative proposal and decided to afford an additional three months for non-Tier I service providers to meet the deployment benchmarks and related requirements for handsets newly subject to the hearing aid compatibility rules. In allowing additional time until the April 1, 2018 transition date, the Commission recognizes that non-Tier I service providers often have difficulty obtaining the newest handset models. The Commission determined that the record does not demonstrate a need for a longer transition period for non-Tier I service providers (including small entities) nor provide any reason to depart from prior hearing aid compatibility transitions in which the Commission afforded non-Tier I providers an additional three months beyond the transition period

provided to Tier I service providers because, in part, a shorter period would better meet the needs of consumers with hearing loss.

6. Report to Congress

55. The Commission will send a copy of the Fourth Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Fourth Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Fourth Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Final Paperwork Reduction Act Analysis

56. The Fourth Report and Order does not contain substantive new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It does not contain any substantive new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

57. The Commission will include a copy of this Fourth Report and Order and Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

III. Ordering Clauses

58. *It is ordered,* pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, this Fourth Report and Order *is hereby adopted.*

59. *It is further ordered* that the rule amendments *will become effective* 30 days after their publication in the **Federal Register**.

60. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Fourth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 2. Section 20.19 is amended by revising paragraphs (a)(1) and (2), (a)(3)(iv), and (b)(3)(i) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) * * *

(1) *Service providers.* (i) On or after January 1, 2018 for Tier I carriers and April 1, 2018 for service providers other than Tier I carriers, the hearing aid compatibility requirements of this section apply to providers of digital mobile service in the United States to the extent that they offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 698 MHz to 6 GHz bands.

(ii) Prior to January 1, 2018 for Tier I carriers and April 1, 2018 for service providers other than Tier I carriers, the hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 698 MHz to 6 GHz bands.

(2) *Manufacturers.* On or after January 1, 2018, the requirements of this section also apply to the manufacturers of the wireless handsets that are used in delivery of the services specified in paragraph (a)(1)(i) of this section. Prior to January 1, 2018, the requirements of this section also apply to the manufacturers of the wireless handsets that are used in delivery of the services specified in paragraph (a)(1)(ii) of this section.

(3) * * *

(iv) Service provider refers to a provider of digital mobile service to which the requirements of this section apply.

* * * * *

(b) * * *

(3) * * *

(i) Except as provided in paragraph (b)(3)(ii) of this section, a wireless handset used for digital mobile service only over the 698 MHz to 6 GHz frequency bands is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard set forth in paragraph (b)(1) or (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter. A wireless handset that incorporates operations outside the 698 MHz to 6 GHz frequency bands is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph (b).

* * * * *

[FR Doc. 2015–32757 Filed 1–4–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 141219999–5432–02]

RIN 0648–XE345

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015 Tribal Fishery Allocations for Pacific Whiting; Reapportionment Between Tribal and Non-Tribal Sectors

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

ACTION: Reapportionment of tribal Pacific whiting allocation; request for comments.

SUMMARY: This document announces the reapportionment of 30,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via automatic action on September 21, 2015, in order to allow

full utilization of the Pacific whiting resource.

DATES: This rule is effective December 30, 2015, until December 31, 2015. The reapportionment of Pacific whiting is applicable September 21, 2015, until December 31, 2015. Comments will be accepted through January 20, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0017, by any of the following methods:

- *Electronic Submissions*: Submit all electronic public comments via the Federal eRulemaking Portal at *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0017,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Miako Ushio.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206–526–4644 or email: *miako.ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This document is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Pacific Whiting

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. Pacific whiting has the largest (by volume) annual allowable harvest levels of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide Pacific whiting stock is managed jointly by the United States (U.S.) and Canada, and mature Pacific whiting are commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment for and the establishment of the 2015 Total Allowable Catch (TAC) for Pacific whiting is provided in the final rule for the 2015 Pacific whiting harvest specifications, published May 14, 2015 (80 FR 27588). Pacific whiting is allocated to the Pacific Coast treaty tribes (tribal fishery), and to three non-tribal commercial sectors: The catcher/processor cooperative (C/P Coop), the mothership cooperative (MS Coop), and the Shorebased Individual Fishery Quota (IFQ) Program.

This document announces the reapportionment of 30,000 mt of Pacific whiting from the tribal allocation to the non-tribal commercial sectors on September 21, 2015. Regulations at § 660.131(h) contain provisions that allow the Regional Administrator to reapportion Pacific whiting from the tribal allocation, specified at § 660.50, that will not be harvested by the end of the fishing year to other sectors.

Pacific Whiting Reapportionment

For 2015, the Pacific Coast treaty tribes were allocated 56,888 mt of Pacific whiting. The best available information through September 14, 2015, indicated that there had been no harvest by the tribes to date, and at least 30,000 mt of the tribal allocation would not be harvested by December 31, 2015. To allow for full utilization of the resource, NMFS reapportioned 30,000 mt to the Shorebased IFQ Program, C/P Coop and MS Coop in proportion to each sector's original allocation on that date. Reapportioning this amount was expected to allow for greater attainment of the TAC while not limiting tribal harvest opportunities for the remainder of the year. Emails sent directly to fishing businesses and individuals, and postings on the West Coast Region's internet site were used to provide actual notice to the affected fishers. Reapportionment was effective the same day as the notice.

After the reapportionment, the amounts of Pacific whiting available for 2015 are:

- Tribal 26,888 mt;
- C/P Coop 100,873 mt;
- MS Coop 71,204 mt; and
- Shorebased IFQ Program 124,607.45 mt.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) because such notification would be impracticable and contrary to the public interest. As previously noted, actual notice of the reapportionment was provided to fishers at the time of the action. Prior notice and opportunity for public comment on this reapportionment was impracticable because NMFS had insufficient time to provide prior notice and the opportunity for public comment between the time the information about the progress of the fishery needed to make this determination became available and the time at which fishery modifications had to be implemented in order to allow fishers access to the available fish during the remainder of the fishing season. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness for these actions, required under 5 U.S.C. 553(d)(3).

These actions are authorized by §§ 660.55 (i), 660.60(d) and 660.131(h) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq* and 16 U.S.C. 7001 *et seq.*

Dated: December 30, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–33155 Filed 12–30–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE367

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2016 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2016 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 1, 2016, until the effective date of the final 2016 and 2017 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 16, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0134, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0134,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) set the 2016 Bering Sea (BS) pollock TAC at 1,310,000 metric tons (mt), the 2016 BSAI Atka mackerel TAC at 54,817 mt, the 2016 BS Pacific cod TAC at 240,000 mt, and the AI Pacific cod TAC at 9,422 mt. In December 2015, the North Pacific Fishery Management Council (Council) recommended a 2016 BS pollock TAC of 1,340,000 mt, which is more than the 1,310,000 mt TAC established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI. The Council also recommended a 2016 BSAI Atka mackerel TAC of 55,000 mt, which is more than the 54,817 mt TAC established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2016 BS Pacific cod TAC of 238,680 mt, and an AI Pacific cod TAC of 12,839 mt, which is less than the BS Pacific cod TAC of 240,000 mt, and more than the AI Pacific cod TAC of 9,422 mt established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI. The Council's recommended 2016 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2015, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for Atka mackerel, Pacific cod, and pollock fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014). The regulations at § 679.20(a)(5)(i) specify how the BS pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2015 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2016 BS pollock TAC to 1,340,000 mt, the 2016 BSAI Atka mackerel TAC to 55,000, the 2016 BS Pacific cod TAC to 238,680 mt, and the AI Pacific cod TAC to 12,839 mt. Therefore, Table 2 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i), Table 5 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) is revised for the 2016 BS allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. The Steller sea lion protection measure final rule (79 FR 70286, November 25, 2014), sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541, see § 679.20(a)(5)(iii)(B)(*6*). In Area 541, the 2016 A season pollock harvest limit is no more than 30 percent, or 9,668 mt, of the AI ABC of 32,227 mt. In Area 542, the 2016 A season pollock harvest limit is no more than 15 percent, or 4,834 mt, of the AI ABC of 32,227 mt. In Area 543, the 2016 A season pollock harvest limit is no more than 5 percent, or 1,611 mt, of the AI pollock ABC of 32,227 mt.

TABLE 5—FINAL 2016 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2016 Allocations	2016 A season [1]		2016 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,340,000	n/a	n/a	n/a
CDQ DFA	134,000	53,600	37,520	80,400
ICA [1]	48,240	n/a	n/a	n/a
AFA Inshore	578,880	231,552	162,086	347,328
AFA Catcher/Processors [3]	463,104	185,242	129,669	277,862
Catch by C/Ps	423,740	169,496	n/a	254,244
Catch by CVs [3]	39,364	15,746	n/a	23,618
Unlisted C/P Limit [4]	2,316	926	n/a	1,389
AFA Motherships	115,776	46,310	32,417	69,466
Excessive Harvesting Limit [5]	202,608	n/a	n/a	n/a
Excessive Processing Limit [6]	347,328	n/a	n/a	n/a
Total Bering Sea DFA	1,157,760	463,104	324,173	694,656
Aleutian Islands subarea ABC	32,227	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	10,931	n/a	3,769
Area harvest limit [7] 541	9,668	n/a	n/a	n/a
542	4,834	n/a	n/a	n/a
543	1,611	n/a	n/a	n/a
Bogoslof District ICA [8]	500	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (4.0 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

[8] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) is revised for the 2016 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, and Amendment 80 allocation of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2016 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2016 Allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	28,500	16,000	10,500
CDQ reserve	Total	3,050	1,712	1,124
	A	1,525	856	562
	Critical Habitat	n/a	514	337
	B	1,525	856	562
	Critical Habitat	n/a	514	337
ICA	Total	1,000	75	40
Jig [6]	Total	122	0	0
BSAI trawl limited access	Total	2,433	1,421	0

TABLE 7—FINAL 2016 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2016 Allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
	A	1,216	711	0
	Critical Habitat	n/a	426	0
	B	1,216	711	0
	Critical Habitat	n/a	426	0
Amendment 80 sectors	Total	21,895	12,792	9,337
	A	10,948	6,396	4,668
	B	10,948	6,396	4,668
Alaska Groundfish Cooperative	Total [6]	12,349	7,615	5,742
	A	6,175	3,808	2,871
	Critical Habitat	n/a	2,285	1,723
	B	6,175	3,808	2,871
	Critical Habitat	n/a	2,285	1,723
Alaska Seafood Cooperative	Total [6]	9,546	5,177	3,595
	A	4,773	2,589	1,798
	Critical Habitat	n/a	1,553	1,079
	B	4,773	2,589	1,798
	Critical Habitat	n/a	1,553	1,079

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of critical habitat; (a)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and (a)(8)(ii)(C)(*2*) requires the TAC in Area 543 shall be no more than 65 percent of ABC.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) is revised for the 2016 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2016 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2016 Share of gear sector total	2016 Share of sector total	2016 Seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	238,680	n/a	n/a	n/a
BS CDQ	n/a	25,539	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	213,141	n/a	n/a	n/a
AI TAC	n/a	12,839	n/a	n/a	n/a
AI CDQ	n/a	1,374	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	11,465	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	3,377	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100	224,606	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	136,561	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	136,061	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	108,983	Jan 1–Jun 10	55,581
				Jun 10–Dec 31	53,402
Hook-and-line catcher vessel ≥60 ft LOA	0.2	n/a	448	Jan 1–Jun 10	228
				Jun 10–Dec 31	219
Pot catcher/processor	1.5	n/a	3,357	Jan 1–Jun 10	1,712
				Sept 1–Dec 31	1,645
Pot catcher vessel ≥60 ft LOA	8.4	n/a	18,798	Jan 1–Jun 10	9,587
				Sept 1–Dec 31	9,211
Catcher vessel <60 ft LOA using hook-and-line or pot gear.	2	n/a	4,476	n/a	n/a

TABLE 9—FINAL 2016 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2016 Share of gear sector total	2016 Share of sector total	2016 Seasonal apportionment	
				Seasons	Amount
Trawl catcher vessel	22.1	49,638	n/a	Jan 20–Apr 1	36,732
				Apr 1–Jun 10	5,460
				Jun 10–Nov 1	7,446
AFA trawl catcher/processor	2.3	5,166	n/a	Jan 20–Apr 1	3,874
				Apr 1–Jun 10	1,291
				Jun 10–Nov 1	0
Amendment 80	13.4	30,097	n/a	Jan 20–Apr 1	22,573
				Apr 1–Jun 10	7,524
				Jun 10–Nov 1	0
Alaska Groundfish Cooperative	n/a	n/a	4,751	Jan 20–Apr 1	3,563
				Apr 1–Jun 10	1,188
				Jun 10–Dec 31	0
Alaska Seafood Cooperative	n/a	n/a	25,346	Jan 20–Apr 1	19,010
				Apr 1–Jun 10	6,337
				Jun 10–Dec 31	0
Jig	1.4	3,144	n/a	Jan 1–Apr 30	1,887
				Apr 30–Aug 31	629
				Aug 31–Dec 31	629

[1] The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea may be prohibited, even if a BSAI allowance remains.

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2016 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 28, 2015, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 16, 2015.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 30, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–33145 Filed 12–30–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE383

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2016 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2016 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 1, 2016, until the effective date of the final 2016 and 2017 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0147, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0147,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries

Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2015 and 2016 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2015) set the 2016 pollock TAC at 257,178 metric tons (mt) and the 2016 Pacific cod TAC at 75,202 mt in the GOA. In December 2015, the North Pacific Fishery Management Council (Council) recommended a 2016 pollock TAC of 257,872 mt for the GOA, which is more than the 257,178 mt established by the final 2015 and 2016 harvest specifications for groundfish in the GOA. The Council also recommended a 2016 Pacific cod TAC of 71,925 mt for the GOA, which is less than the 75,202 mt established by the final 2015 and 2016 harvest specifications for groundfish in the GOA. The Council's recommended 2016 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2015, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2015 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2016 GOA pollock TAC to 257,872 mt and the 2016 GOA Pacific cod TAC to 71,925 mt. Therefore, Table 2 of the final 2015 and 2016 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2015) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(iv), Table 4 of the final 2015 and 2016 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2015) is revised for the 2016 TACs of pollock in the Central and Western Regulatory Area of the GOA.

TABLE 4—FINAL 2016 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
A (Jan 20–Mar 10)	3,827	6.41%	43,374	72.71%	12,456	20.88%	59,651
B (Mar 10–May 31)	3,826	6.41%	50,747	85.07%	5,083	8.52%	59,651
C (Aug 25–Oct 1)	24,421	40.94%	15,404	25.82%	19,822	33.23%	59,651
D (Oct 1–Nov 1)	24,421	40.94%	15,402	25.82%	19,822	33.23%	59,651
Annual Total	56,494		124,927		57,183		238,604

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Note: Seasonal allowances may not total precisely to annual TAC total due to rounding.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 6 of the final 2015 and 2016 harvest specifications for groundfish in the GOA (80 FR 10250, February 25, 2015) is revised for the 2016 seasonal apportionments and allocation of Pacific cod TAC in the GOA consistent with this adjustment.

TABLE 6—FINAL 2016 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	992	N/A	595	N/A	397
Hook-and-line CV	383	0.70	192	0.70	192
Hook-and-line C/P	5,417	10.90	2,982	8.90	2,435
Trawl CV	10,506	27.70	7,579	10.70	2,927
Trawl C/P	657	0.90	246	1.50	410
All Pot CV and Pot C/P	10,397	19.80	5,417	18.20	4,979
Total	28,352	60.00	17,011	40.00	11,341
Central GOA:					
Jig (1.0% of TAC)	370	N/A	222	N/A	148
Hook-and-line <50 CV	5,347	9.32	3,411	5.29	1,936
Hook-and-line ≥50 CV	2,456	5.61	2,054	1.10	402
Hook-and-line C/P	1,869	4.11	1,504	1.00	365
Trawl CV [1]	15,226	21.14	7,738	20.45	7,487
Trawl C/P	1,537	2.00	734	2.19	804
All Pot CV and Pot C/P	10,180	17.83	6,528	9.97	3,652
Total	36,984	60.00	22,190	40.00	14,794
Eastern GOA	.....	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	6,589		5,930		659

Note: Seasonal apportionments may not total precisely due to due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 28, 2015, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2016.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 30, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–33149 Filed 12–30–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 2
Tuesday, January 5, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3883; Directorate Identifier 2014–SW–029–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332L2 and EC225LP helicopters. This proposed AD would require installing a cut-out for the left-hand (LH) and right-hand (RH) rail support junction profiles and inspecting splices, frame 5295, and related equipment for a crack. This proposed AD is prompted by reports of cracks on frame 5295 and on splices installed to prevent those cracks. The proposed actions are intended to detect a crack in frame 5295, which could lead to loss of the helicopter frame's structural integrity and consequently, loss of helicopter control.

DATES: We must receive comments on this proposed AD by March 7, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3883 or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, issued AD No. 2014–0098–E, dated April 25, 2014, to correct an unsafe condition for AS332L2 and EC225LP helicopters. EASA AD No. 2014–0098–E applies to helicopters with a frame 5295 that have been reinforced by installing aluminium splices on the RH and LH fuselage external skins. EASA advises of a report of a crack detected on the reinforced frame during a scheduled inspection of a helicopter. According to EASA, the crack initiated on a splice in an area hidden by the overlapping junction profile of the cabin sliding door rail support, and then spread to the frame.

EASA states that a crack in frame 5295, if not detected and corrected, could lead to loss of structural integrity of the helicopter frame and subsequent loss of control of the helicopter. To address this condition, EASA issued AD No. 2014–0098–E to require repetitive inspections of the splices for a crack, as well as cutting out the rail support junction profiles to provide a convenient access to identify cracks in a splice.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. EC225–05A038 for Model EC225LP helicopters and ASB No. AS332–05.00.97 for Model

AS332L2 helicopters. The ASBs, both Revision 0 and both dated April 15, 2014, report cracks were found in the splice and frame 5295 on a Model AS332L2 helicopter during a major inspection. The splice had been added in compliance with Modification 0726517. Had an optional rail support cut-out been accomplished on the aircraft to allow for a visual check of the splice for frame 5295, it would have revealed the crack in the splice, prompting its repair and consequently limiting the damage to frame 5295. As a result, the ASBs call for the rail support cut-out on the RH and LH side of the frame as well as periodic visual inspections of frame 5295 and related equipment. 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.

Other Related Service Information

We reviewed Airbus Service Bulletin (SB) No. 53–003, Revision No. 4, for Model EC225LP helicopters and SB No. 53.01.52, Revision 5, for Model AS332L2 helicopters, both dated July 23, 2010. The SBs specify procedures to reinforce frame 5295 by installing a new titanium plate underneath the fitting and a new widened aluminum splice below the upper corner of the door. We also reviewed Airbus Helicopters Service Bulletin No. 05–019, Revision 4, dated September 22, 2014, for Model EC225LP helicopters, which proposes that you cut out the junction profiles to perform periodic visual inspections.

Proposed AD Requirements

This proposed AD would require the following before a splice reaches 1,700 hours time-in-service (TIS), within 50 hours TIS, or before the helicopter reaches 11,950 hours TIS, whichever occurs later:

- Installing the rail support cut-out and identifying the right-hand and left-hand junction profile.
- Inspecting each splice for a crack, and repairing or replacing the splice if there is a crack.

This proposed AD would then require, at intervals not to exceed 110 hours TIS, inspecting each splice for a crack, and repairing or replacing the splice if there is a crack.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires contacting Airbus Helicopters if there is a crack in the affected parts. This proposed AD would make no such requirement.

The EASA AD sets various timelines for the repair or replacement of affected parts if a crack exists. This proposed AD would require the repair or replacement of affected parts before further flight if a crack exists.

Costs of Compliance

We estimate that this proposed AD would affect 4 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

Installing the cut-outs on frame 5295 would require 40 work hours for a labor cost of $3,400. Parts would cost $5,000 for total cost per helicopter of $8,400 and $33,600 for the U.S. fleet.

Inspecting helicopter frame 5295 would require 2 work-hours for a labor cost of $170 per helicopter. No parts would be needed for a total U.S. fleet cost of $680 per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus Helicopters: Docket No. FAA–2015–3883; Directorate Identifier 2014–SW–029–AD.

(a) Applicability

This AD applies to Model AS332L2 and Model EC225LP helicopters with an extended aluminum splice installed on frame 5295, certificated in any category.

Note 1 to paragraph (a) of this AD: Helicopters with modification (MOD) 0726517 have an extended aluminum splice installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack on helicopter frame 5295. This condition could result in structural failure of the frame and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by March 7, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Before a splice reaches 1,700 hours time-in-service (TIS), within 50 hours TIS, or before the helicopter reaches 11,950 hours TIS, whichever occurs later, do the following:

(i) Install the rail support cut-out and identify the right-hand and left-hand junction

profile in accordance with the Accomplishment Instructions, paragraph 3.B.2, of Alert Service Bulletin (ASB) No. EC225–05A038, Revision 0, dated April 15, 2014 (ASB EC225–05A038), or ASB No. AS332–05.00.97, Revision 0, dated April 15, 2014 (ASB AS332–05.00.97), whichever is applicable to your helicopter.

(ii) Inspect each splice for a crack in the area depicted as Area Y in Figure 3 of ASB EC225–05A038 or ASB AS332–05.00.97, whichever is applicable to your helicopter. If a crack exists, repair or replace the splice before further flight.

(2) Thereafter at intervals not to exceed 110 hours TIS, inspect each splice for a crack in the area depicted as Area Y in Figure 3 of ASB EC225–05A038 or ASB AS332–05.00.97. If a crack exists, repair or replace the splice before further flight.

(f) Credit for Actions Previously Completed

Installing rail support cut-outs in accordance with MOD 0728090 or Airbus Helicopters Service Bulletin No. 05–019, Revision 4, dated September 22, 2014, before the effective date of this AD is considered acceptable for compliance with the corresponding actions specified in paragraph (e)(1)(i) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Airbus Helicopters Service Bulletin (SB) No. 05–019, Revision 4, dated September 22, 2014, and SB No. 53–003 and SB No. 53.01.52, both Revision 4 and both dated July 12, 2010, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2014–0098–E, dated April 25, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5310, Fuselage Main, Structure.

Issued in Fort Worth, Texas, on December 22, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–33014 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2015–0246]

RIN 2105–AE12

Nondiscrimination on the Basis of Disability in Air Travel; Consideration of Negotiated Rulemaking Process

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of intent; extension of comment period.

SUMMARY: This document extends the comment period for the notice of intent that was published in the **Federal Register** on Monday, December 7, 2015. The notice announced that the Department of Transportation (''Department'' or ''DOT'') is exploring the feasibility of conducting a negotiated rulemaking (reg neg) concerning accommodations for air travelers with disabilities addressing inflight entertainment, supplemental medical oxygen, service animals, accessible lavatories on single-aisle aircraft, seating accommodations, and carrier reporting of disability service requests.

DATES: The deadline for submitting comments on the notice of intent published on December 7, 2015, (80 FR 75953), is extended from January 6, 2016 to January 21, 2016.

ADDRESSES: You may submit comments identified by docket number DOT–OST–2015–0246 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Blank Riether, Senior Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at *kathleen.blankriether@dot.gov* or by telephone at 202–366–9342. To obtain a copy of this notice in an accessible format, you may also contact Kathleen Blank Riether.

SUPPLEMENTARY INFORMATION:

On December 7, 2015, the Department announced its intention to explore the feasibility of conducting a reg neg to:

- Ensure that the same in-flight entertainment (IFE) available to all passengers is accessible to passengers with disabilities;
- Provide individuals dependent on in-flight medical oxygen greater access to air travel consistent with Federal safety and security requirements;
- Determine the appropriate definition of a service animal;
- Establish safeguards to reduce the likelihood that passengers wishing to travel with their pets will be able to falsely claim that their pets are service animals;
- Address the feasibility of accessible lavatories on new single aisle aircraft;
- Address whether premium economy is a different class of service from standard economy as airlines are required to provide seating accommodations to passengers with disabilities within the same class of service; and
- Require airlines to report annually to the Department the number of requests for disability assistance they receive and the time period within which wheelchair assistance is provided to passengers with disabilities.

The Department requested that all comments be submitted no later than January 6, 2016.

On December 21, 2015, the Department received a letter from 11 disability advocacy organizations representing diverse interests expressing their concern that the designated comment period does not allow enough time for stakeholders to fully consider the impact of engaging in a negotiated rulemaking on these issues of critical concern to people with disabilities. The disability advocacy organizations noted that as a result of the holidays, the 30-day comment period is effectively reduced by nearly two weeks. They noted that the notice and comment process would be more effective if all stakeholders had sufficient time to consider and comment on the efficacy of conducting a negotiated rulemaking on each of the proposed issues.

We agree that an extension of the comment period is appropriate given the effective shortening of the comment period by observance of the holidays. We believe that a 15-day extension to

the comment filing period is reasonable to provide stakeholders with ample opportunity to more fully analyze and respond to the issues to be considered during the reg neg. Accordingly, the deadline for filing comments is extended to January 21, 2016.

Issued on December 29, 2015, under authority delegated in 49 CFR 1.27.

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2015–33150 Filed 1–4–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127895–14]

RIN 1545–BM33

Dividend Equivalents From Sources Within the United States; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations providing guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments.

DATES: The public hearing originally scheduled for January 15, 2016 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on September 18, 2015 (80 FR 56415) announced that a public hearing was scheduled for January 15, 2016, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 871(m) of the Internal Revenue Code.

The public comment period for these regulations expired on December 17, 2015. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of December 28, 2015, no one has requested to speak. Therefore, the public hearing scheduled for January 15, 2016 at 10 a.m. is cancelled.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2015–33090 Filed 1–4–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2015–0825]

RIN 1625–AA01

Anchorage Regulations, Delaware River; Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of anchorage ''10'' in the Delaware River in the vicinity of the Navy Yard in Philadelphia, Pennsylvania. The proposed change would alter the size and use of the anchorage, reducing the anchorage in size and allowing the anchorage to be used as a general anchorage in the Delaware River. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 4, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0825 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 Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271–4851, email *Brennan.P.Dougherty@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR **Federal Register**
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

On December, 12, 1967, the Coast Guard Fifth District published a final rule establishing an anchorage area on the Delaware River in Philadelphia, Pennsylvania in the **Federal Register** (32 FR 17726, 17749). The anchorage area established is contained in 33 CFR 110.157(a)(11). This proposed rule would change the shape and the dimensions of anchorage ''10'', and remove the ''restricted naval anchorage'' verbiage from the regulation. The anchorage currently remains unused by the Naval Yard. Removing the restrictions on anchorage ''10'' would alleviate congestion within the port, allowing the anchorage to be used as a general anchorage for commercial traffic.

III. Discussion of Proposed Rule

The new anchorage area would encompass all waters of the Delaware River on the north side of the channel along West Horseshoe Range, bounded as follows: Beginning off of the southeasterly corner of Pier 1 at 39°53′07″ N., 075°10′30″ W., thence south to the to the north edge of the channel along West Horseshoe Range to 39°52′58″ N., 075°10′29″ W., thence east along the edge of the channel to 39°52′56″ N., 075°09′53″ W., thence north to 39°53′07″ N., 075°09′54″ W., thence continuing west to the beginning point at 39°53′07″ N., 075°10′30″ W. Additionally, the restrictions on the use of the anchorage will be removed, permitting all vessels to anchor within its bounds. The regulatory text we are proposing appears at the end of this document.

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.

This proposed rule is not a significant regulatory action because it will not interfere with existing maritime activity on the Delaware River. Moreover, it is enhancing navigational safety along the Delaware River by providing an additional anchorage for commercial and recreational vessels. The proposed anchorage maintains the same parallel distance along the channel boundaries as the existing anchorage. The impacts to navigational safety are expected to be minimal because the proposed anchorage area would not unnecessarily restrict traffic, as it is located outside of the established navigation channel. Vessels may navigate in, around, and through the proposed anchorage.

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.

For the reasons stated in paragraph IV.A, this proposed rule would not have a significant economic impact on a substantial number of small entities. 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.lD, 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 the alteration of the size and use of anchorage ''10,'' restricted Naval Anchorage. It is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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 NPRM, and all public comments, will be 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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 11—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.157, revise paragraph (a)(11) to read as follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(11) *Anchorage 10 at Naval Base, Philadelphia.* On the north side of the channel along West Horseshoe Range, bounded as follows: Beginning off of the southeasterly corner of Pier 1 at 39°53′07″ N., 075°10′30″ W., thence south to the to the north edge of the channel along West Horseshoe Range to 39°52′58″ N., 075°10′29″ W., thence east along the edge of the channel to 39°52′56″ N., 075°09′53″ W., thence north to 39°53′07″ N., 075°09′54″ W., thence continuing west to the beginning point at 39°53′07″ N., 075°10′30″ W.

* * * * *

Dated: December 17, 2015.

Stephen P. Metruck,

Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2015–33167 Filed 1–4–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP35

Copayments for Medications Beginning January 1, 2017

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning copayments charged to certain veterans for medication required on an outpatient basis to treat non-service connected conditions. VA currently charges non-exempt veterans either $8 or $9 for each 30-day or less supply of medication, and under current regulations, a calculation based on the prescription drug component of the Medical Consumer Price Index would be used to determine the copayment amount in future years. This rulemaking would eliminate the formula used to calculate future rate increases and establish three classes of medications, identified as Tier 1, Tier 2, and Tier 3. These tiers would be defined further in the rulemaking and would be distinguished in part based on whether the medications are available from multiple sources or a single source, with some exceptions. Copayment amounts would be fixed and would vary depending upon the class of medication. The following copayment amounts would be effective January 1, 2017: $5 for a 30-day or less supply of a Tier 1 medication, $8 for a 30-day or less supply of a Tier 2 medication, and $11 for a 30-day or less supply of a Tier 3 medication. For most veterans these copayment amounts would result in lower out-of-pocket costs, thereby encouraging greater adherence to prescribed medications and reducing the risk of fragmented care that results when veterans use multiple pharmacies to fill their prescriptions.

DATES: *Comment Date:* Comments must be received by VA on or before March 7, 2016.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP35–Copayments for Medications Beginning January 1, 2017.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition, unless the veteran is exempt from having to pay a copayment because the veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. Under 38 U.S.C. 1722A(b), VA ''may,'' by regulation, increase that copayment amount and establish a maximum annual copayment amount (a ''cap''). We have consistently interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount (as long as that amount is at least $2) for medication furnished on an outpatient basis for covered treatment, provided that any increase in the copayment amount or annual cap is the subject of a rulemaking proceeding. VA is also prohibited under 38 U.S.C. 1722A(a)(2) from requiring a veteran to pay an amount in excess of the cost to VA. We have implemented this statute in 38 CFR 17.110.

Under 38 CFR 17.110(b)(1), veterans are obligated to pay a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). Under the current regulation, for the period from July 1, 2010, through December 31, 2015, the copayment amount for veterans in priority categories 2 through 6 of VA's health care system is $8. 38 CFR 17.110(b)(1)(i). For the period July 1, 2010, through December 31, 2015, the copayment amount for veterans in priority categories 7 and 8 is $9. 38 CFR 17.110(b)(1)(ii). Thereafter, the

copayment amount for all affected veterans is to be established using a formula based on the prescription drug component of the Medical Consumer Price Index (CPI–P), set forth in regulation in 38 CFR 17.110(b)(1)(iii).

Current § 17.110(b)(2) also includes a ''cap'' on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. Through December 31, 2015, the annual cap is set at $960. Thereafter, the cap increases ''by $120 for each $1 increase in the copayment amount'' applicable to veterans enrolled in one of VA's health care enrollment system priority categories 2 through 6.

VA has found that the current regulatory model has produced and will continue to produce copayment amounts that increase at a higher rate than the larger, non-VA retail market for prescribed medications. For this reason, VA has published a series of rulemakings that have ''frozen'' copayments from 2009 to the present. In these rulemakings, we stated that these freezes were appropriate because higher copayments reduce the utilization of VA pharmacy benefits. Even with the freezes VA has instituted, however, VA's copayment rates have exceeded those charged in other pharmacy benefits programs.

In addition to higher copayments increasing the risk that veterans will not fill their prescriptions, VA's lack of competitive copayment pricing increases the likelihood that veterans will obtain their prescribed medications from other sources. Fragmentation of prescription records to more than one pharmacy increases the risk of an incomplete medication record, which can lead to unintended adverse reactions. Different clinicians caring for the patient may not be aware of all the medications that the patient is taking. VA medical providers need to be aware of all of the medications a veteran is taking to avoid unintended prescribing of contraindicated medications. Through this rulemaking, we believe that we can prevent or minimize these unintended or adverse effects of patients choosing multiple pharmacies to fill their prescriptions.

A large body of academic research supports this position. Researchers have found that prescription copayments can affect medication adherence (Lieberman, D.A., J.M. Polinski, N.K. Choudhry, J. Avorn, and M.A. Fischer. 2014. Unintended consequences of a Medicaid prescription copayment plan. Medical Care. 52(5):422). Research also has found that higher copayment levels are associated with poor adherence, discontinuation, and non-initiation of therapy (Mann, B.S., L. Barnieh, K. Tang, D.J.T. Campbell, F. Clement, B. Hemmelgarn, M. Tonelli, D. Lorenzetti, B.J. Manns. Association between drug insurance cost sharing strategies and outcomes in patients with chronic diseases: a systematic review. PLOS ONE. 9(3):e89168). These findings are evident in a veteran study regarding lipid-lowering medication adherence. (Doshi, J.A., Zhu, J., Lee, B.Y., Kimmel, S.E., Volpp, K.G. 2009. Impact of a Prescription Copayment Increase on Lipid-Lowering Medications Adherence in Veterans. Circulation. 2009;119:390–397.). Other studies have also found that high copayment requirements can negatively influence adherence to prescription medication plans (Kazerooni, R., K. Vu, A. Tazikawa, C. Broadhead, and A.P. Morreale. Association of copayment and socioeconomic status with hormonal contraceptive adherence in a female veteran population. 2014. Women's Health Issues. 24(2):e237). Another team of researchers found that adherence rates are negatively affected by copayment rates, and that these effects vary based upon the disease burden of the patient; they also found that patients with low-comorbidity risks were more likely to be more affected by copayments, which may subsequently lead to adverse events that require more intensive and expensive health care services (Wang, V., C.F. Liu, C.L. Bryson, N.D. Sharp, and M.L. Maciejewski. 2011. Does medication adherence following a copayment increase differ by disease burden? HSR: Health Services Research. 46(6):1963).

The proposed rule would focus on the type of medication being prescribed and would remove the automatic escalator provision, meaning that changes in copayments would only occur through subsequent rulemakings. Veterans exempt by law from copayments under 38 U.S.C. 1722A(a)(3) would continue to be exempt. VA proposes to include a definition of ''medication'' and to establish three classes of medications: Tier 1 medications, Tier 2 medications, and Tier 3 medications. Tiers 1 and 2 would include multi-source medications, a term that would be defined in § 17.110(b)(1)(iv). Tier 3 would include medications that retain patent protection and exclusivity and are not multi-source medications. Copayment amounts would vary depending upon the Tier in which the medication is classified. A 30-day or less supply of Tier 1 medications would have a copayment of $5. For Tier 2 medications, the copayment would be $8, and for Tier 3 medications, the copayment would be $11.

This proposed change would provide a financial benefit to many veterans because it would reduce their copayment liabilities for most medications and their overall liability under the copayment cap. An average veteran would be better off under this model than the current approach in nearly every scenario; the sole exception is veterans who only fill Tier 3 medications, but even this group would face the same copayment liabilities under the current regulation in 2017, and would face higher copayments in future years. These veterans would also often pay substantially more in the private sector to fill the same prescriptions. Based on a comparison of the current and proposed copayment amounts, we anticipate that most veterans would realize between a 10 and 50 percent reduction in their overall pharmacy copayment liability each year based on historic utilization patterns. By our estimates, 94 percent of copayment eligible veterans would experience no cost increase, and 80 percent would realize a savings of between $1 and $5 per 30-day equivalent of medications. The proposed copayment amounts intends to support patient adherence, reduce instances of veterans not filling prescription medications and assisting veteran health improvements from chronic disease. The following table shows how copayments would vary for veterans and different types of medications. Annual savings would be even greater for veterans with a large number of medication copayments. VA estimates that at least 50 percent of all billable prescriptions would be in Tier 1, with no more than 35 percent in Tier 2, and approximately 15 percent in Tier 3. Exact estimates for Tier 1 and Tier 2 are not possible at this time and would depend on the final list of medications selected for Tier 1.

TABLE 1—TYPICAL USER, ANNUAL COST OF COPAYMENTS, CALENDAR YEAR 2017

Medication distribution	Tiered copayment proposal	Current regulation	Potential annual savings under tiered proposal
100% Tier 1	$150	$330	$180
50% Tier 1, 50% Tier 2	195	330	135
100% Tier 2	240	330	90
50% Tier 1, 50% Tier 3	240	330	90
100% Tier 3	330	330	0

Initially, VA would make a clarifying amendment to § 17.110(a) to define the term ''medication.'' As noted previously, VA is required by 38 U.S.C. 1722A to charge veterans at least a $2 copayment for each 30-day or less supply of medication furnished on an outpatient basis for the treatment of non-service-connected disabilities or conditions, unless the veteran is otherwise exempt. VA has interpreted the term ''medication'' in the past to include prescription and over-the-counter medications as determined by the Food and Drug Administration (FDA), but not medical supplies and nutritional items. This change would clarify that interpretation in regulation. Medical supplies and nutritional items, such as bandages, diabetic supplies, and catheters, would be excluded from the definition of medication, and hence not subject to the medication copayment requirements of this section. These are not considered medications and are not regulated by FDA as such, and consequently should be excluded from this definition.

Medications are conventionally classified as either ''generic'' or ''brand name'' medications, and generic medications generally are less expensive and more available than brand name medications. However, this simple classification does not capture all of the factors that affect the price and availability of medications. For example, when a brand manufacturer's patent protection and/or regulatory exclusivity ends, it sometimes authorizes the marketing of its brand name medication under a private label at generic prices; the FDA describes these products as ''authorized generics'' at 21 CFR 314.3. In addition, even without the entry of an authorized generic, the price of most brand name drugs declines as generic competitors enter the market. Because generic medications, authorized generic medications, and brand name medications that face competition from generic medications typically are sold at lower prices than brand name medications that do not face such competition, VA would include all three classes of medications in a single class for copayment purposes. Because brand name medications that face competition from generic medications may still be sold at a higher price than their generic equivalents, however, VA would only include those brand name medications that face generic competition and are procured by VA under a contracting strategy in place that makes the brand name medication lower in cost than other generic sources. VA would be able to determine if these medications are lower in cost because the contracting strategy would have reviewed available prices and identified prices that are preferable to generic competition.

Some medications also have multiple brand name products capable of being substituted because they work in the same way and in a comparable amount of time with the same active ingredients. This competition between brand name medications generally results in a lower price and so, VA would also include them in the same class as generic medications, authorized generic medications, and brand name medications that face competition from generic medications and are procured by VA under a contracting strategy in place that makes the brand name medication lower in cost than other generic sources. To avoid confusion that could arise by placing brand name medications and generic medications in the same class, VA would simply refer to these four types of medications together as multi-source medications. The term multi-source medication would be defined in § 17.110(b)(1)(iv)(A). VA would then designate medications as Tier 1, Tier 2, and Tier 3. The first two tiers would consist of multi-source medications, but those in Tier 1 would have been selected by VA using a process described below and would be available at a lower copayment than medications in Tier 2. Tier 3 medications would include all other medications and would have the highest copayment amount.

VA proposes to amend § 17.110(b)(1) by revising the subparagraphs that currently identify the copayment rates for different priority groups of veterans. Specifically, VA would revise paragraph (b)(1)(i) to state that the copayment amount for a 30-day or less supply of Tier 1 medications, as defined in paragraph (b)(1)(iv), is $5. Paragraph (b)(1)(ii) of this section would state the copayment amount for a 30-day or less supply of Tier 2 medications is $8, and paragraph (b)(1)(iii) of this section would state the copayment amount for a 30-day or less supply of Tier 3 medications is $11.

These copayment amounts are cost competitive with other health care plans, while still in line with VA's appropriated resources. Many large retailers offer a limited range of generic or multi-source medications between $1 and $4, but these plans often include premiums of more than $10 per month. VA does not charge veterans a premium, so their only out-of-pocket costs are the copayment amounts. In this context, we believe the $5 and $8 copayment amounts are comparable to what many veterans would pay for selected generic or multi-source medications from these retailers. The $11 amount for Tier 3 medications is a small increase ($2) for veterans in priority groups 7 and 8, and a modest increase ($3) for veterans in priority groups 2 through 6. The vast majority of our billable prescriptions (85 percent) are for medications that would be categorized as Tier 1 or Tier 2. For veterans receiving Tier 1 medications, there would be a price decrease of $3 in priority groups 2 through 6 and $4 in priority groups 7 and 8. The price for Tier 2 medications would remain unchanged for veterans in priority groups 2 through 6, but veterans in priority groups 7 and 8 would experience a ($1) price decrease for medications in this category. Even with an increase in the copayment amount for Tier 3 medications from their current levels, VA's pharmacy copayments for these drugs would remain a significant

value for veterans, as many non-VA pharmacy plans charge $20, $30, or $40 or more for brand name medications, which comprise the bulk of Tier 3 medications, in addition to regular premiums. Moreover, the pharmacy copayment amounts calculated using the existing regulations currently exceed $11 for veterans in priority categories 2 through 8.

VA estimates that the copayment amounts would increase three times over 6 years if the current regulations are left unchanged. These increases are projected using the current regulation's methodology because VA has taken action to freeze medication copayments over the last several years, which has generated greater separation from the initial CPI–P as of September 30, 2001.

VA would define the three classes of medications in proposed paragraph (b)(1)(iv)(B)–(D), which would be Tier 1, Tier 2, and Tier 3 medications.

As briefly described above, VA would define a ''multi-source medication'' that could be included in either Tier 1 or Tier 2 to include four types of medications. First, this would include a medication that has been and remains approved by the FDA either under sections 505(b)(2) or 505(j) of the Food, Drug, and Cosmetic Act (FDCA, 21 U.S.C. 355) and that has an A-rating in the current version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book), or under section 351(k) of the Public Health Service Act (PHSA, 42 U.S.C. 262) and that has been granted an I or B rating in the current version of FDA's Lists of Licensed Biological Products with (1) Reference Product Exclusivity and (2) Biosimilarity or Interchangeability Evaluations (the Purple Book). Second, a multi-source medication would also include medications that have been and remain approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a) and which are referenced by at least one FDA-approved product that meets the first definition of multi-source medication. These medications would be included only if they are covered by a contracting strategy in place with pricing such that it is lower in cost than other generic sources. Third, multi-source medications would include those medications that have been and remain approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a) and have the same active ingredient(s), work in the same way and in a comparable amount of time, and are determined by VA to be substitutable for another medication that has been and remains approved by the FDA pursuant to FDCA section 505(b)(1) or PHSA section 351(a). Insulin and levothyroxine are two examples of such medications. Finally, multi-source medications would also include a listed drug, as defined in 21 CFR 314.3, that has been approved under FDCA section 505(c) and is marketed, sold, or distributed directly or indirectly to retail class of trade with either labeling, packaging (other than repackaging as the listed drug in blister packs, unit doses, or similar packaging for use in institutions), product code, labeler code, trade name, or trademark that differs from that of the listed drug. These definitions cover the full range of medications that are broadly available and lack patent protection and exclusivity and which can be procured at a low price. This includes all generic medications, as well as brand name medications that are marketed as generic medications and medications with multiple substitutable options. Such medications are widely prescribed and used by both VA and non-VA providers and represent generally the lowest cost medications available. As such, these are ideally suited for a lower copayment rate.

VA offers these medications to address a variety of chronic conditions common in our patient population, such as diabetes mellitus, hypertension, and hypercholesterolemia. If a significant portion of these prescriptions are filled with VA because of this rule, the potential clinical benefits could be far-reaching and significant, and therefore, we would encourage the use of these drugs by providing lower copayments. (We also note that, in addition to being a clear benefit to our veteran patients, far-reaching improved health outcomes would necessarily lead to lower future health care costs, although we cannot quantify these predicted cost benefits.) VA would separate multi-source medications into two categories: Tier 1 medications and Tier 2 medications. Tier 1 medications would be multi-source medications that meet all of the criteria in proposed paragraph (b)(2) as explained in further detail below. Tier 2 would include multi-source medications that do not meet all of the criteria in (b)(2).

Tier 3 medications would be defined as a medication approved by the FDA under a New Drug Application (NDA) or a biological product approved by the FDA pursuant to a biologics license agreement (BLA) that retains its patent protection and exclusivity and is not a multi-source medication identified in paragraph (b)(1)(iv)(A)(3). FDA publishes a list of the medications that have been approved under NDAs on its Web site at *www.fda.gov.*

Proposed paragraph (b)(2) would identify how VA will determine whether a multi-source medication qualifies as a Tier 1 medication; all other multi-source medications would be Tier 2 medications under proposed paragraph (b)(1)(iv)(C). Although we believe that lowering copayments for prescription medications would improve clinical outcomes for veterans who take those medications, for budgetary reasons we must limit the number of medications that would qualify for a lower copayment amount as selected multi-source medications. This limitation should effectively target VA's health care resources to achieve maximum health benefits for veterans. For example, the reduction in copayments for affected medication must be significant enough to increase the likelihood that veterans would choose to fill their medications with VA, thereby leading to the clinical benefits we discuss above. Reducing the copayment amount for a limited group of medications that are used on a long-term basis by a large number of veterans would allow us to reduce the copayment by a significant amount while still extending this financial and clinical benefit to as many veterans as possible.

Accordingly, in addition to excluding Tier 3 medications through the definition of the term ''multi-source medication,'' VA proposes to use seven exclusionary criteria to limit the medications that would be considered as Tier 1 medications entitled to the lowest copayment amount of $5. A medication must meet all of these criteria to be selected as a Tier 1 medication. These criteria would appear in proposed paragraph (b)(2) and its subparagraphs. VA would use these criteria not less than once per year to select which medications would qualify as Tier 1 medications. This annual (or more frequent) review would ensure that VA regularly reviews new medications and changes in prescription patterns and patient needs.

The first five criteria appear in paragraph (b)(2)(i). The first, in proposed paragraph (b)(2)(i)(A), would be that VA's acquisition cost for the medication must be less than or equal to $10 for a 30-day supply of medication. This is an economic criterion designed to limit the effects of the proposed rule on VA's overall budget. The $10 amount is currently the greatest amount that VA may consider while also keeping the cost of the reduced copayment amounts within acceptable budgetary limits.

Second, in proposed paragraph (b)(2)(i)(B), VA would exclude topical

creams, products used to treat musculoskeletal conditions, antihistamines, and steroid-containing medications. These classes of medications generally are used on an ''as needed'' basis, and the quantity dispensed is not uniform for topical creams, lotions, and ointments. These medications would be excluded because they are not often used to treat chronic conditions, and their inclusion would result in a loss of revenue beyond what VA can support within its appropriated resources. Finally, excluding medications that are often used for short time periods and/or for acute skin infections or conditions is consistent with the criterion in proposed paragraph (b)(2)(i)(E), below.

Third, under proposed paragraph (b)(2)(i)(C), we would require that the medication be on the VA National Formulary (VANF). The VANF is a list of medications approved by VA for VA patients based on considerations of safety, quality, effectiveness, and the ability of the medications to meet the needs of VA's unique patient population. Requiring a medication to be on the VANF ensures that VA has already reviewed the medication in terms of its safety, quality, effectiveness, and general applicability, thereby ensuring sound clinical care. Medications that are not on the VANF are not approved on a national level, even if they may have specialized uses and may be appropriate for prescribing in individual cases. Non-formulary medications can be prescribed by VA when clinically warranted, on a case-by-case basis. However, these medications are much less likely to meet VA's goal of reaching the largest number of VA patients possible through this rulemaking. In addition, a drug may not be included on the VANF because we have determined that another medication from the same drug class is selected based on clinical effectiveness. Finally, many non-VANF drugs are prescribed by VA clinicians to treat conditions with a low prevalence among veterans or to treat non-chronic conditions. Requiring that the medication be on the VANF is medically appropriate and consistent with the purposes of this rulemaking. VA periodically revises the medications that appear on the formulary, and to the extent it appears that a drug meets the other criteria of this proposed rule, and a lower copayment for that drug would serve the clinical objectives animating this rulemaking, we would consider adding the drug to the VANF.

Fourth, under proposed paragraph (b)(2)(i)(D), VA would exclude antibiotics that primarily are used for short periods of time to treat infections. These medications may lead to harmful health outcomes if overprescribed, and this exclusion is intended to support clinical care. A veteran in need of antibiotics for a short-term illness likely only pays a single copayment for this prescription during the course of a year. Accordingly, the clinical incentive for patient medication adherence over time that VA intends to promote through this rulemaking is less relevant for these medications.

Fifth, under proposed paragraph (b)(2)(i)(E), VA would only consider medications that primarily are prescribed to either treat or manage a chronic condition, or to reduce the risk of adverse health outcomes of secondary conditions that are often more dangerous than the chronic condition itself. We believe this is crucial to maximizing the clinical benefit under this proposed rule. For example, VA would select medications used to treat high blood pressure because they reduce the risks of heart attack, stroke, and kidney failure. Some examples of chronic conditions prevalent among veterans include hypertension (more than 40 percent of enrolled veterans), diabetes (25 percent), and various types of heart disease (between 5 and 10 percent). VA anticipates that reducing copayments for medications treating these conditions would improve health outcomes for veterans by increasing the rate of adherence to prescribed medication regimens. VA may also benefit from secondary cost savings resulting from improved health outcomes and reduced demand for high cost treatments, such as surgery, for potentially life-threatening conditions that could have been prevented.

This criterion is also crucial because it serves to focus budgetary resources onto drugs used to treat and prevent conditions for which we expect the clinical benefits of this proposed rule will be the most pronounced. Improving our ability to monitor patients' compliance and increased patient compliance with treatment plans would have the most dramatic health benefits for veterans who take medications that fall within this criterion. It is well established that adherence to medications used in the management of chronic diseases such as hypertension, diabetes, hyperlipidemia and heart disease slows progression of major diseases that result in disability and increased consumption of health care resources.

Further, we propose that conditions that persist for 3 months or more will be considered chronic. We are aware that 38 CFR 3.317(a)(4) provides that a condition must persist for 6 months before it may be considered chronic. However, that section is designed to identify conditions that form the basis of a monthly monetary payment of compensation, which is a different goal than the treatment of a medical condition. Treating a persistent medical condition can be critical in preventing additional or worsening symptoms as well as secondary illnesses. Moreover, § 3.317(a)(4) of 38 CFR deals with undiagnosed illnesses arising out of the comparatively narrow context of the Gulf War. When a disease is difficult to diagnose, requiring a longer period of persistence helps VA ensure that condition in question actually is chronic as that term is commonly understood. We would also apply this criterion to conditions, not to individual patients. For example, just because it is technically possible for a common cold to persist for 3 months does not mean that colds are chronic. Rather, conditions which typically persist for 3 months in most or all patients would meet this criterion. For example, VA would select medications used to treat high blood pressure because that condition typically persists for more than 3 months and, under the proposed rule, we would charge the $5 copayment for such medication (as long as it met all other criteria) regardless of whether the patient for whom the medication is prescribed has actually been diagnosed as having had high blood pressure for 3 months.

Under the sixth criterion in proposed paragraph (b)(2)(ii), we would consider, among those medications that satisfy all of the criteria in paragraph (b)(2)(i), those medications that are among the top 75 most commonly prescribed multi-source medications based on the number of prescriptions issued for a 30-day or less supply on an outpatient basis during a fixed period of time to determine our annual list of Tier 1 medications. This would enable VA to consider veteran utilization when adopting the list. By looking at how many prescriptions are filled by veterans, VA can identify those medications that are in greatest demand and reduce their copayments, thereby providing the greatest benefit to veterans in terms of cost reduction. VA clinicians are also most likely to prescribe medications that have the greatest clinical benefit to veterans, and as a result, veterans are also likely to benefit from improved health care delivery. This factor would also ensure that, as the clinical needs of veterans change, VA reassesses the list to determine if new drugs should qualify

or if drugs currently identified as selected should be removed. VA proposes to identify up to 75 medications under this paragraph because this number would allow VA to identify a broad spectrum of pharmaceuticals while limiting the potential budgetary impact of reduced copayment collections. VA would review utilization data for a fixed period of time, likely a 12-month period either consisting of a fiscal year or a calendar year. This requirement would allow VA to regularly assess the available data and make any necessary changes.

After identifying the top multi-source medications prescribed that also satisfy the criteria in paragraph (b)(2)(i), VA would evaluate these medications to determine their clinical value under the seventh criterion, which appears in proposed paragraph (b)(2)(iii), and in the context of VA's available budgetary resources, as described in more detail below. VA would make a medical determination concerning the clinical value of each entry on the list of the most utilized medications. New developments, such as a shift in the health care needs of the veteran population, newly released data or clinical treatment guidelines, or newly released multi-source medications could help VA determine which medications should be Tier 1 medications, but the possible range of factors are too numerous to be set forth in regulation. For example, many veterans have cardiovascular conditions that require treatment or management, such as high blood pressure, high cholesterol, heart disease, diabetes, and others. VA would take the prevalence of these conditions into account when selecting medications to ensure that a large number of veterans would be able to receive medications at a reduced copayment. As another example, VA would consider the recommendations of clinical practice guidelines it follows in the treatment of serious, chronic conditions. These clinical practice guidelines are developed in consultation with experts in each disease and are based on the latest available research in terms of efficacy and health outcomes. A medication that is identified as a first course of treatment would likely receive preference over a medication that is primarily used as second treatment option. In a similar way, VA would also look to empirical data on morbidity and mortality rates for conditions following treatment with certain medications. If one medication does a better job at improving health outcomes than another based on these measures, VA would likely select that better performing medication. There may be certain medications that treat a larger segment of the population than others, and VA would likely consider these attributes as well. If one medication is particularly effective with a sub-group, but is less effective with the average patient, it would be less likely to be selected. Similarly, VA may apply public health principles to identify conditions that are either under-treated or that, if treated early, can prevent the onset of more complex conditions that are more expensive to treat. For example, VA may look for medications that treat glaucoma or osteoporosis, which have a low prevalence in the veteran population, but that if treated and managed early can prevent more serious conditions such as blindness or broken bones. Ultimately, these determinations would be made by VA using the clinical expertise of its physicians, pharmacists, public health specialists, and other clinicians as appropriate to ensure that VA is able to offer at a reduced copayment the right mix of medications for its patient population. This approach is commonly used by other health care plans to select medications under their pharmacy benefits programs. As new multi-source medications become approved and available, VA would need to reassess this list and, as the health profile of its patient population changes, VA would need to maintain flexibility to ensure that the medications identified for a reduced copayment are appropriate.

The purpose of the criterion of clinical value in paragraph (b)(2)(iii) would be to ensure that those medications that would most improve clinical care would be available at a reduced copayment; however, we note that this evaluation should not be read to suggest that other multi-source mediations do not have clinical value. The Tier 1 and Tier 2 classifications are designed simply to distinguish between two similar classes of medications and do not reflect on the quality of the medication itself. VA would make determinations regarding which medications should be included in Tier 1 in light of available budgetary resources to ensure that it does not select more medications than it can afford to maintain at a reduced copayment amount.

The decision regarding which medications qualify for Tier 1 would also be made in the context of VA's available budgetary resources, as noted in proposed paragraph (b)(2)(iii). Each year, VA assembles a budget request that is carefully calculated based on its enrolled patient population, their clinical needs, and the cost of delivering health care. Included in VA's budget projections is an estimate for how much VA will receive from first- and third-party payers for certain types of treatment. These payments are deposited into the Medical Care Collections Fund (MCCF). Medication copayments are one source of revenue for the MCCF. In each year's budget recommendation submitted by VA, we identify the MCCF estimates, and in each budget enacted by Congress, the MCCF estimates are also included. VA's budget for the Medical Services, Medical Support and Compliance, and Medical Facilities accounts are appropriated in advance under 38 U.S.C. 117, so VA knows in one year what resources it will have in the following year. VA would use these figures to determine how it can enhance the value of the pharmacy portion of the medical benefits package by offering the maximum number of Tier 1 medications while maintaining the established budget parameters. VA does not anticipate dramatic changes in the numbers or types of medications that are available for a Tier 1 reduced copayment from year to year.

VA is aware that as a result of using these proposed criteria, some veterans who have conditions that are very serious but not very common may receive no Tier 1 medication copayment reduction under the proposed rule. Whether a particular veteran realizes reduced medication expenditures in a given year would depend on the medications VA selects for a reduced copayment amount and the medications prescribed to that veteran. However, as explained above, the purpose of this rule is to improve clinical outcomes for a large number of veterans while maintaining a responsible budget. VA does not expect that veterans' obligations for copayments would increase by a notable amount, and any increases resulting from this rule would be less than they would have been over time with the current regulations.

VA would also modify § 17.110(b)(3) to state that VA would publish a list of Tier 1 medications not less than once per year in the **Federal Register** and on VA's Web site at *www.va.gov/health*. The current paragraph (b)(3) requires VA to publish and distribute information on copayment amounts, but as these amounts would be established in regulation, there would be no need to continue that practice. VA expects it would publish a list of Tier 1 medications only once per year, but there may be situations when a change during the year would be justified. For example, if a medication that VA has

identified as a Tier 1 medication is removed from the market or if significant safety concerns are raised with its use, VA physicians and pharmacists would likely shift patients to a different multi-source medication to treat the same conditions. In this scenario, VA may elect to designate this alternative medication as a Tier 1 medication so that a large number of veterans do not experience a mid-year increase in the cost of filling their medications as a result of events outside their control.

VA has published a list of medications that it would classify as Tier 1 medications on its Web site, *www.va.gov/health.* This list was compiled using the process described above to show what medications would be placed in Tier 1 if the proposed rule were effective today, and as such, this list is intended to be demonstrative only. We expect the list of Tier 1 medications to change before January 1, 2017, as new medications become available, prices vary for different for medications, and new clinical evidence is published showing the efficacy of different medications. If the proposed rule is finalized and takes effect prior to January 1, 2017, VA will publish an updated list showing those medications that will be placed in Tier 1 for purposes of copayments starting on January 1, 2017.

VA would further modify § 17.110(b) by moving the discussion of the copayment cap from current paragraph (b)(2) to a new paragraph (b)(5). VA would amend this provision, which establishes a current rate and a methodology for increasing that rate, and replace it with a single rate that could only be changed through subsequent rulemaking. VA proposes to establish a fixed copayment cap of $700 in a calendar year for all enrolled veterans. VA is extending application of the copayment cap to include veterans in priority groups 7 and 8. A typical veteran fills two to three prescriptions per month, and at the current copayment rates, a veteran must fill 10 prescriptions per month each month of the year to hit the copayment cap. Presently, less than three percent of all veterans realize savings as a result of the copayment cap. With a copayment cap of $700, veterans filling six to eight prescriptions per month would likely reach the cap over a calendar year. Reducing the copayment cap would also provide a unique benefit to veterans who exclusively use Tier 3 medications, as their total annual expenses would be no more than $700, whereas under the current regulations, they would be $960 or more. We estimate approximately nine percent of veterans subject to a copayment would benefit from a $700 copayment cap. If, in the future, VA engaged in further rulemaking to raise the copayment rates from those proposed in this rule, it could also then consider whether to raise the copayment cap.

VA would also make a formatting revision to paragraph (b)(4), titling this section ''Veterans Choice Program,'' to maintain consistency with other paragraph headings. This would result in no formal or substantive change to the copayment rule articulated in this paragraph for the Veterans Choice Program, authorized by 38 CFR 17.1500–17.1540.

Effect of Rulemaking

The Code of Federal Regulations, if revised as proposed by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this rulemaking once made final, if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is an economically significant regulatory action under Executive Order 12866.

Regulatory Impact Analysis Summary Statement

This rulemaking proposes to amend its regulations concerning copayments and the copayment cap charged to certain Veterans for medications required on an outpatient basis to treat non-service connected conditions. In addition, this rule would eliminate the formula used to calculate future rate increases and change the copayment amount beginning January 1, 2017, to $5 for a 30-day supply of Tier 1 medications, to $8 for a 30-day supply of Tier 2 medications, and $11 for a 30-day supply of Tier 3 medications. The Tiers of medications would be defined in regulation, but generally would reflect selected multi-source medications (Tier 1), other multi-source medications (Tier 2), and single source medications (Tier 3), with certain exceptions.

Based on a comparison of the current and proposed copayment amounts, we anticipate that most veterans would realize between a 10 and 50 percent reduction in their overall pharmacy copayment liability each year based on historic utilization patterns. By our estimates, 94 percent of copayment eligible veterans would experience no cost increase, and 80 percent would realize a savings of between $1 and $5 per 30-day equivalent of medications. The proposed copayment amounts are intended to support patient adherence, reduce instances of veterans not filling prescription medications and assisting veteran health improvements from chronic disease. Table 1 above, shows how copayments would vary for veterans and different types of medications. Annual savings would be even greater for veterans with a large number of medication copayments. VA estimates that at least 50 percent of all billable prescriptions would be in Tier 1, with no more than 35 percent in Tier 2, and approximately 15 percent in Tier 3. Exact estimates for Tier 1 and Tier 2

are not possible at this time and would depend on the final list of medications selected for Tier 1.

VA anticipates the implementation of a tiered copayment plan in CY2017 would reduce First Party Pharmacy copayment revenue from current budget levels for Veterans in PGs 2 through 8 who are required to make a copayment for certain medications. VA's regulatory impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

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

Congressional Review Act

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

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

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on September 1, 2015, for publication.

List of Subjects in 38 CFR Part 17

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

Dated: December 29, 2015.

William F. Russo,

Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

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

PART 17—MEDICAL

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

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

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

The revisions and additions read as follows:

§ 17.110 Copayments for medications.

(a) *General.* This section sets forth requirements regarding copayments for medications provided to veterans by VA. For purposes of this section, the term ''medication'' means prescription and over-the-counter medications, as determined by the Food and Drug Administration (FDA).

(b) * * *

(1) * * *

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

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

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

(iv) For purposes of this section:

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

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

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

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

(*2*) A medication that—

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

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

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

(*3*) A medication that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

[FR Doc. 2015–33052 Filed 1–4–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 15–285; FCC 15–155]

Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on revisions to the Commission's wireless hearing aid compatibility rules. The Commission proposes to adopt a consensus approach developed cooperatively by consumer advocates and industry trade associations, which would require manufacturers and service providers to increase the percentage of new wireless handset models that are hearing aid compatible over time, culminating in a system in which all wireless handset models are accessible to people with hearing loss.

DATES: Interested parties may file comments on or before January 14, 2016, and reply comments on or before January 29, 2016.

ADDRESSES: You may submit comments, identified by WT Docket No. 15–285; FCC 15–155, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *fcc504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection modifications proposed herein should be submitted to the Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: For further information regarding the NPRM, contact Michael Rowan, Wireless Telecommunications Bureau, (202) 418–1883, email *Michael.Rowan@*

fcc.gov, or Eli Johnson, Wireless Telecommunications Bureau (202) 418–1395, email *Eli.Johnson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 15–285; FCC 15–155, adopted November 19, 2015, and released on November 20, 2015. This summary should be read with its companion document, the Fourth Report and Order summary published elsewhere in this issue of the **Federal Register**. The full text of the NPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Additionally, the complete item is available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this NPRM, the Commission seeks comment on potential revisions to the Commission's part 20 rules governing wireless hearing aid compatibility. The Commission initiates this proceeding to develop a record on an innovative and groundbreaking proposal, advanced collaboratively by industry and consumer groups, to replace the current fractional regime with the staged adoption of a system under which all covered wireless handsets will be hearing aid-compatible. The Commission proposes to adopt this consensus approach, which recognizes that the stakeholders themselves are best positioned to craft a regime that ensures full accessibility while protecting incentives to innovate and invest.

II. Background

2. The Joint Consensus Proposal provides that within two years of the effective date of the adoption of the new benchmark rules, 66 percent of wireless handset models offered to consumers should be compliant with the Commission's acoustic coupling radio frequency interference (M rating) and inductive coupling (T rating) requirements. The proposal provides that within five years of the effective date of new rules adopted, 85 percent of wireless handset models offered to consumers should be compliant with the Commission's M and T ratings.

3. The proposal provides that these new benchmarks should apply to manufacturers and carriers that offer six or more digital wireless handset models in an air interface, except that Tier I and Non-Tier I carriers would receive six months and eighteen months of additional compliance time, respectively, to account for availability of handsets and inventory turn-over rates. The proposal states that the existing *de minimis* exception should continue to apply for manufacturers and carriers that offer three or fewer handset models in an air interface and that manufacturers and carriers that offer four or five digital wireless handset models in an air interface should ensure that at least two of those handsets models are compliant with our M and T rating requirements. In addition, the proposal provides that these benchmarks should only be applicable if testing protocols are available for a particular air interface.

4. In addition to these two-year and five-year benchmarks, the proposal provides that ''[t]he Commission should commit to pursue that 100% of wireless handsets offered to consumers should be compliant with [the M and T rating requirements] within eight years.'' The Joint Consensus Proposal conditions the transition to 100 percent, however, on a Commission determination within seven years of the rules' effective date that reaching the 100 percent goal is ''achievable.'' The Joint Consensus Proposal prescribes the following process for making that determination:

> [The Commission shall create] a task force, including all stakeholders, identifying questions for exploration in year four after the effective date that the benchmarks described above are established. After convening, the stakeholder task force will issue a report to the Commission within two years.
>
> The Commission, after review and receipt of the report described above, will determine whether to implement 100 percent compliance with [the M and T ratings requirements] based on concrete data and information about the technical and market conditions involving wireless handsets and the landscape of hearing improvement technology collected in years four and five. Any new benchmarks resulting from this determination, including 100 percent compliance, would go into effect no less than twenty-four months after the Commission's determination.
>
> Consumer groups and the Wireless Industry shall work together to hold meetings going forward to ensure that the process will include all stakeholders: including at a minimum, consumer groups, independent research and technical advisors, wireless industry policy and technical representatives, hearing aid manufacturers and Commission representatives.

III. Discussion

5. The Commission proposes to adopt the general approach discussed in the Joint Consensus Proposal, including the staged benchmark revisions, the Commission's determination of achievability, and the process for moving to a 100 percent compliance standard, and the Commission seeks comment on this proposal and its various components. The Commission recognizes that the Joint Consensus Proposal reflects the intensive efforts and commitment of consumer and industry stakeholders to develop an approach that expands access for consumers with hearing loss while preserving the flexibility that allows innovation to flourish. The Commission notes that the current hearing aid compatibility rules, including the current benchmarks, are also based on a consensus proposal developed and submitted in 2007 by representatives of the wireless industry and consumers with hearing loss. In substantially adopting the terms of that proposal, the Commission found that broad multi-stakeholder support ''testifie[d] to the success of the proffered proposals in meeting the goals of the Hearing Aid Compatibility Act, and in addressing the concerns of manufacturers and service providers while still advancing the interests of consumers with hearing loss in having greater access to advanced digital wireless communications.'' Given the success of the previous consensus proposal, and recognizing that the Joint Consensus Proposal was generated by the very stakeholders that it will impact most directly, the Commission considers favorably the Joint Consensus Proposal—particularly to the extent that it moves toward a 100 percent hearing aid compatibility requirement without discouraging or impairing the development of improved technology. The Commission also believes that an approach developed through consensus among the relevant stakeholders may yield outcomes that most effectively leverage innovative technological solutions.

6. Accordingly, below, the Commission seeks comment on the merits of the Joint Consensus Proposal, both with respect to its overall effectiveness in fulfilling Congress's intent to ensure access to telephones for people with hearing loss under Section 710 of the Communications Act as amended by the CVAA, and more specifically with respect to its various components as these have been

presented jointly by the consumer and industry stakeholders. The Commission also seeks comment on several related matters.

1. The Joint Consensus Proposal

7. *Benchmarks.* First, the Commission asks commenters to address the timeframes that the proposal describes as well as the process for the Commission's determination of achievability. Are the proposed new benchmarks appropriate for all covered entities and handsets? How will these benchmarks effectively meet the needs of consumers while protecting innovation and competition for current and future operations? The Commission asks commenters who recommend different benchmarks for small entities, for certain technologies or services, or for meeting the standards for acoustic coupling and inductive coupling to explain their reasoning in detail, along with justifications for why their preferred alternatives would be better than the approach contained in the Joint Consensus Proposal, taking into consideration the purposes and goals of Section 710. The Joint Consensus Proposal provides that the Commission should commit to pursuing a goal of 100 percent compatibility within eight years of the effective date at the time the revised benchmarks are established. The Commission seeks comment on this eight-year period. Would a longer or shorter transition period be more appropriate and, if so, why?

8. *De minimis exception to two- and five-year benchmarks.* The proposal recommends that the existing *de minimis* exception to the benchmarks should continue to apply for manufacturers and carriers that offer three or fewer handset models in an air interface and that the rule should further provide that manufacturers and carriers that offer four or five digital wireless handset models in an air interface should ensure that at least two of those handsets models are compliant with sections 20.19(b)(1) and (b)(2). The Commission seeks comment on these proposed exceptions to the new benchmarks.

9. *Determination of Achievability.* The Commission seeks comment on the proposed process for determining achievability. For example, in determining achievability, should the Commission limit itself to assessing information and data collected in years four and five, or should it also take account of more recent data and information that may be available at that time? Should the Commission seek public comment in connection with reaching the achievability determination? Are there any aspects of the Joint Consensus Proposal's benchmarks, timing, and achievability determination that the Commission should not adopt? Should the Commission supplement them with any additional requirements or considerations? Regarding the proposed task force, the Commission seeks comment on how and through what process or mechanism the Commission should establish the task force, on whether the task force should be established without delay even if its primary functions would not begin until year four, and on how the task force should be structured and its membership determined, including how to ensure that ''all stakeholders'' are adequately represented. The Commission also seeks comment on which issues or questions the Commission should ask the task force to explore, on the scope and content of the task force's report, and on the processes or rules, if any, that should govern its activities.

10. The Commission also seeks comment on how the Commission should determine achievability, including the appropriate substantive definition, standard, or framework to govern the Commission's determination. For example, should the determination of achievability be based on relevant factors specified in Section 710, *e.g.,* technological feasibility, marketability, and impact on the use and development of technology? The Commission notes that the CVAA contains a specific definition of achievability that applies in the context of sections 716 and 718 of the Act. Specifically, Section 716(g) of the Act defines the term ''achievable'' to mean ''with reasonable effort or expense, as determined by the Commission.'' Section 716 requires providers of advanced communications services and manufacturers of equipment used for those services to make their offerings accessible to and usable by individuals with disabilities, unless not achievable. Section 718 requires manufacturers of telephones used with public mobile services to ensure that web browsers on those devices are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Given that these sections similarly contain mandates for equipment accessibility by people with disabilities, is it appropriate to apply the CVAA achievability definition here as well? Or would an alternative be preferable in the context of the Joint Consensus Proposal?

11. In considering whether the 100 percent goal is achievable, should the Commission consider innovative approaches, including standards or technologies that are different from the currently applicable ANSI standard, that can achieve telephone access for consumers with hearing loss? For example, Apple has explained that it ''work[ed] outside the existing Part 20 framework to advance its goal of dramatically improving the user experience for individuals with hearing loss,'' and that it developed a new hearing aid platform that relies on Bluetooth® technology. The Commission urges stakeholders to think broadly in developing alternative approaches, whether they build on Apple's experience or other efforts, as the Commission is confident that creativity and innovation can significantly advance the interests of consumers with hearing loss without hobbling wireless innovation. The Commission is particularly interested in commenters' insights regarding alternative compliance approaches that can, in a technologically neutral manner, ensure that devices are fully accessible for users with hearing loss.

2. Stakeholders' Suggested Requests for Comment

12. The Joint Proposal itself recommends that the Commission seek comment on various issues related to modifying the benchmark regime. In particular, it suggests that the Commission seek comment on the following issues, which it now does:

> The Commission should seek comment in the NPRM on how the FCC's rules should be modified to ensure manufacturers and service providers meet the new benchmarks while preserving the ability to offer innovative wireless handsets in a rapidly changing market. For example, the Commission should seek comment on whether wireless handsets can be deemed compliant with the HAC rules through means other than by measuring RF interference and inductive coupling. In addition, the Commission should seek comment on which compliance processes, such as waivers, should be modified to accommodate innovation and carriers', especially rural and regional carriers', handset inventories and turn-over rates, within a compliance regime with the enhanced benchmarks described above. The Commission also should seek comment on whether disclosures to consumers could serve as a means of compliance for wireless handsets utilizing new air interfaces or technologies where HAC standards or testing protocols are not yet available. In addition to examining the effect on innovation, the Commission should seek comment on the impact of the new benchmarks on U.S. product offerings.
>
> The Commission should also seek comment on the best ways to improve collaboration on consumer education including but not limited to: making

information about the HAC ratings of wireless handsets and hearing aids more easily discoverable and accessible by consumers as well as how HAC information should be updated on Web sites in a timely manner that is usable by consumers. The Commission should also request comment on how the hearing aid industry and other relevant stakeholders should take measures to ensure that consumers have improved access to the HAC ratings of hearing aids.

13. In connection with the suggested questions regarding waivers, the Commission also seeks comment on how to best to apply the Section 710(b)(3) waiver process in the context of the Joint Consensus Proposal. Should the Commission establish a fixed time period within which the Commission must take action on waiver requests? If so, would 180 days be an appropriate amount of time, considering both the need to develop a full record and the importance of avoiding delay in the introduction of new technologies? If not 180 days, what amount of time would be appropriate? If the Commission establishes a time period for Commission action, are there situations in which the Commission should have the ability to extend the deadline?

3. Analysis of Statutory Factors

14. The Commission seeks comment on whether the Joint Consensus Proposal is consistent with and warranted under Section 710 of the Communications Act. Section 710(b)(2)(B) directs the Commission to use a four-part test to periodically reassess exemptions from the hearing aid compatibility requirements for wireless handsets. Specifically, the statute directs the Commission to revoke or limit an exemption if it finds that (1) Continuing the exemption without such revocation or limitation would have an adverse effect on individuals with hearing loss; (2) compliance with the hearing aid compatibility requirements would be technologically feasible for devices to which the exemption applies; (3) the cost of compliance would not increase costs to such an extent that the newly covered devices could not be successfully marketed; and (4) revoking or limiting the exemption is in the public interest. The Commission seeks comment on whether this analysis is applicable to the changes proposed in the Joint Consensus Proposal, whether such changes would meet this four-part test, and whether the proposal requires any modifications to satisfy the statutory standard.

15. Section 710 further directs that, in any rulemaking to implement hearing aid compatibility requirements, the Commission should (1) specifically consider the costs and benefits to all telephone users, including people with and without hearing loss, (2) ensure that hearing aid compatibility regulations encourage the use of currently available technology and do not discourage or impair the development of improved technology, and (3) use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users. The Commission therefore asks commenters to address these factors in their analysis of the proposal and to explain whether modifications are warranted.

4. Standards and Technologies for Meeting Compatibility

16. The Commission seeks comment on whether the compatibility requirement—revised pursuant to the Joint Consensus Proposal or in any other manner—should specifically require both a minimum M3 and minimum T3 rating, or whether manufacturers should be allowed to meet the requirement by incorporating other methods of achieving compatibility with hearing aids, such as Bluetooth®. The Commission is mindful that some innovative advances in accessibility features have resulted from outside-of-the-box solutions, and the Commission does not wish to discourage these types of pioneering advances. The Commission seeks comment on the extent to which such alternative approaches are able to meet the communications needs of people with hearing loss. Specifically, in addition to commenting on the effectiveness of such alternatives for aiding in comprehending telephone conversation, the Commission asks commenters to provide information about the cost of such devices to consumers, as well as the ease of procuring devices needed to use such alternatives. Given these criteria, what approaches should the Commission recognize as viable alternatives, how should such alternative approaches be incorporated into the hearing aid compatibility rules, what customer disclosures should be required for alternative approaches, and what standards should apply to the alternative approaches, particularly with respect to testing and rating alternative devices and technologies? How, if at all, would such alternative approaches impact the efficacy of the Joint Consensus Proposal?

17. What are the costs and benefits of allowing these alternative approaches? For example, Apple proposes that the Commission apply the ANSI standards as a ''safe harbor'' for hearing aid compatibility but to ''reward innovators for finding other, better solutions that result in real accessibility even if they do not meet the ANSI standards.'' Although Apple proposes this approach as an alternative method of meeting the existing benchmarks, the Commission seeks comment on whether to adopt it in conjunction with the Joint Consensus Proposal. The Commission also seeks comment on how to determine hearing aid compatibility outside of compliance with the applicable ANSI standard. The Commission invites commenters to consider alternatives of this kind when evaluating the Joint Consensus Proposal.

5. Exceptions

18. The current *de minimis* exception provides that small manufacturers and service providers that offer two or fewer digital wireless handset models operating over a particular air interface are exempt from the benchmark deployment requirements in connection with that air interface, while larger manufacturers and service providers with two or fewer handset models have a limited obligation. The provision further states that any manufacturer or service provider that offers three digital wireless handset models operating over a particular air interface must offer at least one such handset model that meets the M3 and T3 standards for that air interface. Although the Joint Consensus Proposal recommends retaining this exception for the new two and five year benchmarks (with an added provision for entities offering four or five handsets), it does not expressly address whether and how the exception will continue to apply under a subsequent 100 percent requirement.

19. The Commission seeks comment on whether to preserve the *de minimis* exception in whole or in part in the event the Commission adopts a 100 percent requirement. Should the Commission preserve the exception during the transitional periods prior to implementation of a 100 percent compatibility requirement, as proposed in the Joint Consensus Plan? Alternatively, should the Commission phase out the *de minimis* exception over the course of the transitional periods? Should the Commission preserve the exception even in the event of a 100 percent compatibility obligation? How would the *de minimis* exception operate under a 100-percent compatibility requirement? If a qualifying manufacturer were to offer a non-compliant handset, could *any* provider make it available to consumers, or would it only be available to providers that are also eligible for the exception? If such handsets were unavailable to providers that were not eligible for the

exception, would preserving the exception effectively limit consumer choice in many cases? If so, are there distinct aspects or features of the exception that the Commission should preserve?

20. The Commission seeks comment on whether it should include any other exceptions in the event the Commission adopts a 100 percent compatibility requirement, and how such exceptions are consistent with and warranted under Section 710's requirements. The Commission seeks comment on whether there are particular air interfaces, such as GSM operating in the 1900 MHz band, which will face particular difficulties in meeting a 100 percent compatibility requirement and, if so, whether and how such difficulties should be specifically addressed or accommodated under a 100 percent compatibility requirement. Are there new technological solutions that should better enable GSM/1900 handsets to achieve hearing aid compatibility and, if so, what requirements should apply to GSM/1900 handsets given such solutions?

6. Legacy Models

21. In the event the Commission adopts a 100 percent compatibility requirement, the Commission seeks comment on the appropriate treatment of legacy models. Should non-hearing aid-compatible handsets that received equipment authorization prior to the end of any transition period be grandfathered to better ensure that manufacturers are able to recoup their investments in their legacy handsets? The Commission seeks comment on this option, on alternative approaches to grandfathering, and on whether, following some additional period after a transition to a 100 percent compatibility regime, the Commission should require hearing aid compatibility for all handset models offered (as opposed to just models released after transitioning to the 100 percent regime).

22. The Commission further seeks comment on how best to ensure that people with hearing loss are able to find hearing aid compatible phones that can meet their communication needs during the transition period to a 100 percent compatibility requirement. The Commission notes that Section 717(d) of the Communications Act, added by the CVAA, requires the Commission to maintain a clearinghouse of information about accessible products and services required under sections 255, 716, and 718 of the Act. The Commission launched its Accessibility Clearinghouse in October 2011. Among other things, this database allows consumers to search for wireless handsets with accessibility features that meet the needs of various disabilities, including hearing aid compatible handsets. Does this Accessibility Clearinghouse, or the Web sites upon which it relies, effectively provide the information needed by consumers to locate hearing aid compatible phones? In other words, does it enable a consumer to determine without difficulty whether any particular handset model is hearing aid compliant? If not, the Commission seeks comment on the format and type of information that the Commission should include in the Accessibility Clearinghouse in order to empower consumers to make educated decisions about their handset purchases. The Commission notes, for example, that currently, manufacturers are required to electronically file annual compliance reports with the Commission on FCC Form 655 in July of each year and service providers must electronically file this form with the Commission in January of each year. These reports include, among other information, the M and T ratings for each handset. Is there a way that such information can be used to automatically supplement the information now provided in the Accessibility Clearinghouse database? In addition, in the event the Commission adopts a 100 percent compatibility requirement, will it be necessary to continue providing information on hearing aid compatible phones in the Accessibility Clearinghouse? It is not the Commission's intention to create additional reporting burdens on manufacturers and service providers, therefore, the Commission seeks comment on approaches to ensuring that the improvements contemplated above do not impose such burdens.

23. The Commission also seeks comment on whether service providers should be able to rely on information in the Accessibility Clearinghouse and on Form 655 to the extent that it reflects compliance information submitted by manufacturers. Are there any reasons service providers should not be able to rely on the Accessibility Clearinghouse or Form 655? For example, how should the Commission treat a service provider if it offers a handset that a manufacturer has included in the Accessibility Clearinghouse and indicated to be compliant in the manufacturer's annual FCC Form 655, even if it is later determined that the handset does not in fact meet the hearing aid compatibility requirements? Should such information create a presumption that the service provider is not in breach of the Commission's hearing aid compatibility rules?

7. Burden Reduction

24. In the event the Commission ultimately transitions to a 100-percent compatibility regime, the Commission proposes to ease or eliminate the reporting, disclosure, labeling, and other requirements imposed under the current rules. The Commission seeks comment on the extent to which these requirements are unnecessary or unwarranted in the event the Commission moves to a 100 percent regime, and on the costs and benefits of easing such requirements as they relate to consumers, manufacturers, and service providers.

25. Currently, manufacturers are required to electronically file annual compliance reports with the Commission on FCC Form 655 in July of each year and service providers must electronically file this form with the Commission in January of each year. The Commission seeks comment on whether to end the reporting requirements for manufacturers and service providers in the event the Commission moves to a 100 percent regime or at some point thereafter. The Commission notes that numerous parties, especially rural and small service providers, have asserted that preparing these annual reports is burdensome. While these reports help the Commission monitor compliance with the hearing aid compatibility benchmarks, will such monitoring still be necessary, and will the benefits of these reports still outweigh the burdens, in the event the Commission moves to a 100 percent compatibility regime? Alternatively, should the Commission eliminate the reporting requirement only for service providers, on the grounds that manufacturers' reports will be sufficient under a 100 percent regime to ensure all models available to consumers are compliant? Should the Commission maintain the reporting requirement for other groups for a certain period of time while non-compliant legacy models remain in inventory? Should the Commission maintain reporting requirements for manufacturers and service providers who offer handsets that are exempt from hearing aid compatibility requirements or can be used for services that are exempt from these rules? The Commission notes that the Joint Consensus Plan would establish two new benchmarks, at year two and year five. Should the Commission modify the content or applicability of the reporting requirements that apply during the period following either the two or five

year benchmark but prior to the implementation of a 100 percent compatibility requirement?

26. The existing hearing aid compatibility rules also require manufacturers and service providers to label their hearing aid-compatible handsets with the appropriate M and T ratings and provide information on the rating system, and to meet certain disclosure requirements for hearing aid-compatible handsets that are not compatible over all their operations. The rules also require manufacturers and service providers to provide information on their Web sites, such as a list of all hearing aid-compatible models currently offered, the associated rating information for those handsets, and an explanation of the rating system. The Commission seeks comment on whether, in the event the Commission moves to a 100 percent compatibility regime, the current labeling and disclosure requirements should be eliminated, simplified, or amended. Alternatively, should the Commission continue to require disclosure of rating information in packaging and on Web sites for hearing aid-compatible handset models so that consumers can distinguish between M3 and M4 ratings, between T3 and T4 ratings, and between hearing aid-compatible handsets and grandfathered non-compatible models?

27. The Commission also seeks comment on whether to eliminate the product refresh rule applicable to manufacturers and the differing levels of functionality rule applicable to service providers if the Commission moves to a 100 percent compatibility regime or adopts other modifications to the benchmarks. The product refresh rule requires manufacturers that offer new handset models in a year to ensure that a certain number of the new models are hearing aid-compatible. The differing levels of functionality rule requires service providers to offer a range of hearing aid-compatible models with differing levels of functionality in terms of capabilities, features, and price. In the context of benchmarks that do not require 100 percent of handsets to be hearing aid-compatible, these additional requirements help to ensure that people with hearing loss have access to handsets with the latest features and functions and at different price points. The Commission tentatively concludes that a refresh rule would serve no purpose after a 100 percent requirement takes effect, given that it merely imposes a fractional obligation on new models, which would be entirely subsumed by the new requirement. The Commission seeks comment on this conclusion. The Commission further seeks comment on whether a 100 percent requirement on manufacturers would also be sufficient to ensure that service providers offer a range of hearing aid-compatible models with differing levels of functionality. Will maintaining the differing levels of functionality requirement help to ensure that low-income Americans with hearing loss have access to affordable hearing aid-compatible handsets?

28. Finally, to the extent the Commission moves to a 100 percent compatibility regime, the Commission seeks comment on whether the Commission should eliminate or otherwise ease the deployment benchmarks applicable to the overall handset portfolios of manufacturers and service providers. Will benchmarks remain necessary, even after a transition to a 100 percent requirement, to ensure that manufacturers and service providers do not weight their portfolios toward non-compliant grandfathered handsets? If so, for how long? Would an additional two-year period be an appropriate time-frame to sunset these service provider requirements? Alternatively, should the Commission eliminate deployment benchmarks for Tier III service providers immediately upon moving to a 100 percent regime, but preserve it for Tier I and II service providers for an additional two or three years? What are the costs and benefits of eliminating the benchmarks on service providers if all or nearly all new models offered by manufacturers will be compliant?

8. Alternative to the Joint Consensus Proposal

29. The Commission seeks comment on whether and how to revise the current benchmark system in the event that, based on the record the Commission receives, the Commission determines not to adopt the Joint Consensus Proposal. Should the Commission pursue another approach to transition to a 100 percent compatibility requirement, consistent with the factors identified in Section 710? What would be an appropriate transition period? Should the Commission consider exceptions, waivers, burden reductions, legacy handset rules, and alternative approaches to measuring compliance, as discussed above in connection with the Joint Consensus Proposal?

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

1. Need for, and Objectives of, the Proposed Rules

31. To ensure that a wide selection of digital wireless handset models is available to consumers with hearing loss, the Commission's rules require both manufacturers and service providers to meet defined benchmarks for offering hearing aid-compatible wireless phones. Specifically, manufacturers and service providers are required to offer minimum numbers or percentages of handset models that meet specified technical standards for compatibility with hearing aids operating in both acoustic coupling and inductive coupling modes. These benchmarks apply separately to each air interface for which the manufacturer or service provider offers handsets.

32. The wireless hearing aid compatibility rules have incorporated this fractional benchmark approach since the provision was first established in 2003, but the Commission has on occasion revised the specific benchmarks that manufacturers and service providers are required to meet. The current benchmarks were established in 2008 when the Commission adopted the Joint Consensus Plan submitted by an Alliance for Telecommunications Industry Solutions (ATIS) working group that included Tier I carriers, handset manufacturers, and several organizations representing the interests of people with hearing loss. That plan provided for benchmarks to increase over time, up to a final set of benchmarks that became effective in 2010 and remain in place today.

33. The current deployment benchmarks require that, subject to a *de minimis* exception described below, a handset manufacturer must meet, for each air interface over which its models operate, (1) at least an M3 rating for RF interference reduction for at least one-third of its models using that air interface (rounded down), with a minimum of two models, and (2) a T3 rating for inductive coupling for at least one-third of its models using that interface (rounded down), with a

minimum of two models. Similarly, for each of the air interfaces their handsets use, service providers also must meet an M3 rating for at least 50 percent of their models or ten models, and must meet a T3 rating for at least one-third of their models or ten models. In general, under the *de minimis* exception, manufacturers and service providers that offer two or fewer wireless handset models for any given covered air interface are exempt from these benchmarks for those models.

34. In the NPRM, the Commission seeks comment on a historic agreement (hereinafter, the ''Joint Consensus Proposal'') among key consumer and industry stakeholders that would revise the current benchmarks. In brief, the Joint Consensus Proposal provides that within two years of the effective date of new rules adopted, 66 percent of wireless handsets offered to consumers should be compliant with the Commission's acoustic coupling radio frequency interference (M rating) and inductive coupling (T rating) requirements. The proposal provides that within five years of the effective date of new rules adopted, 85 percent of wireless handsets offered to consumers should be compliant with the Commission's M and T ratings. The proposal provides that this benchmark should apply directly to manufacturers and carriers that offer six or more digital wireless handset models in an air interface, with additional compliance periods for Tier I and Non-Tier I carriers of six months and eighteen months, respectively, to account for limits on handset availability and inventory turn-over rates. In addition to these two-year and five-year benchmarks, the proposal provides that the Commission should commit to pursue that 100 percent of wireless handsets offered to consumers should be compliant within eight years. The Joint Consensus Proposal conditions the transition to 100 percent, however, on a Commission determination within seven years of the rules' effective date that reaching the 100 percent goal is achievable, based in part on review of a report by a task force to be established for this purpose.

35. While the Commission finds that the existing fractional benchmarks have been successful in making a broad variety of hearing aid-compatible handsets available to consumers with hearing loss, the Commission recognizes its statutory obligation to periodically reassess any exemptions from the hearing aid compatibility requirements. The Commission proposes to adopt the Joint Consensus Proposal, finding that it provides an effective approach to replacing the fractional system with one that will give consumers with hearing loss the same selection of wireless handsets that is available to the general public.

2. Legal Basis

36. The potential actions about which comment is sought in this NPRM would be authorized pursuant to the authority contained in sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

37. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. To assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this NPRM.

38. As discussed above, in the NPRM, the Commission seeks comment on a revision to the deployment benchmarks. While these changes would affect the specific obligations of covered entities under the rules, it would not alter the scope of entities subject to the rules, and accordingly, the Commission finds that the analysis of the categories and number of small entities that may be affected by the proposed rules is the same as for the Final Regulatory Flexibility Analysis the Commission provided in connection with the revision to those rules adopted in the Fourth Report and Order. Accordingly, the Commission incorporates the analysis in the Final Regulatory Flexibility Analysis accompanying the Fourth Report and Order, as the description and estimate of the number of small entities to which the proposed rules would apply.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

39. The Commission is not proposing to impose any additional reporting or record keeping requirements. Rather, as discussed in the next section, the Commission is seeking comment on whether, if it adopts a 100 percent requirement, it can reduce regulatory burden on all wireless handset manufacturers and wireless service providers regardless of size by eliminating and streamlining the related hearing aid compatibility requirements. Presently, these requirements include annual reporting, disclosure, labeling, and other regulatory requirements. As part of its decision to eliminate or reduce regulatory burden, the Commission will consider whether it can reduce regulatory burden for small service providers and manufactures, if it cannot be done for all service providers and manufacturers.

5. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.''

41. In the NPRM, the Commission proposes to adopt the terms of the Joint Consensus Proposal, including provisions that will help to minimize impact on small entities. The Joint Consensus Proposal recommends, and the Commission proposes, that while increasing the benchmarks at year two and year five, the Commission keeps in place the existing *de minimis* exception for manufacturers and service providers offering three handsets or less. The current *de minimis* exception provides that small manufacturers and service providers that offer two or fewer digital wireless handsets operating over a particular air interface are exempt from the benchmark deployment requirements in connection with that air interface, while larger manufacturers

with two or fewer handsets have a limited obligation. The provision further states that any manufacturer or service provider that offers three digital wireless handset models operating over a particular air interface must offer at least one such handset model with at least an M3 and T3 rating for that air interface. In addition to retaining this exception to the benchmarks, the Commission proposes to adopt the Joint Consensus Proposal's recommendation that manufacturers and service providers offering either four or five handsets in an air interface be required to ensure that at least two of those handset models comply with the Commission's M and T rating requirements, rather than be required to meet the new 66 percent and 85 percent benchmarks. Finally, the Joint Consensus Proposal also provides additional time to small carriers to meet the benchmarks. Specifically, it provides that, while manufacturers must meet the new 66 percent and 85 percent benchmarks after two and five years, respectively, following the effective date of the rules, all non-nationwide carriers will have eighteen additional months to reach each benchmark (*i.e.,* eighteen months after the two and five year deadlines applicable to manufacturers).

42. With respect to adoption of a 100 percent requirement, the Joint Consensus Proposal conditions the transition to 100 percent hearing aid compatibility on a Commission determination, after the receipt and review of a report from a newly established task force, that reaching the 100 percent goal is ''achievable.'' The NPRM seeks comment on how the Commission should determine achievability and what criteria should be utilized in making this determination. The NPRM also seeks comment on whether the current *de minimis* exception or the expanded *de minimis* exception, as proposed by the Joint Consensus Proposal, should be preserved in whole or in part if the Commission determines that adopting a 100 percent benchmark is achievable. In making the determination of achievable and whether to keep or expand the *de minimis* exception, the Commission will be considering, in part, whether small handset manufacturers and service providers have the resources to meet a 100 percent obligation or whether some accommodation, such as an exception, needs to be made for these entities.

43. In addition to the *de minimis* exception, the Commission seeks comment on other possible exceptions to the 100 percent requirement. These exceptions could apply to all manufacturers of wireless handsets or to some subset of wireless handset manufacturers, such as small entities generally (*i.e.,* including those that do not fall within the *de minimis* exception). Further, the Commission seeks comment on which compliance process, such as waivers, should be modified to accommodate innovation and carriers', especially rural and regional carriers', handset inventories and turn-over rates, within a compliance regime with the enhanced benchmarks. These modifications would benefit all wireless handset manufacturers, including small entities, with their compliance obligations.

44. In the event the Commission adopts a 100 percent requirement, the NPRM seeks comment on grandfathering legacy handsets that are not hearing aid-compatible. The NPRM ask whether the Commission should allow manufacturers, including small manufacturers, of wireless handsets the ability to recoup their investment in non-hearing aid-compatible legacy handsets. Under this proposal, the Commission would allow wireless handset manufacturers to continue to offer handset models that have not been certified as hearing aid-compatible after the transition period to 100 percent ends if the manufacturer received equipment authorization for the handset prior to the end of that period. This proposal should help to minimize the economic impact of a 100 percent requirement on small entities.

45. The NPRM also seeks comment on whether transitioning to a 100 percent requirement would justify easing or eliminating several requirements associated with the hearing aid compatibility rules, which would further reduce the net economic impact of the adopted changes on these manufacturers and providers, including small entities. First, under the current rules, manufacturers are required to electronically file annual compliance reports with the Commission on FCC Form 655 in July of each year and service providers must electronically file this form with the Commission in January of each year. While these reports help the Commission to monitor compliance with the hearing aid compatibility benchmarks, numerous parties, especially rural and small entities, have asserted that having to file these annual reports is burdensome. The Commission seeks comment on whether to end or modify the reporting requirements for manufacturers and service providers at some point as the benchmarks increase. These changes to the reporting requirements would benefit all service providers and manufacturers, including small providers and manufacturers.

46. The existing hearing aid compatibility rules also require that manufacturers and service providers meet certain labeling and disclosure requirements for hearing aid-compatible handsets, and provide information on their Web sites, such as making available on their publicly-accessible Web sites a list of all hearing aid-compatible models currently offered, the associated rating information for those handsets, and an explanation of the rating system. The Commission seeks comment on whether, upon implementation of the 100 percent requirement, the current labeling and disclosure requirements should be eliminated or amended.

47. The Commission also seeks comment on whether, if it adopts a 100 percent requirement or other modifications to the benchmarks, it should eliminate the product refresh rule applicable to manufacturers, which provides that each manufacturer that offers any new model for a particular air interface during the calendar year must ''refresh'' its offering of hearing aid-compatible handset models by offering a mix of new and existing models that comply with the hearing aid compatibility technical standards. It further seeks comment on eliminating the differing levels of functionality rule applicable to service providers. Finally, if the Commission adopts a 100 percent requirement, the NPRM seeks comment on whether to eliminate or otherwise ease the deployment benchmarks applicable to the overall handset portfolios of manufacturers and service providers. Elimination of these rules would benefit small entities as well as larger manufacturers and service providers.

48. The Commission seeks comment generally on the effect, economic impact, or burden of the rule changes considered in the NPRM on small entities. It further seeks comment on any alternatives that would reduce the economic impact on small entities. It also seeks comment on whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing or further reducing the burdens on small entities, and on what effect such alternative rules would have on those entities. The Commission invites comment on ways in which it can achieve its goals while minimizing the burden on small wireless handset manufacturers and service providers. For the duration of this docketed proceeding, the Commission will continue to examine alternatives with

the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

49. None.

B. Initial Paperwork Reduction Act Analysis

50. The Notice of Proposed Rulemaking contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Other Procedural Matters

1. Ex Parte Rules—Permit-But-Disclose

51. The proceeding that the Notice of Proposed Rulemaking initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

2. Comment Filing Procedures

52. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WT Docket No. 15–285. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

V. Ordering Clauses

53. *It is ordered,* pursuant to sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610, this Notice of Proposed Rulemaking *is hereby adopted.*

54. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before January 14, 2016, and reply comments on or before January 29, 2016.

55. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporation by reference, Radio.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 2. Section 20.19 is amended by revising paragraph (c) introductory text, adding paragraph (c)(1)(i)(C), revising paragraph (c)(1)(ii), adding paragraphs (c)(2)(iii) and (c)(3)(iii), revising paragraph (c)(4)(ii) and paragraph (d) introductory text, adding paragraphs (d)(1)(iii), (d)(2)(iii), and (d)(3)(iii), revising paragraph (d)(4)(ii), adding paragraphs (e)(3) and (4), revising paragraph (i)(1), and adding paragraph (m) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(c) Phase-in of requirements relating to radio frequency interference. Until [eight years after the effective date of the rules], the following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section.

(1) * * *

(i) * * *

(C) [Beginning two years after the effective date of the rules], each manufacturer of wireless handsets models must ensure that 66 percent of the wireless handset offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section. [Beginning five years after the effective date of the rules], each manufacturer of wireless handsets must ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section.

(ii) *Refresh requirement.* Until [eight years after the effective date of the rules], for each year a manufacturer elects to produce a new model, each manufacturer that offers any new model for a particular air interface during the calendar year must ''refresh'' its offerings of hearing aid-compatible handset models by offering a mix of new and existing models that comply with paragraph (b)(1) of this section according to the following requirements:

* * * * *

(2) * * *

(iii) [Beginning two and half years after the effective date of the rules], ensure that 66 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section. [Beginning five and half years after the effective date of the rules], ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section.

(3) * * *

(iii) [Beginning three and half years after the effective date of the rules], ensure that 66 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section. [Beginning six and half years after the effective date of the rules], ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(1) of this section.

(4) * * *

(ii) *Offering models with differing levels of functionality.* Until [eight years after the effective date of the rules], each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.,* operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

(d) Phase-in of requirements relating to inductive coupling capability. Until [eight years after the effective date of the rules], the following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section.

(1) * * *

(iii) [Beginning two years after the effective date of the rules], each manufacturer of wireless handsets models must ensure that 66 percent of the wireless handset offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section. [Beginning five years after the effective date of the rules], each manufacturer of wireless handsets must ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section.

(2) * * *

(iii) [Beginning two and half years after the effective date of the rules], ensure that 66 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section. [Beginning five and half years after the effective date of the rules], ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section.

(3) * * *

(iii) [Beginning three and half years after the effective date of the rules], ensure that 66 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section. [Beginning six and half years after the effective date of the rules], ensure that 85 percent of the wireless handset models offered to consumers shall comply with the requirements set forth in paragraph (b)(2) of this section.

(4) * * *

(ii) *Offering models with differing levels of functionality.* Until [eight years after the effective date of the rules], each service provider must offer its customers a range of hearing aid-compatible models with differing levels of functionality (*e.g.,* operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

(e) * * *

(3) Beginning [two years after the effective date of the rules], manufacturers that offer four or five digital wireless handset models in an air interface must offer at least two handset models compliant with paragraphs (b)(1) and (2) of this section in that air interface.

(4) Beginning [two and a half years after the effective date of the rules] for Tier I carriers and [three and half years after the effective date of the rules] for other service providers, service providers that offer four or five digital wireless handset models in an air interface must offer at least two handset models compliant with paragraphs (b)(1) and (2) of this section in that air interface.

* * * * *

(i) * * *

(1) *Reporting dates.* Until [eight years after the effective date of the rules], manufacturers shall submit reports on efforts toward compliance with the requirements of this section on July 15, 2009, and annually thereafter. Until [eight years after the effective date of the rules], service providers shall submit reports on efforts toward compliance with the requirements of this section on January 15, 2009, and annually thereafter. Information in the reports must be up-to-date as of the last day of the calendar month preceding the due date of the report.

* * * * *

(m) *Compatibility requirements for all new models.* To the extent the Commission has determined it achievable, beginning [eight years after the effective date of the rules], all wireless handset models that a manufacturer offers in the United States and that are within the scope of this section must be certified as hearing aid-compatible under the standards of paragraph (b) of this section.

[FR Doc. 2015–32756 Filed 1–4–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2015–0128; 4500030113]

RIN 1018–AZ97

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Species From American Samoa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our October 13, 2015, proposed rule to list five species from American Samoa—two endemic American Samoan land snails, the American Samoa distinct population segment of the friendly ground-dove, the Pacific sheath-tailed bat (South Pacific subspecies), and the mao—as endangered species under the Endangered Species Act of 1973, as amended (Act). We now reopen the public comment period for an additional 30 days and announce notice of a public hearing and public information meeting on our proposed rule. We are reopening the public comment period to allow all interested parties additional time and opportunity to comment on the proposed rule.

DATES: *Public Hearing:* We will hold a public hearing, preceded by a public information meeting. The public hearing and public information meeting will be held in the U.S. Territory of American Samoa on the island of Tutuila. A public hearing will take place on Thursday, January 21, 2016, at the Governor H. Rex Lee Auditorium or Fale Laumei, Main Building, from 3:00 p.m. to 5:00 p.m., and will be preceded by a public information meeting from 2:00 p.m. to 3:00 p.m. at the same location. See **ADDRESSES** for location details.

Written Comments: We will consider comments received or postmarked on or before February 4, 2016 or at the public hearing. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on these actions.

ADDRESSES: *Document Availability:* You may obtain copies of the proposed rule at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2015–0128; from the Pacific Islands Fish and Wildlife Office's Web site (*http://www.fws.gov/pacificislands*); or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: The public hearing and public information meeting on the proposed listing of the five American Samoa species will be held as follows: On the island of Tutuila, a public hearing will take place on Thursday, January 21, 2016, at the Governor H. Rex Lee Auditorium or Fale Laumei, Main Building, located at Route 1, William McKinley Memorial Highway, Utulei, American Samoa 96799, from 3:00 p.m. to 5:00 p.m., and will be preceded by a public information meeting from 2:00 p.m. to 3:00 p.m. People needing reasonable accommodation in order to attend and participate in either the public hearing or the public meeting should contact Mary Abrams, Field Supervisor, Pacific Islands Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2015–0128, which is the docket number for this action. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit comments on the proposed listing rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2015–0128; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

(3) *Public hearing:* Interested parties may provide oral or written comments at the public hearing (see **DATES**).

We request that you provide comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Mary Abrams, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are reopening the public comment period for 30 days on our October 13, 2015, proposed rule to list the five American Samoa species (80 FR 61568), to allow all interested parties additional time to comment on the proposed rule. We received a request for a public hearing and to extend the public comment period beyond the December 14, 2015, due date in our October 13, 2015, proposal. We will accept comments and information until the date specified above in **DATES** or at the public hearing. We will consider all information and recommendations from all interested parties.

For details on specific information that we are requesting, please see the Information Requested section in our proposed listing rule (80 FR 61568) for the five American Samoa species. The proposed rule is available at the Federal eRulemaking Portal at *http://www.regulations.gov* (see **ADDRESSES**, above). Our final determination concerning this proposed rulemaking will take into consideration all written and oral comments and any additional information we receive. If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in our final rulemaking.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you

submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2015–0128 or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 21, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–33156 Filed 1–4–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.: 150629565–5999–01]

RIN 0648–BF15

Fisheries Off West Coast States; Comprehensive Ecosystem-Based Amendment 1; Amendments to the Fishery Management Plans for Coastal Pelagic Species, Pacific Coast Groundfish, U.S. West Coast Highly Migratory Species, and Pacific Coast Salmon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Comprehensive Ecosystem-Based Amendment 1 (CEBA 1), which includes amendments to the Pacific Fishery Management Council's (Council's) four fishery management plans (FMPs): The Coastal Pelagic Species (CPS) FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast Highly Migratory Species (HMS), and the Pacific Coast Salmon FMP. If approved, CEBA 1 would amend the Council's FMPs to bring new ecosystem component species (collectively, ''Shared EC Species'') into each of those FMPs, and would prohibit directed commercial fisheries for Shared EC Species within the U.S. West Coast Exclusive Economic Zone (EEZ). Implementing regulations for CEBA 1 would define and prohibit directed commercial fishing for Shared EC Species, and would prohibit, with limited exceptions, at-sea processing of Shared EC Species.

DATES: Comments must be received on or before February 9, 2016.

ADDRESSES: You may submit comments on CEBA 1 and this proposed rule, identified by NOAA–NMFS–2015–0123, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0123,* 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: Yvonne deReynier.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of CEBA 1 may be obtained from the Council Web site at *http://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6129, *Yvonne.deReynier@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Ocean fisheries in the EEZ off Washington, Oregon, and California are managed under the Council's CPS, Groundfish, HMS, and Salmon FMPs. The Council also maintains a Fishery Ecosystem Plan (FEP), which includes an ecosystem initiative process for reviewing fisheries management issues that may affect multiple FMPs and for developing policies and regulations to address those issues under the authority of its FMPs. Under the ecosystem initiative process, the Council has reviewed trophic connections between the West Coast EEZ's unfished forage fish species and the EEZ's predator species managed under the MSA, the Marine Mammal Protection Act, and the Endangered Species Act. Through that review, the Council determined that it wanted to bring a suite of unfished and unmanaged forage fish species into its FMPs as ecosystem component (EC) species, and to prohibit directed fisheries for those species (unless and until science indicates that the stocks could support such fisheries).

The Council has recommended amending its FMPs to include the following species as Shared EC Species: Round herring (*Etrumeus teres*) and thread herring (*Opisthonema libertate* and *O. medirastre*); mesopelagic fishes of the families *Myctophidae, Bathylagidae, Paralepididae,* and *Gonostomatidae;* Pacific sand lance (*Ammodytes hexapterus*); Pacific saury (*Cololabis saira*); silversides (family *Atherinopsidae*); smelts of the family *Osmeridae;* and pelagic squids (families: *Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae* except Humboldt squid (*Dosidicus gigas,*) *Onychoteuthidae,* and *Thysanoteuthidae*). Under Federal regulations at 50 CFR 600.310(d)(5)(iii,) a species may be included in an FMP as an EC species for: Data collection purposes, to inform the understanding of ecosystem considerations related to specification of optimum yield for the associated fishery, to assist in the development of conservation and management measures for the associated fishery, or to address other ecosystem issues. The Council recommended including the suite of Shared EC Species in its FMPs as EC species to address ''other ecosystem issues,'' because these species are the broadly used prey of marine mammal, seabird, and fish species in the U.S. West Coast EEZ. The Council also noted that Shared EC Species are among the known prey of fishery management unit species of all four of the Council's FMPs; therefore, Shared EC Species support predator species' growth and development and may also be identified as EC species ''for ecosystem considerations related to specification of optimum yield for the associated fishery.''

CEBA 1, through its implementing FMP amendments and regulations, would prohibit the future development of fisheries for Shared EC Species within the U.S. West Coast EEZ until

the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. CEBA 1 includes these FMP amendments: Amendment 15 to the CPS FMP, Amendment 25 to the Pacific Coast Groundfish FMP, Amendment 3 to the FMP for U.S. West Coast HMS, and Amendment 19 to the Pacific Coast Salmon FMP. NMFS published a notice of availability of CEBA 1 in the **Federal Register** (80 FR 76924, December 11, 2015) to notify the public of the availability of the FMP amendments and invite comments. Comments received by the end of the CEBA 1 comment period, whether specifically directed to the FMP amendments or the proposed rule, will be considered and addressed in the preamble to the final rule for this action.

Proposed Regulations

FMPs for EEZ fisheries off the U.S. West Coast are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by regulations at 50 CFR 660. This proposed rule would revise 50 CFR 660.1(a,) subpart A, to clarify that the regulations in Part 660 of Title 50 of the Code of Federal Regulations apply to all vessels fishing within the U.S. West Coast EEZ. This proposed rule would also add new regulations at 50 CFR part 660, subpart B, that: (1) Identify Shared EC Species as including the unfished forage species listed earlier in the preamble to this proposed rule; (2) define what is meant by ''directed commercial fishing'' for Shared EC Species within the U.S. West Coast EEZ; (3) prohibit directed commercial fishing for Shared EC Species; and (4) prohibit at-sea processing of Shared EC Species, except while otherwise lawfully processing groundfish in accordance with 50 CFR part 600, subpart D. Directed commercial fishing for Shared EC Species is proposed to be defined as: Any vessel landing Shared EC Species without landing any other species; or any vessel landing Shared EC Species with other species and in amounts more than 10 mt combined weight of all Shared EC Species from any fishing trip, or 30 mt combined weight of all Shared EC Species in any calendar year.

Proposed landings limits are based on historic daily and annual per vessel landings levels of Shared EC Species, and take into account 99 percent of all Shared EC Species daily vessel landings and 97 percent of annual vessel total landings from the 2005–2014 period. This proposed rule also addresses the potential for incidental catch of Shared EC Species within the at-sea whiting sectors of the groundfish trawl fishery by providing an exception to the prohibition on at-sea processing of Shared EC Species when those species are retained and processed in amounts smaller than 1 mt for all Shared EC Species other than squid, and 40 mt for all Shared EC squid species. Over the 2002–2014 period, the highest annual catch of Shared EC Species other than squid, for the combined catcher-processor and mothership whiting fleets was 1.2 mt in 2011. Over the 2006–2014 period, all at-sea processors received fewer than 40 mt of Shared EC squid species, except for one vessel that in one year received 60 mt of Shared EC squid species.

This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ, in recognition of the importance of these forage fish to the species managed under the Council's FMPs and to the larger California Current Ecosystem. Shared EC Species have not historically been targeted or processed in EEZ fisheries, and the limits provided in this proposed rule are intended to recognize that low levels of incidental catch if Shared EC Species may continue to occur. This action does not supersede tribal or state fishery management for these species.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast HMS, the Pacific Coast Salmon FMP, and other applicable law, subject to further consideration after public comment.

An environmental assessment (EA) for this action is available on NMFS's Web site at *www.westcoast.fisheries.noaa.gov/fisheries/ecosystem/index.html.*

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows, with significant alternatives identified per 603(c).

Small entities include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The SBA has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $20.5 million for all its affiliated operations worldwide (13 CFR part 121; August 17, 2015). For commercial shellfish harvesters, the other qualifiers apply and the receipts threshold is $5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply and the receipts threshold is $7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply and the employment threshold is 100 employees. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations less than 50,000.

The Council considered three alternatives for the implementation of this rule. The No Action and the selected/preferred alternatives are not expected to have a signficiant impact on any small entities. The third alternative was not selected and would likely increase costs for a substantial number of small entities. A summary of each alternative and the economic impacts follows below.

Alternative 1: If it is in conformance with all current Federal requirements, such as the Federal list of authorized fisheries and gear, the No Action alternative could allow a new fishery for Shared EC Species to begin without advance Council action to ensure the fishery's long-term sustainability. Participants in fisheries that currently take Shared EC Species incidentally (CPS and groundfish trawl) could more easily develop new fisheries for Shared EC Species under the No Action alternative than under the selected alternative. However, there have not been substantial historical U.S. West Coast landings of Shared EC Species. Barring notable shifts in composition of resident and transient species in the U.S. West Coast EEZ, it is unlikely that there are any current or future potentially important directed fishing opportunities for Shared EC Species in the EEZ. Alternative 1 is therefore not expected to have direct impacts on small entities.

Alternative 2 (preferred/Selected): The selected (preferred) alternative will not impose any changes in existing fishing behavior and is unlikely to have any effect on West Coast fisheries, either small or large entities, compared to the No Action Alternative. The selected alternative would prohibit the future development of directed commercial fisheries for currently unfished species; recreational fisheries and associated entities are not regulated by this action. The selected alternative is not expected to change fisheries harvest rates, the types of gears used off the U.S. West Coast, fishing seasons, or the geographical location of any fishery. The selected alternative could have minor, indirect, and positive effects on fishery management practices compared to the No Action Alternative 1 and is expected to have no direct impacts on small entities.

Alternative 3: Alternative 3 would have moderate, indirect and negative effects on coastal pelagic species net, shrimp, bottom trawl, and whiting fisheries and fishery management practices. These four fisheries comprise a substantial number of small entities, many of which likely fish in federal waters and would experience increased costs resulting from increased sorting, recordkeeping and reporting requirements.

Fifty-eight vessels are currently permitted in the Federal CPS limited entry fishery. All of these vessels currently fish off California. Average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below $20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Approximately 95 vessels participated in the pink shrimp fishery on the West Coast in 2014, all of which would be considered small businesses according to the 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.

Currently, the Shorebased IFQ Program is composed of 149 Quota Share permits/accounts, 152 vessel accounts, and 43 first receivers. Many companies participate in multiple sectors of the fishery. After accounting for cross participation, multiple Quota Share account holders, and for affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered to be ''small'' businesses.

The mothership (MS) fishery is currently composed of a single cooperative, the Whiting Mothership Cooperative with six mothership processor permits, and 34 mothership/catcher-vessel (MS/CV) endorsed permits, with three permits each having two catch history assignments. The catcher/processor (C/P) Program is composed of 10 C/P permits owned by three companies that have formed a single cooperative, the Pacific Whiting Conservation Cooperative. These two cooperatives are considered large entities from several perspectives: They have participants that are large entities, cooperative revenues exceed or have exceeded $20.5 million, combined employment exceeds 500 employees, and co-op members are connected to American Fishing Act permits or co-ops where the NMFS Alaska Region has determined they are all large entities (79 FR 54597, September 12, 2014).

Therefore, 17 large groundfish fishery entities and 242 small entities would be affected by Alternative 3 (the non-preferred alternative): 89 small entities in the trawl fishery, 58 small entities in the CPS fishery, and 95 small entities in the pink shrimp fishery. We expect Alternative 3 would have moderate, indirect and negative effects on coastal pelagic species, shrimp, bottom trawl, and whiting fisheries and fishery management practices; however, these effects cannot be quantified without better data on the costs vessels would incur discarding at sea.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in 50 CFR 600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing.

Dated: December 29, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.1 revise paragraph (a) to read as follows:

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing activity of vessels of the United States that fish or support fishing inside the outer boundary of the EEZ off the states of Washington, Oregon, and California.

* * * * *

■ 3. Add subpart B to read as follows:

Subpart B—All West Coast EEZ Fisheries

Sec.

660.5 Shared Ecosystem Component Species.
660.6 Prohibitions.

§ 660.5 Shared Ecosystem Component Species.

(a) *General.* The FMPs implemented in this part 660 each contain ecosystem component species specific to each FMP, as well as a group of ecosystem component species shared between all of the FMPs. Ecosystem component species shared between all of the Pacific Fishery Management Council's FMPs, and known collectively as ''Shared EC Species,'' are:

(1) Round herring (*Etrumeus teres*) and thread herring (*Ophisthonema libertate* and *O. medirastre*).

(2) Mesopelagic fishes of the families *Myctophidae, Bathylagidae, Paralepididae,* and *Gonostomatidae.*

(3) Pacific sand lance (*Ammodytes hexapterus*).
(4) Pacific saury (*Cololabis saira*).
(5) Silversides (family *Atherinopsidae*).
(6) Smelts of the family *Osmeridae.*
(7) Pelagic squids (families: *Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae* except Humboldt squid [*Dosidicus gigas,*] *Onychoteuthidae,* and *Thysanoteuthidae*).

(b) *Directed Commercial Fishing for Shared EC Species.* For the purposes of this section, ''directed commercial fishing'' means that a fishing vessel lands Shared EC Species without landing any species other than Shared EC Species, or lands Shared EC Species with other species and in amounts more than:

(1) 10 mt combined weight of all Shared EC Species from any fishing trip; or

(2) 30 mt combined weight of all Shared EC Species in any calendar year.

§ 660.6 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and the other prohibitions specified in this part, it is unlawful for any person to:

(a) *Directed Commercial Fishing.* Engage in directed commercial fishing for Shared EC Species from a vessel engaged in commercial fishing within the EEZ off Washington, Oregon, or California. This prohibition does not apply to:

(1) Fishing authorized by the Hoh, Makah, or Quileute Indian Tribes, or by the Quinault Indian Nation, or

(2) Fishing trips conducted entirely within state marine waters.

(b) *At-sea Processing.* At-sea processing of Shared EC Species is prohibited within the EEZ, except while processing groundfish in accordance with Subpart D of this part.

■ 4. In § 660.112, add paragraphs (d)(16) and (e)(10) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(d) * * *

(16) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

(e) * * *

(10) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

[FR Doc. 2015–33106 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 2
Tuesday, January 5, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Submission for OMB Review; Comment Request

AGENCY: Risk Management Agency, USDA.

ACTION: Notice.

SUMMARY: 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.

DATES: Comments regarding these information collections are best assured of having their full affect if received within February 4, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Risk Management Education Partnerships; Request for Applications.

OMB Control Number: 0563–0067.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. FCIC operating through the Risk Management Agency (RMA) has two application programs to carryout certain risk management education provisions of the Federal Crop Insurance Act. The two educational programs requiring application are: To establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program; and to provide agricultural producers with training opportunities in risk management with a priority given to producers of specialty crops and underserved commodities. Funds are available to fund parties willing to assist RMA in carrying out local and regional risk management can crop insurance education programs.

Need and Use of the Information: Applicants are required to submit a completed application package in hard copy to RMA. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding. For applicants that are selected, the information will be used to create the terms of cooperative agreements between the applicant and the agency and will not be shared outside of RMA.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,188.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2015–33205 Filed 1–4–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Commerce Data Advisory Council

AGENCY: Economic and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Economic and Statistics Administration (ESA) is giving notice of virtual meetings to be held by the following Commerce Data Advisory Council (CDAC) Working Groups (WG): Data Governance, Data Usability, and Commerce Data Advisory Council (CDAC). Each CDAC WG will hold a separate meeting, through virtual means, to discuss perspective WG matters. Agendas for each CDAC WG meeting will be posted the ESA.gov Web site at: *http://esa.gov/content/upcoming-past-meetings.* Each CDAC WG will meet for approximately two hours for discussion on January 14, 2016. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: January 14, 2016. Each CDAC WG's meeting time and agenda will be posted to the *ESA.gov* Web site three days prior to the meeting.

ADDRESSES: Meeting access information will be posted the esa.gov Web site at: *http://esa.gov/content/upcoming-past-meetings.*

FOR FURTHER INFORMATION CONTACT: Burton Reist, *BReist@doc.gov* Director of External Communication and DFO, CDAC, Department of Commerce, Economics and Statistics Administration, 1401 Constitution Ave. NW., Washington, DC 20230, telephone (202) 482–3331.

SUPPLEMENTARY INFORMATION: Charters for each CDAC WG is available on the *ESA.gov* Web site at: *http://esa.gov/content/federal-advisory-committee-documentation.* The CDAC comprises as many as 20 members. The Council

provides an organized and continuing channel of communication between recognized experts in the data industry (collection, compilation, analysis, dissemination and privacy protection) and the Department of Commerce. The CDAC provides advice and recommendations, to include process and infrastructure improvements, to the Secretary, DOC and the DOC data-bureau leadership on ways to make Commerce data easier to find, access, use, combine and disseminate. The aim of this advice shall be to maximize the value of Commerce data to all users including governments, businesses, communities, academia, and individuals.

The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. Individuals questions or statements must submit them in writing to: *DataAdvisoryCouncil@doc.gov* (subject line ''January 2016 CDAC Working Group Meeting Public Comment''), or by letter submission to the Director of External Communication and DFO, CDAC, Department of Commerce, Economics and Statistics Administration, 1401 Constitution Ave. NW., Washington, DC 20230. Such submissions will be included in the record for the meeting if received by Monday, January 11, 2016.

Dated: December 29, 2015.

Burton Reist,

Director for External Affairs, Economics and Statistics Administration.

[FR Doc. 2015–33154 Filed 12–30–15; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–85–2015]

Foreign-Trade Zone (FTZ) 20—Newport News, Virginia; Notification of Proposed Production Activity; Canon Virginia, Inc.; Subzone 20D; (Toner Cartridges and Bottles) Newport News, Virginia

Canon Virginia, Inc. (Canon), operator of Subzone 20D, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 20D, in Newport News, Virginia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 14, 2015.

Canon already has authority to produce a range of printers, copiers and their parts and supplies, including toner, toner cartridges, toner bottles and cartridge parts, within Subzone 20D. The current request would add foreign-status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Canon from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, Canon would be able to choose the duty rates during customs entry procedures that apply to toner cartridges or toner bottles (duty-free) for the foreign-status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Carbon black and aluminum flanges (duty rates: Duty-free and 5.7%, respectively).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is February 16, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: December 29, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–33160 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (''PRC''). The period of review (''POR'') is April 1, 2014, through March 31, 2015. This review covers two PRC companies, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal, Co., Ltd. (''TMM''). The Department preliminarily finds that TMI and TMM did not have reviewable entries during the POR. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–5848, respectively.

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from the PRC, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and

products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [1] and are thus outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as ''alloy'' magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [2]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[3] The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[2] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[3] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

Background

On April 1, 2015, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the PRC for the period April 1, 2014 through March 31, 2015.[4] On April 30, 2015, U.S. Magnesium LLC (''U.S. Magnesium''), a domestic producer and Petitioner in the underlying investigation of this case, made a timely request that the Department conduct an administrative review of TMI and TMM.[5] On May 26, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review.[6] On June 19, 2015, TMM submitted a letter to the Department certifying that it did not export magnesium metal to the United States during the POR.[7] On June 24, 2015, TMI submitted a letter to the Department certifying that it did not export magnesium metal to the United States during the POR.[8]

On July 9, 2015, we notified U.S. Customs and Border Protection (''CBP'') that we were in receipt of no-shipment certifications from TMI and TMM and requested CBP to report any contrary information within 10 days.[9] CBP did not report any contrary information. On August 21, 2015, the Department placed on the record information obtained in response to the Department's query to CBP concerning imports into the United States of subject merchandise during the POR.[10] This information indicates that there were no entries of subject merchandise during the POR that had been exported by TMI or TMM.

[4] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 17392 (April 1, 2015).

[5] *See* letter from U.S. Magnesium, ''Magnesium Metal from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2015.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 30041 (May 26, 2015).

[7] *See* letter from TMM, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium Metal Co., Ltd.,'' dated June 19, 2015, at 1.

[8] *See* letter from TMI, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated June 24, 2015, at 1.

[9] *See* Memorandum to the File, ''Magnesium Metal from the People's Republic of China: 14–15 Administrative Review: U.S. Customs and Border Protection Data,'' dated August 21, 2015 (''No Shipments Memo''), at Attachment 1: Customs Message 5190303.

[10] *See* No Shipments Memo.

Preliminary Determination of No Shipments

As noted in the ''Background'' section above, TMI and TMM submitted timely-filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR. In addition, CBP did not provide any evidence that contradicts TMI's and TMM's claims of no shipments. Further, on August 21, 2015, the Department released to interested parties the results of a CBP query to corroborate TMI and TMM's no shipment claims.[11] The Department received no comments from interested parties concerning the results of the CBP query.

Based on TMI's and TMM's certifications and our analysis of CBP information, we preliminarily determine that TMI and TMM did not have any reviewable entries during the POR. In addition, the Department finds that it is not appropriate to rescind the review in this circumstance but, rather, to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review, consistent with its practice in non-market economy (''NME'') cases.[12]

Public Comment

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[13] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[14] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[15] Parties submitting briefs should do so pursuant to the Department's electronic filing system: Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[16] ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit,

[11] *Id.*

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) and the ''Assessment Rates'' section, below.

[13] *See* 19 CFR 351.309(c)(1)(ii).

[14] *See* 19 CFR 351.309(d)(1)–(2).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.303 (for general filing requirements).

Room B8024 of the main Department of Commerce building.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the date of publication of this notice. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Additionally, pursuant to a refinement to its assessment practice in NME cases, if the Department continues to determine that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be separate from the PRC-wide entity), the cash deposit rate will be the PRC-wide rate of 141.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–33162 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 25, 2015, the Department of Commerce (the Department) initiated a changed circumstances review and published a notice of preliminary results of changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand.[1] In that notice, we preliminarily determined that Thai Union Group Public Co., Ltd. (Thai Union Group) is the successor-in-interest to Thai Union Frozen Products Public Co., Ltd. (Thai Union Frozen) for purposes of determining antidumping duty cash deposits and liabilities. No interested party submitted comments on, or requested a public hearing to discuss, the *Initiation and Preliminary Results.* For these final results, the Department continues to find that Thai Union Group is the successor-in-interest to Thai Union Frozen.

DATES: *Effective Date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2015, Thai Union Group, a producer/exporter of Thai shrimp covered by this order, changed its name from Thai Union Frozen to Thai Union Group. On October 5, 2015, Thai Union Group requested that the Department conduct an expedited changed circumstances review under section 751(b) of the Act, 19 CFR 351.216(c), and 19 CFR 351.221(c)(3)(ii) to confirm that Thai Union Group is the successor-in-interest to Thai Union Frozen for purposes of determining antidumping duty cash deposits and liabilities. On November 25, 2015, the Department initiated this changed circumstances review and published the notice of preliminary results, determining that Thai Union Group is the successor-in-interest to Thai Union Frozen.[2] In the *Initiation and Preliminary Results,* we provided all interested parties with an opportunity to comment or request a public hearing regarding our preliminary finding that

[1] *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from Thailand,* 80 FR 73726 (November 25, 2015) (*Initiation and Preliminary Results*).

[2] *Id.,* 80 FR at 73728.

Thai Union Group is the successor-in-interest to Thai Union Frozen. We received no comments or requests for a public hearing from interested parties within the time period set forth in the *Initiation and Preliminary Results.*

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[3] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.21.1030, and 1605.29.1010. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the *Initiation and Preliminary Results,* and because we received no comments from interested parties to the contrary, the Department continues to find that Thai Union Group is the successor-in-interest to Thai Union Frozen. As a result of this determination, we find that Thai Union Group should receive the cash deposit rate previously assigned to Thai Union Frozen in the most recently completed review of the antidumping duty order on shrimp from Thailand.[4] Consequently, the Department will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Thai Union Group and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 1.10 percent, which is the current antidumping duty cash-deposit rate for the Thai Union group of companies, of which Thai Union Frozen (and now Thai Union Group) is a part.[5] [6] This cash deposit requirement shall remain in effect until further notice.

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: December 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–33161 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–DS–P

[3] For a complete description of the scope of the order, *see Initiation and Preliminary Results.*

[4] *See, e.g., Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 74 FR 41681, 41682 (August 18, 2009).

[5] This group now consists of Thai Union Group, Thai Union Seafood Co., Ltd., Pakfood Public Company Limited, Okeanos Co. Ltd., Okeanos Food Co., Ltd, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., and Takzin Samut Co. Ltd. (collectively, ''Thai Union'').

[6] Thai Union Frozen received a 1.10 percent dumping margin as part of Thai Union in the 2012–2013 administrative review of the AD order on shrimp from Thailand. *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014) (corrected by *Certain Frozen Warmwater Shrimp From Thailand: Notice of Correction to the Final Results of the 2012–2013 Antidumping Duty Administrative Review,* 79 FR 62099 (October 16, 2014)). We note that Thai Union Frozen is also a respondent in the current 2014–2015 administrative review of this antidumping duty order. *See Certain Frozen Warmwater Shrimp from India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 80 FR 16634 (March 30, 2015). Because we determined that Thai Union Group is the successor-in-interest to Thai Union Frozen, we will assign Thai Union Group an updated cash deposit rate based on the final results of that administrative review.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 14, 2015, the United States Court of International Trade (CIT or the Court) sustained the Department of Commerce's (Department's) results of redetermination,[1] which recalculated the subsidy rate for Tai Shan City Kam Kiu Aluminium Extrusion Co. Ltd. (Kam Kiu) in the first administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China,[2] pursuant to the Court's remand order in *Kam Kiu*.[3] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,*[4] as clarified by *Diamond Sawblades,*[5] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending its *Final Results* with respect to Kam Kiu.

DATES: *Effective Date:* December 24, 2015.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4793.

SUPPLEMENTARY INFORMATION:

Background

In the *Final Results,* the Department determined that Kam Kiu failed to respond to its request for information regarding the company's quantity and value of imports of subject merchandise to the United States during the review period.[6] The Department therefore found Kam Kiu to be uncooperative and determined that the application of facts available with an adverse inference was appropriate pursuant to sections 776(a)(2)(A) and (C) and section 776(b) of the Tariff Act of 1930, as amended (the Act).[7] The Department assigned to Kam Kiu a rate of 121.22 percent. This rate was based on the application of total adverse facts available (AFA) which the Department determined was corroborated to the extent practicable in accordance with section 776(c) of the Act.[8]

In *Kam Kiu,* the Court held that the Department must, to the extent practicable, corroborate the AFA rate assigned to Kam Kiu by either attempting to corroborate Kam Kiu's ability to benefit simultaneously from the location-specific subsidy programs included in the AFA rate, or adjusting its methodology as applied to Kam Kiu and corroborate its findings under the new methodology.[9] The Court found

[1] *See Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.* v. *United States,* Court No. 14–00016; Slip Op. 15–138 (CIT December 14, 2015) (*Kam Kiu II*).

[2] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011,* 79 FR 106 (January 2, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (Final Results Decision Memorandum).

[3] *See Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.* v. *United States,* Court No. 14–00016; Slip Op. 15–21 (CIT March 20, 2015) (*Kam Kiu*).

[4] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[5] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[6] This first administrative review covered the period September 7, 2010, through December 31, 2011.

[7] *See* Final Results Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies'' and Comment 23.

[8] *Id.*

[9] *See Kam Kiu,* Slip Op. at 18–20.

that the Department did not explain how the final rate of 121.22 percent was related to Kam Kiu, and that such a rate appeared punitive in light of the lower rates assigned to the mandatory respondents which were partially based on AFA.[10] The Court further held that the Department failed to corroborate its finding that Kam Kiu could have benefited from the ''Export Rebate for Mechanic, Electronic, and High-Tech Products'' program, and evidence that the mandatory respondents in the review did not use the program detracted from the Department's finding.[11]

On remand, the Court instructed the Department to reconsider its corroboration methodology with regard to location-specific subsidy programs included in Kam Kiu's rate and the ''Export Rebate for Mechanic, Electronic, and High-Tech Products'' program also included in Kam Kiu's rate, as well as to explain how the final AFA rate relates to Kam Kiu.[12]

In its final results of redetermination pursuant to *Kam Kiu,*[13] the Department demonstrated that the AFA rate applied to Kam Kiu in the *Final Results* was corroborated to the extent practicable and was relevant to Kam Kiu. However, to comply with the Court's remand order, under protest, the Department adjusted Kam Kiu's AFA rate to remove all location-specific subsidy programs aside from programs that Kam Kiu could have used based on its mailing address. The Department further explained its corroboration of Kam Kiu's ability to use the ''Export Rebate for Mechanic, Electronic, and High-Tech Products'' program to the extent practicable, and demonstrated that the revised AFA rate of 79.80 percent was relevant to Kam Kiu.

On December 14, 2015, the Court sustained the Department's final results of redetermination pursuant to remand.[14]

Timken Notice

In its decision in *Timken* [15] as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's opinion in *Kam Kiu II,* issued on December 14, 2015, sustaining the Department's final results of redetermination, constitutes a final decision of the court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to the *Final Results,* the Department amends its *Final Results.* The Department finds that the following revised net subsidy rate exists:

Company	Subsidy rate
Tai Shan City Kam Kiu Aluminium Extrusion Co. Ltd.	79.80 percent *ad valorem*

Since the *Final Results,* the Department established a new cash deposit rate for Kam Kiu.[16] Therefore, the cash deposit rate for Kam Kiu does not need to be updated as a result of these amended final results. In the event that the Court's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to liquidate entries of subject merchandise that were exported by Kam Kiu, and which were entered, or withdrawn from warehouse, for consumption during the period September 7, 2010, through December 31, 2011, at the revised rate of 79.80 percent *ad valorem.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 29, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–33164 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–DS–P

[10] *Id.,* at 22–23.

[11] *Id.,* at 23.

[12] *Id.*

[13] *See* Final Results of Redetermination Pursuant to Court Remand—*Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.* v. *United States, Court No. 14–00016;* Slip Op. 15–21 (CIT 2015), signed August 13, 2015.

[14] *See Kam Kiu II.*

[15] *See Timken,* 893 F.2d at 341.

[16] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 78788 (December 31, 2014).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 101st Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The 101st Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held in San Diego, California, from Sunday, January 10, 2016, through Wednesday, January 13, 2016. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The meeting will be held on Sunday, January 10, 2016, through Tuesday, January 12, 2016, from 8:00 a.m. to 5:00 p.m. Pacific time, and on Wednesday, January 13, 2016 from 9:00 a.m. to 12:00 p.m. Pacific time. The meeting schedule is available at *www.ncwm.net.*

ADDRESSES: This meeting will be held at the Westin San Diego Gaslamp Quarter, 910 Broadway Circle, San Diego, California 92101.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hockert, Chief, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Ms. Hockert at (301) 975–5507 or by email at *carol.hockert@nist.gov.* The meeting is open to the public, but a paid registration is required. Please see NCWM Web site (*www.ncwm.net*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in the publications of the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, federal agencies, and representatives from the private sector. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to

encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices, packaged goods, and other trade and commerce issues.

The following are brief descriptions of some of the significant agenda items that will be considered at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Specification and Tolerances Committee (S & T Committee) and the Laws and Regulations Committee (L & R Committee) may also accept comments, and where recommendations will be developed for consideration and possible adoption at the NCWM 2016 Annual Meeting. The Committees may withdraw or carryover items that need additional development.

Some of the items listed below provide notice of projects under development by groups working to develop specifications, tolerances, and other requirements for devices used in transportation network systems and the establishment of approximate gallon and liter equivalents to diesel fuel that would be used in marketing both compressed and liquefied natural gas.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the NCWM Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The S&T Committee will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM L&R Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality'' and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods.''

S&T Committee

The following items are proposals to amend NIST Handbook 44:

LPG and Anhydrous Ammonia Liquid-Measuring Devices Item 332–2. S.1.4.3. Provisions for Power Lost, S.1.5.1.1. Unit Price, S.1.5.1.2. Product Identity, S.1.6. For Retail Motor Vehicle Fuel Devices Only, S.1.7. For Wholesale Devices Only, UR. 2.7. Unit Price and Product Identity, and UR.2.8.

Computing Device

Retail motor-fuel dispensers used to dispense refined fuels such as gasoline and diesel are regulated under the Liquid-Measuring Devices (LMD) Code in NIST Handbook 44. The LMD Code has been repeatedly revised over the past 20 years to reflect changes in technology and marketing practices surrounding the sale of these fuels; however, corresponding changes have not always been made to the LPG and Ammonia Liquid-Measuring Devices Code: The proposed changes under this item are designed to align the LPG and Ammonia Liquid-Measuring Devices Code with the LMD code and help promote uniformity in device requirements and practices and ensure a level playing field among competing businesses.

Mass Flow Meters

Item 337–2 Appendix D—Definitions: Diesel Liter and Diesel Gallon Equivalents of Natural Gas

In 1994 both liter and gallon ''equivalents'' for gasoline were established by the NCWM to provide a means for consumers to make value and fuel economy comparisons between compressed natural gas (CNG) and gasoline, and to promote broader acceptance and use of CNG as a vehicle fuel. These ''equivalents'' are based on a specific weight (mass) per volume, called the gasoline liter equivalent (GLE) and gasoline gallon equivalent (GGE), and are calculated using an estimate of the ''average'' equivalent energy content—a number provided by industry. For several years, the NCWM Specifications and Tolerances (S&T) and Laws and Regulations (L&R) Committees have deliberated on proposals to establish and/or revise requirements for the method of sale and commercial measurement of LNG and CNG. The purpose of this item is to define acceptable units of measurement and identify requirements for equipment used to commercially measure these products.

Hydrogen Gas-Metering Devices

Item 339–2 Table T.2. Accuracy Classes and Tolerances for Hydrogen Gas-Measuring Devices

The NIST Handbook 44, Hydrogen-Gas Measuring Devices code was added to NIST Handbook 44 in 2010 as a ''Tentative Code.'' As is often the case with a tentative code, it is expected that adjustments will need to be made to the code prior to changing its status to ''permanent'' as experience is gained by industry and regulatory offices on the operation, testing, and use of the devices covered by that code.

The tolerances currently specified in the NIST Handbook 44, Hydrogen-Gas Measuring Devices code are ±1.5% for Acceptance Tolerance and ±2.0% for Maintenance Tolerance. According to the submitter of this proposal, no hydrogen-gas dispenser manufacturers can meet the tolerances currently specified in the tentative code. This item proposes establishing multiple accuracy classes in which Acceptance Tolerances would range from ±1.5% to ±5.0% and Maintenance Tolerances would range from ±2.0% to ±10.0%. The proposal places limits on the installation of certain accuracy classes after specified dates. After January 1, 2020, newly installed devices will be required to meet the current, more stringent tolerances; however, larger tolerances may continue to apply to devices installed prior to that date. This proposal would also permit devices of different accuracies to be used in the same application.

Taximeters

Item 354–5 U.S. National Work Group on Taximeters (USNWG)—Taximeter Code Revisions and Global Positioning System (GPS)-Based Systems for Time and Distance Measurement and

Item 354–6 Transportation Network Systems—Draft Code

For several years, the NIST USNWG on Taximeters has discussed possible approaches for amending the NIST Handbook 44, Taximeters Code to specifically recognize GPS-based time and distance measuring systems that are used to assess charges for transportation services such as taxicabs and limousines. Appropriate specifications, tolerances, and other technical requirements for these devices must be developed for manufacturers and users of these devices, as well for weights and measures officials. Such requirements help ensure accuracy and transparency for customers and a level playing field for transportation service companies, enabling consumers to make value

comparisons between competing services. In the fall of 2015, the California Division of Measurement Standards submitted a proposal through multiple regional weights and measures associations to establish a separate NIST Handbook 44 code to address ''Transportation Network Services.'' The S&T Committee will examine these proposals and the result of recent discussions from a November 2015 USNWG meeting to assess how to best address these systems.

L&R Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 130—Section on Uniform Regulation for the Method of Sale of Commodities:

Item 232–7 Section 2.23. Animal Bedding

The L&R Committee will consider a proposal to recommend adoption of a uniform method of sale for animal bedding that will enhance the ability of consumers to make value comparisons and will ensure fair competition. Animal Bedding is generally defined as any material, except for baled straw, that is kept, offered or exposed for sale or sold to retail consumers for primary use as a medium for any pet or companion or livestock animal to nest or eliminate waste. If adopted, the proposal will require packers to advertise and sell packages of animal bedding on the basis of the expanded volume of the bedding. Most packages of animal bedding are compressed during packaging and the expanded volume is the amount of product that consumers will recover through unwrapping and decompressing the bedding according to the instructions provided by the packer. See also Item 260–5, Section 3.15. Test Procedure for Verifying the Usable Volume Declaration on Packages of Animal Bedding.

NIST Handbook 133—Chapter 3

Items 260–3 and 260–4 Section 3.14. Firewood—(Volumetric Test Procedures for Packaged Firewood with a Labeled Volume of 113 L [4 ft³] or Less)

The current test procedure in NIST Handbook 133, Section 3.14., Firewood—(Volumetric Test Procedure for Packaged Firewood with a Labeled Volume of 113 L [4 ft³] or Less) has provided different test results when applied in various state inspections. If adopted, this proposal would clarify the test procedure and improve the accuracy of length determinations when determining the volume of wood in bags, bundles and boxes. Improving the test procedures will help ensure that consumers can make value comparisons and reduce unfair competition. Also Item 232–4, NIST Handbook 130, Method of Sale of Sale of Commodities Regulation, Section 2.4. Fireplace and Stove Wood, is being considered for revision to recognize traditional industry labeling practice and eliminate language that appears to conflict with the requirements of the Uniform Packaging and Labeling Regulation.

Authority: 15 U.S.C. 272(b).

Richard Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–33128 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Genome in a Bottle Consortium—Progress and Planning Workshop

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the Genome in a Bottle Consortium—Progress and Planning Workshop to be held on Thursday, January 28, 2016, and Friday, January 29, 2016. The Genome in a Bottle Consortium is developing the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable performance assessment of sequencing and science-based regulatory oversight of clinical sequencing. The purpose of this workshop is to update participants about progress of the consortium work, continue to get broad input from individual stakeholders to update or refine the consortium work plan, continue to broadly solicit consortium membership from interested stakeholders, and invite members to participate in work plan implementation.

Topics of discussion at this workshop will include progress and planning of the Analysis Group, which is analyzing and integrating the large variety of sequencing data for four candidate NIST Reference Materials (RMs), with a particular focus on challenging types of variants and challenging regions of the genome. Other potential NIST RMs that might be developed by the consortium will also be discussed.

DATES: The Genome in a Bottle Consortium workshop will be held on Thursday, January 28, 2016 from 9:00 a.m. to 5:30 p.m. Pacific Time, and Friday, January 29, 2016 from 9:00 a.m. to 1:00 p.m. Pacific Time. Attendees must register by 5:00 p.m. Pacific Time on Thursday, January 21, 2016.

ADDRESSES: The meeting will be held on the second floor of the Li Ka Shing Conference Center, Stanford University, 291 Campus Drive, Palo Alto, CA 94305. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact Justin Zook by email at *jzook@nist.gov* or by phone at (301) 975–4133 or Marc Salit by email at *salit@nist.gov* or by phone at (650) 350–2338. To register, go to: *http://web.stanford.edu/~saracl/GIAB2016.fb*

SUPPLEMENTARY INFORMATION: Clinical application of ultra high throughput sequencing (UHTS) for hereditary genetic diseases and oncology is rapidly growing. At present, there are no widely accepted genomic standards or quantitative performance metrics for confidence in variant calling. These standards and quantitative performance metrics are needed to achieve the confidence in measurement results expected for sound, reproducible research and regulated applications in the clinic. On April 13, 2012, NIST convened the workshop ''Genome in a Bottle'' to initiate a consortium to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls (*www.genomeinabottle.org*). On August 16–17, 2012, NIST hosted the first large public meeting of the Genome in a Bottle Consortium, with about 100 participants from government, academic institutions, and industry. This meeting was announced in the **Federal Register** (77 FR 43237) on July 24, 2012. A principal motivation for this consortium was to enable science-based regulatory oversight of clinical sequencing.

At the August 2012 meeting, the consortium established work plans for four technical working groups with the following responsibilities:

(1) Reference Material (RM) Selection and Design: Select appropriate sources for whole genome RMs and identify or design synthetic DNA constructs that could be spiked-in to samples for measurement assurance.

(2) Measurements for Reference Material Characterization: Design and carry out experiments to characterize

the RMs using multiple sequencing methods, other methods, and validation of selected variants using orthogonal technologies.

(3) Bioinformatics, Data Integration, and Data Representation: Develop methods to analyze and integrate the data for each RM, as well as select appropriate formats to represent the data.

(4) Performance Metrics and Figures of Merit: Develop useful performance metrics and figures of merit that can be obtained through measurement of the RMs.

The products of these technical working groups will be a set of well-characterized whole genome and synthetic DNA RMs along with the methods (documentary standards) and reference data necessary for use of the RMs. These products will be designed to help enable translation of whole genome sequencing to regulated clinical applications. The pilot, NIST ''Human DNA for Whole-Genome Variant Assessment (Daughter of Utah/European Ancestry)'' RM was released in May 2015 and is available at *http://tinyurl.com/giabpilot.* The consortium is currently analyzing and integrating data from two trios that are candidate NIST RMs. The consortium meets in workshops two times per year, in January at Stanford University in Palo Alto, CA, and in August at the National Institute of Standards and Technology in Gaithersburg, MD. At these workshops, including the last meetings at Stanford in January 2015 and at NIST in August 2015, participants in the consortium have discussed progress developing well-characterized genomes for NIST Reference Materials and planned future experiments and analysis of these genomes (see *https://federalregister.gov/a/2012-18064, https://federalregister.gov/a/2013-18934, https://federalregister.gov/a/2014-18841* and *https://federalregister.gov/a/2015-01158* for past workshops at NIST and Stanford). The January 2015 meeting was announced in the **Federal Register** (80 FR 3220) on January 22, 2015, and the meeting is summarized at *https://docs.google.com/document/d/19J6YDg1MH1iD-8Q8mmV9L7wHOfuyUC3aogctZ2Nh87U/edit?usp=sharing.* The August 2015 meeting was announced in the **Federal Register** (80 FR 45194) on July 29, 2015, and the meeting is summarized at *https://docs.google.com/document/d/19-KSn0ydF8rsWRbl6OqhIdbt2gGN10dOMRF6inKmrk4/edit?usp=sharing.*

There is no cost for participating in the consortium. No proprietary information will be shared as part of the consortium, and all research results will be in the public domain.

All attendees are required to pre-register. Anyone wishing to attend this meeting must pre-register at *http://web.stanford.edu/~saracl/GIAB2016.fb* by 5:00 p.m. Pacific Time on Thursday, January 21, 2016, in order to attend.

Richard Cavanagh,

Acting Associate Director of Laboratory Programs.

[FR Doc. 2015–33140 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Quantitative Assessment of Spatially-Explicit Social Values Relative to Wind Energy Areas: Outer Continental Shelf Offshore North Carolina

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 7, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Theresa L. Goedeke, 240–533–0383 or *theresa.goedeke@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to the Outer Continental Shelf Land Act, the National Environmental Policy Act and the Coastal Zone Management Act, this request is for a new data collection to benefit the National Oceanic and Atmospheric Administration (NOAA), Bureau of Ocean Energy Management (BOEM), and policy-makers on the state and local level in North Carolina. BOEM has identified three wind energy areas for potential development on the outer continental shelf of North Carolina. The National Ocean Service (NOS) proposes to collect data on the knowledge, beliefs, social values, and attitudes of North Carolina and South Carolina residents relative to marine and coastal landscapes, alternative energy production options, and offshore wind energy development. Respondents will be sampled from households in eight to ten coastal counties.

The required information will be used to objectively assess the level of support and/or opposition for offshore wind energy development in the region, as well as identify the relevant issues and concerns most salient to residents. The information will be used by BOEM, NOAA, and others to improve agency understanding about the beliefs, social values, attitudes, and concerns of people potentially affected by offshore wind energy development. Such information will be used to ascertain the possible sociocultural outcomes of offshore wind energy development in the region, such as an enhancement or reduction in enjoyment of the coastal landscape/seascape. Additionally, information collected will be used to improve communication efforts targeted to residents, enabling agencies to more effectively and efficiently direct outreach and community inclusion activities.

II. Method of Collection

The data collection will take place over a three to four month period and will be comprised of a questionnaire to be completed by the respondent. The data will be collected via a mail-back survey instrument.

III. Data

OMB Control Number: 0648–XXXX.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,333.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 30, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–33152 Filed 1–4–16; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Port of Long Beach Deep Draft Navigation Project, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Los Angeles District intends to prepare an Environmental Impact Statement (EIS) to support a cost-shared feasibility study with the Port of Long Beach, California, for navigation improvements to existing navigation channels within the Port. The purpose of the feasibility study is to provide safe, reliable, and efficient waterborne transportation improvements to the Port of Long Beach. The EIS will analyze potential impacts of the recommended plan and a range of alternatives for navigation improvements. Alternatives will include both structural and non-structural measures.

ADDRESSES: You may submit your concerns in writing to the Los Angeles District at the address below. Comments, suggestions, and requests to be placed on the mailing list for announcements should be sent to Larry Smith, U.S. Army Corps of Engineers, Los Angeles District, 915 Wilshire Boulevard, Suite 930, Los Angeles, CA 90017–3401, or email to *lawrence.j.smith@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Larry Smith, Project Environmental Coordinator, (213) 452–3846.

SUPPLEMENTARY INFORMATION: Authorization: Resolution of the Senate Committee on Public Works adopted 11 May 1967 and the Resolution of the House Committee on Public Works adopted 10 July 1968. The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with proposed navigation improvements measures in the study area.

Study Area: The Port of Long Beach is on the coast of southern California in San Pedro Bay, approximately 20 miles south of downtown Los Angeles, California. The communities of San Pedro and Wilmington are to the west and northwest of San Pedro Bay, respectively, and to the northeast the city of Long Beach. The study area includes the waters in the immediate vicinity (and shoreward) of the breakwaters through the entire Port of Long Beach and the downstream reaches of the Los Angeles River that have direct impact on the Bay, including Outer Harbor, Inner Harbor, Cerritos Channel, West Basin, and the Back Channel.

Problems and Needs: The primary problem is the inefficient operation of deep draft vessels in secondary channels, which increases the Nation's transportation costs. This study will address inefficiencies to container movements only. The following problem statements summarize these inefficiencies.

(1) Due to depth limitations along channels accessing the Port's container terminals, existing container vessels cannot load to their maximum draft, which is causing light-loading of vessels at the point of origin and delays to an increasing number of containerships.

(2) The dimensions of the world-wide fleet of container vessels have increased significantly, and it is anticipated that this trend will continue into the future. Delays and light-loading due to container vessel draft limits will increase as new, larger vessels are added to the fleet.

(3) There are diminished recreation opportunities and environmental degradation in coastal areas outside of the study area.

Proposed Action and Alternatives: The Los Angeles District will investigate and evaluate all reasonable alternatives to address the problems and needs identified above. In addition to the NO ACTION alternative, both structural (deepen the secondary access channel to Pier J, deepen the secondary access channel to Pier T West Basin, construct a turning basin in the secondary access channel to Pier J, construct a turning basin in the secondary access channel to Pier T West Basin, deepen the approach channel, or deepen the anchorage along the main channel, beneficial use of dredged material for recreation or ecosystem restoration) and non-structural (high tide riding, light loading, and vessel re-routing) measures will be investigated.

Previous Actions: Port of Long Beach Main Channel Deepening Project, Pier T Marine Terminal, Middle Harbor Redevelopment.

Scoping: The scoping process is ongoing and has involved preliminary coordination with Federal, State, and local agencies. A public scoping meeting is scheduled on 19 January 2016, from 2:00 to 4:00 p.m. at the Port of Long Beach Harbor Department Interim Administrative Offices; 4801 Airport Plaza Drive, Long Beach, California. The public will have an opportunity to express opinions and raise any issues relating to the scope of the Feasibility Study and the EIS. The public as well as Federal, State, and local agencies are encouraged to participate by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the study. Useful information includes other environmental studies, published and unpublished data, alternatives that could be addressed in the analysis, and potential mitigation measures associated with the proposed action. All comments enter into the public record.

Availability of the Draft EIS: The Draft EIS is scheduled to be published and circulated in late 2016, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Dated: December 29, 2015.

Dennis P. Sugrue,

Lieutenant Colonel, U.S. Army, Acting Commander and Acting District Engineer.

[FR Doc. 2015–33166 Filed 1–4–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, To Vacate Prior Authorization and Errata During November 2015

	FE Docket Nos.
PIERIDAE ENERGY (USA) LTD	14–179–LNG
SUNCOR ENERGY MARKETING INC	15–158–NG
BAKKEN HUNTER, LLC	15–160–NG
MERCURIA COMMODITIES CANADA CORPORATION	15–161–NG
PUGET SOUND ENERGY, INC	15–139–LNG
PUGET SOUND ENERGY, INC	15–140–LNG
PUGET SOUND ENERGY, INC	15–141–LNG
PUGET SOUND ENERGY, INC	11–142–LNG
FLORIDIAN NATURAL GAS STORAGE COMPANY, LLC	15–38–LNG
IBERDROLA ENERGY SERVICES, LLC	15–172–NG
COLONIAL ENERGY, INC	15–173–NG
RAINBOW ENERGY MARKETING CORPORATION	15–166–NG
SOUTHERN CALIFORNIA GAS COMPANY	15–167–NG
DELPHI ENERGY CORP	15–170–NG
WISCONSIN PUBLIC SERVICE CORPORATION	15–163–NG
DIVERSENERGY	15–159–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2015, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to vacate prior authority, and errata. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/downloads/listing-doefe-authorizationsorders-issued-2015*. They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 17, 2015.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Errata	11/02/15	14–179–LNG	Pieridae Energy (USA) Ltd	Errata notice to DOE/FE Order No. 3639.
3737	11/02/15	15–158–NG	Suncor Energy Marketing Inc	Order granting blanket authority to import/export natural gas from/to Canada.
3738	11/02/15	15–160–NG	Bakken Hunter, LLC	Order granting blanket authority to import natural gas from Canada.
3739	11/03/15	15–161–NG	Mercuria Commodities Canada Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3740	11/12/15	15–139–NG	Puget Sound Energy, Inc	Order granting long-term authority to import/export natural gas from/to Canada.
3741	11/12/15	15–140–NG	Puget Sound Energy, Inc	Order granting long-term authority to import/export natural gas from/to Canada.
3742	11/12/15	15–141–NG	Puget Sound Energy, Inc	Order granting long-term authority to import/export natural gas from/to Canada.
3743	11/12/15	15–142–NG	Puget Sound Energy, Inc	Order granting long-term authority to import/export natural gas from/to Canada.
3744	11/25/15	15–38–LNG	Floridian Natural Gas Storage Company, LLC.	Final Opinion and Order 3744 granting long-term, Multi-contract authority to export LNG in ISO Containers loaded at the proposed Floridian Facility in Martin County, Florida, and exported by vessel to Free Trade Agreement Nations.
3745	11/30/15	15–172–NG	Iberdrola Energy Services, LLC.	Order granting blanket authority to import/export natural gas from/to Canada.
3746	11/30/15	15–173–NG	Colonial Energy, Inc	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3747	11/30/15	15–166–NG	Rainbow Energy Marketing Corporation.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3748	11/30/15	15–167–NG	Southern California Gas Company.	Order granting blanket authority to import/export natural gas from/to Canada.
3749	11/30/15	15–170–NG	Delphi Energy Corp	Order granting blanket authority to import natural gas from Canada.
3750	11/30/15	15–163–NG	Wisconsin Public Service Corporation.	Order granting blanket authority to import/export natural gas from/to Canada.
3751	11/30/15	15–159–LNG	DIVERSENERGY	Order granting blanket authority to import/export LNG from/to Mexico by truck and vacating prior authority.

[FR Doc. 2015–33151 Filed 1–4–16; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD16–2–000]

Proposed Agency Information Collection

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) invites public comment in Docket No. RD16–2–000 on a proposed change to collections of information (FERC–725P and FERC–725P1) that the Commission is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before March 7, 2016.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission will submit the reporting and recordkeeping requirements of Reliability Standard PRC–005–6 to OMB for review. Reliability Standard PRC–005–6 replaces or supplements requirements from previous versions of the PRC–005 Reliability Standard, which are approved under FERC–725P (Mandatory Reliability Standards: Reliability Standard PRC–005–3, OMB Control No. 1902–0269) and FERC–725P1 (Mandatory Reliability Standards, PRC–005–4 Reliability Standard, OMB Control No. 1902–0280). The requirements and associated burden of Reliability Standard PRC–005–6 will be included in FERC–725P1.[1]

Type of Request: Three-year extension of the FERC–725P1 information collection requirements with the stated changes to the current reporting and record retention requirements, and reduction to the requirements of FERC–725P.

Abstract: The Commission requires the information collected by the FERC–725P1 to implement the statutory provisions of section 215 of the Federal Power Act (FPA).[2] On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005).[3] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[4]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[5] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO.[6] The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

On November 13, 2015, the North American Electric Reliability Corporation (NERC) filed a petition for Commission approval of proposed Reliability Standard PRC–005–6 (Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance). NERC also requested approval of the proposed implementation plan for PRC–005–6, and the retirement of previous versions of Reliability Standard PRC–005. NERC explained in its petition that Reliability Standard PRC–005–6 represents an improvement upon the most recently-approved version of the standard, PRC–005–4.[7] FERC approved the proposed Reliability Standard PRC–005–6 on December 18, 2015.[8]

Type of Respondents: Transmission Owners (TO), Generator Owners (GO), and Distribution Providers.

Estimate of Annual Burden.[9] Estimates for the changes to burden and cost due to Docket No. RD16–2–000 follow.

[1] In the future, to consolidate reporting requirements associated with the PRC Standards, the Commission plans to transfer the burden associated with Reliability Standard PRC–005–6 to FERC–725G (OMB Control No. 1902–0252) and removed from FERC–725P and FERC–725P1.

[2] 16 U.S.C. 824*o* (2012).

[3] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824*o*).

[4] 16 U.S.C. 824*o*(e)(3).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

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

[7] As noted in NERC's petition, NERC filed a separate motion to delay implementation of the approved, but not yet effective, versions of the PRC–005 Reliability Standard in Docket Nos. RM14–8–000 (PRC–005–3), RD15–3–000 (PRC–005–3(i)), and RM15–9–000 (PRC–005–4) until after the Commission issues an order or rule regarding proposed PRC–005–6. NERC's motion was granted in a delegated letter order issued December 4, 2015. See North American Elec. Reliability Corp., Docket Nos. RM14–8–000 et al. (Dec. 4, 2015) (delegated letter order).

[8] The Delegated Letter Order is available in FERC's eLibrary at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14076238.*

[9] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. 5 CFR 1320.3 (2014) (explaining what is included in the information collection burden).

CHANGES MADE IN RD16–2–000

Reliability standard	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response (4)	Total annual burden (hours) and cost (3) * (4) = (5)	Total annual cost per respondent ($)
FERC–725P (Reduction due to Replacement of PRC–005–3) [10] [11]						
One-time review of existing plant and substation sites to determine which ones fall under PRC–005–3.	[12] 937	−1	−937	2 hrs.; $146	−1,874 hrs.; −$136,802	−146.00
One-time review and adjustment of existing program.	[13] 288	−1	−288	8 hrs.; $584	−2,304 hrs.; −$168,192	−584.00
Total Reduction to FERC–725P			−1,225		−4,178 hrs.; −$304,994.	
FERC–725P1						
Replacement of PRC–005–4 [14] [15]—One-time review of sudden pressure relay maintenance program and adjustment (Burden Reduction).	1,287	−1	−1,287	8 hrs.; $522.72	−10,296 hrs.; −$672,740.64	−522.72
Implementation of PRC–005–6—One-time review of existing plant and substation sites to determine which ones fall under PRC–005–6 (Burden Increase).	[16] 937	1	937	2 hrs.; $145	1,874 hrs.; $135,397	144.50
Implementation of PRC–005–6—One-time review and adjustment of existing program for reclosing relays and associated equipment (Burden Increase).	288	1	288	8.5 hrs.; $614	2,448 hrs.; $176,868	614.00
Implementation of PRC–005–6—One-time review and adjustment of existing program for sudden pressure relays (Burden Increase).	1,287	1	1,287	8 hrs.; $531.60	10,296 hrs.; $684,169.20	531.60
Total Net Increase to FERC–725P1			2,512		4,332 hrs.; $323,693.56	
Total Net Change, due to RD16–2			0		144 hrs.; $18,699	

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33125 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

[10] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $73 per Hour = Average Cost per Response. The hourly cost figure comes from the average of the salary plus benefits for a manager and an engineer (rounded to the nearest dollar). The figures are taken from the Bureau of Labor Statistics at (*http://bls.gov/oes/current/naics3_221000.htm*).

[11] Implemented in Docket RM14–8.

[12] This figure reflects the generator owners and transmission owners identified in the NERC Compliance Registry as of May 28, 2014.

[13] This figure is a subset of GOs and TOs, as discussed in Order 803 (Docket No. RM14–8), P 41.

[14] Implemented in Docket RM15–9.

[15] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $65.34 per Hour = Average Cost per Response. The hourly cost figure comes from the average of the salary plus benefits for an engineer (rounded to the nearest dollar). The figures are taken from the Bureau of Labor Statistics at (*http://bls.gov/oes/current/naics3_221000.htm*).

[16] This figure reflects the generator owners and transmission owners identified in the NERC Compliance Registry as of May 28, 2014.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–21–000]

C.P. Crane LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 29, 2015, the Commission issued an order in Docket No. EL16–21–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of C.P. Crane LLC's reactive power rate schedule. *C.P. Crane LLC*, 153 FERC ¶ 61,348 (2015).

The refund effective date in Docket No. EL16–21–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33124 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–490–000, CP15–490–001]

Delfin LNG, LLC; Notice of Scoping for the Proposed Delfin LNG Project and Request for Comments on Environmental Issues

The Federal Energy Regulatory Commission (FERC or Commission) is cooperating with the U.S. Coast Guard (Coast Guard), the lead federal agency for environmental review of the Delfin LNG Project. This proposal involves the construction and operation of an offshore liquefied natural gas (LNG) deepwater port (under the jurisdiction of the Coast Guard and the Maritime Administration) and associated pipeline facilities, including about 1.1 mile of onshore pipeline and aboveground facilities under the Commission's jurisdiction. FERC staff is assisting the Coast Guard in its preparation of an environmental impact statement (EIS) that will discuss the environmental impacts of the Delfin LNG Project. This cooperative effort is to comply with the National Environmental Policy Act of 1969 (NEPA), which requires the Commission to take into account the

environmental impact that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act.

NEPA requires the FERC to discover and address concerns the public may have about proposals under its review. This process is referred to as ''scoping.'' On November 19, 2015, Delfin LNG, LLC (Delfin LNG) amended its application with the FERC regarding the proposed aboveground facilities. Thus, the FERC is opening a scoping period to solicit input from the public and interested agencies *limited to the proposed onshore pipeline and related facilities* (*i.e.,* those under FERC jurisdiction) in Cameron Parish, Louisiana. You can make a difference by providing us [1] with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help determine which issues need to be evaluated in the EIS.[2] Please note that the scoping period will close on January 28, 2016, and comments should be limited to the onshore facilities described in this amended docket. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. Delfin LNG would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Delfin LNG could initiate condemnation proceedings where compensation would be determined in accordance with state law.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.[3] If you received this notice, you are on the environmental mailing list for this project and will continue to receive project updates including the draft and final EISs.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project (FERC Jurisdictional Facilities)

Delfin LNG proposes to activate the formerly abandoned U–T offshore system (UTOS) pipeline and construct new connecting pipelines, a compressor station, and appurtenant facilities the majority of which would be within the PSI Midstream Partners, L.P. (PSI) Cameron Meadows Gas Plant and adjacent Transcontinental Gas Pipe Line, LLC (Transco) Station 44 in Cameron Parish. The proposed facilities consist of:

- 1.1 miles of the existing onshore portion of the 42-inch-diameter UTOS pipeline from the landward side of the mean high water mark along the coast of Cameron Parish to just inside the boundary of Transco Station 44;
- a mainline block valve and blowdown site located south of Louisiana Highway 82;
- a new meter station and connecting piping within the Transco Station 44 site;
- a new 0.25-mile-long 42-inch-diameter pipeline to connect the UTOS line to the new meter station;
- new twin 0.6-mile-long 30-inch diameter header pipelines;
- a new compressor station consisting of:
  - four 30,000 horsepower (hp) Solar Tital 250 gas turbine-driven compressors;
  - four gas coolers;
  - three 600 kilowatt generators;
  - two control buildings, office and warehouse buildings; and
  - pig launcher and check meter.

The general location of the proposed onshore pipeline is shown in appendix 1.[4]

Land Requirements for Construction

Approximately 19.4 acres of land would be affected by construction, with about 13.0 acres permanently impacted for operation. The construction right-of-way width for the three adjacent pipelines—the twin 0.6-mile, 30-inch-diameter header pipelines and the 0.25-mile 42-inch-diameter pipeline would be 120 feet wide, of which 70 feet would be retained as permanent right-of-way. The majority of aboveground facilities would be constructed within the existing fence lines of the Cameron Meadows Gas Plant and Transco Station 44.

Of the land effected by construction, approximately 36.4 percent is classified as industrial land use and approximately 35.9 percent is currently maintained in an herbaceous state. The remaining land comprises intermediate marsh, coastal dune shrub thicket, scrub/shrub swamp, and roads.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues.

As mentioned previously, the Coast Guard is the lead federal agency preparing the EIS for the overall Delfin LNG Deepwater Port Project. According to the Maritime Administration's December 24, 2015 *Notice of Receipt of Amended Application and Request for Comments,* when a draft EIS is complete and ready for public review, the Maritime Administration will publish a *Notice of Availability* in the **Federal Register** to provide for a public comment period that include public meetings in Louisiana and Texas. FERC, as a cooperating agency will play an important role in developing the environmental analysis for the FERC-jurisdictional (onshore) facilities in the EIS. Thus, FERC staff will work with Coast Guard staff and contractors to ensure that the onshore facilities are thoroughly evaluated and that all scoping comments received as a result of this notice are addressed, as

[1] ''We,'' ''us,'' and ''our'' refers to environmental staff of the Office of Energy Projects.

[2] For more information on the original and amended Delfin LNG Project or the Coast Guard's EIS process, see the July 29, 2015 edition of the **Federal Register**, page 45,270, and the December 24, 2015 edition of the **Federal Register**, page 80,455 ''Deepwater Port License Application: Delfin LNG LLC, Delfin LNG Deepwater Port'' under Department of Transportation/Maritime Administration.

[3] Comments submitted during the Coast Guard's scoping period (July 29–September 28, 2015) for the project as originally proposed do not need to be resubmitted.

[4] The appendix referenced in this notice will not appear in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 5 of this notice.

appropriate, in the EIS. Staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on various resource areas.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–490) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–490). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33123 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Prohibited

Docket No.	File date	Presenter or requester
1. CP15–554–000	12–14–2015	Danielle Pollard.
2. CP15–554–000	12–14–2015	Travis Hancock.
3. CP15–17–000	12–16–2015	Angela Rangel.

Docket No.	File date	Presenter or requester
4. CP15–17–000	12–16–2015	Brianna L. Jess.
5. CP16–21–000	12–16–2015	J.L. Bradley.
6. CP16–21–000	12–16–2015	Sebern Fisher.
7. CP16–21–000	12–16–2015	Stephen Balog and Kate Balog.
8. CP15–17–000	12–16–2015	Tanesia Anthony.
9. CP15–17–000	12–16–2015	Esau Gilmore.
10. CP15–17–000	12–16–2015	Jordan McMillan.
11. CP15–17–000	12–16–2015	Carolyn Barrette.
12. CP15–17–000	12–16–2015	Devon Herndon.
13. CP15–17–000	12–16–2015	Bria Jackson.
14. CP15–17–000	12–16–2015	DruAusten Fields.
15. CP15–17–000	12–16–2015	Kyle Sellers.
16. CP15–17–000	12–16–2015	Saloni Patel.
17. CP15–17–000	12–16–2015	Madison Armona.
18. CP14–96–000	12–18–2015	Paul M. Blanch.
19. CP15–558–000	12–18–2015	Rosemarie Jeanettorea and Walter Niemczyk.
20. CP15–554–000	12–21–2015	Leroy Haskett.
21. CP15–554–000	12–22–2015	Edith Goff.
22. CP15–93–000	12–23–2015	LIUNA.

Exempt

Docket No.	File date	Presenter or requester
1. CP16–21–000	12–11–2015	U.S. Senator Kelly A. Ayotte.
2. CP14–115–000, CP14–103–000, CP14–493–000.	12–15–2015	U.S. Congressmen.[1]
3. CP15–504–000	12–16–2014	FERC Staff.[2]
4. CP15–554–000, CP16–10–000	12–16–2014	State of Virginia Delegate Lamont Bagby.
5. CP15–115–000	12–18–2015	State of New York Assemblyman John Ceretto.
6. CP16–22–000	12–18–2015	U.S. House Representative Robert E. Latta.
7. CP15–554–000	12–21–2015	U.S. Congressmen.[3]
8. CP15–554–000	12–21–2015	U.S. House Representative G.K. Butterfield.
9. CP14–96–000	12–22–2015	U.S. House Representative Eliot L. Engel.
10. CP16–9–000	12–22–2015	State of Maine Governor Paul R. LePage.
11. CP16–21–000	12–23–2015	Town of Brookline, Massachusetts, Town Administrator Melvin A. Kleckner.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33126 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2192–026 ER15–1537–003; ER15–1539–003; ER10–2178–026; ER13–1536–010; ER11–2010–023; ER12–1829–013; ER12–1223–018

Applicants: Constellation Energy Commodities Group Maine, LLC, Constellation Energy Services, Inc., Constellation Energy Services of New York, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC, Exelon Wind 4, LLC, Shooting Star Wind Project, LLC, Wildcat Wind, LLC

Description: Updated Market Power Analysis for the Southwest Power Pool Region of the Exelon SPP Entities.

Filed Date: 12/29/15.

Accession Number: 20151229–5163.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–180–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 20151229_Amended JDA to be effective 1/1/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5208.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–641–000.

Applicants: Public Service Company of New Mexico

Description: Tariff Cancellation: Notice of Cancellation of Expedited Service Agreement to be effective 12/10/2015.

Filed Date: 12/28/15.

Accession Number: 20151228–5226.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–642–000.

Applicants: Idaho Power Company.

Description: Section 205(d) Rate Filing: PAC Imnaha NITSA April 2016 to be effective 4/1/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5003.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–643–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Section 205(d) Rate Filing: WPC 2016 TCEC Ex C Filing to be effective 1/31/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5142.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–644–000.

Applicants: Entergy Services, Inc.

[1] Johnny Isakson, David Perdue, and Earl L. 'Buddy' Carter.

[2] Meeting Summary from December 10, 2015 call with FERC, HDR Engineering, Inc., and International Paper regarding Columbia to Eastover Project.

[3] Richard Hudson, Renee Ellmers, George Holding, and Davis Rouzer.

Description: Application of Entergy Services, Inc. on behalf of Entergy Arkansas, Inc. to collect nuclear decommissioning costs for Nuclear One Unit 2 generating plant.

Filed Date: 12/29/15.

Accession Number: 20151229–5162.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–645–000.

Applicants: RE Barren Ridge 1 LLC.

Description: Baseline eTariff Filing: Application for MBR to be effective 2/29/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5173.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–646–000.

Applicants: PJM Interconnection, L.L.C., American Electric Power Service Corporation.

Description: Section 205(d) Rate Filing: AEPSC submits updated depreciation rate revisions to Attach. H–14 and H–20 to be effective 7/1/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5183.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–647–000.

Applicants: Otter Tail Power Company.

Description: Section 205(d) Rate Filing: Revisions to Service Agreement No. 4 Under the CASOT to be effective 1/1/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5211.

Comments Due: 5 p.m. ET 1/19/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–18–000.

Applicants: NorthWestern Corporation.

Description: Application for Authorization Under Section 204 of the Federal Power Act to Issue Securities of NorthWestern Corporation.

Filed Date: 12/28/15.

Accession Number: 20151228–5287.

Comments Due: 5 p.m. ET 1/19/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33121 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–316–000.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Compliance filing per 154.501: TIGT 2015 Annual Reconciliation Filing to be effective.

Filed Date: 12/28/15.

Accession Number: 20151228–5086.

Comments Due: 5 p.m. ET 1/11/16.

Docket Numbers: RP16–322–000.

Applicants: Dominion Carolina Gas Transmission, LLC.

Description: Interruptible Revenue Sharing Report for 2015 of Dominion Carolina Gas Transmission, LLC under RP16–322.

Filed Date: 12/28/15.

Accession Number: 20151228–5154.

Comments Due: 5 p.m. ET 1/11/16.

Docket Numbers: RP16–323–000.

Applicants: Kern River Gas Transmission Company.

Description: Section 4(d) rate filing per 154.204: 2015 Meter Modifications to be effective 2/1/2016.

Filed Date: 12/28/15.

Accession Number: 20151228–5172.

Comments Due: 5 p.m. ET 1/11/16.

Docket Numbers: RP16–324–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Section 4(d) rate filing per 154.204: Neg Rate 2015–12–28 Koch to be effective 1/1/2016.

Filed Date: 12/28/15.

Accession Number: 20151228–5191.

Comments Due: 5 p.m. ET 1/11/16.

Docket Numbers: RP16–325–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Compliance filing per 154.203: Annual Accounting Report filing on 12/29/15.

Filed Date: 12/29/15.

Accession Number: 20151229–5093.

Comments Due: 5 p.m. ET 1/11/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33129 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2302–006.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Triennial Market Power Update.

Filed Date: 12/29/15.

Accession Number: 20151229–5195.

Comments Due: 5 p.m. ET 2/29/16.

Docket Numbers: ER16–648–000.

Applicants: Valley Electric Association, Inc.

Description: Section 205(d) Rate Filing: Annual TRBAA Filing to be effective 1/1/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5230.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–649–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Cancellation of Tariff 304 to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5260.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–650–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Cancellation of Service Agreement No. 340 to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5262.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–651–000.

Applicants: Milo Wind Project, LLC.

Description: Market-Based Triennial Review Filing: Milo Wind Project Triennial Filing to be effective 2/28/2016.

Filed Date: 12/29/15.

Accession Number: 20151229–5273.

Comments Due: 5 p.m. ET 2/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–33122 Filed 1–4–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0741; FRL–9937–07]

Notice of Receipt of Requests To Voluntarily Cancel Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain products containing the pesticides alachlor, atrazine, fludioxonil, glyphosate, POE isooctadecanol, pyrithiobac, quizalofop-p-ethyl, thiamethoxam, and thiophanate methyl, and to amend three dodine product registrations to terminate use on strawberries. The requests would not terminate the last atrazine, fludioxonil, glyphosate, POE isooctadecanol, pyrithiobac, quizalofop-p-ethyl, thiamethoxam, and thiophanate methyl products registered for use in the United States. One request, if granted, would terminate the last alachlor products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 4, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0741, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Miguel Zavala, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0504; email address: *zavala.miguel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

II. Background on the Receipt of Requests To Cancel and/or Amend Registrations To Delete Uses

This notice announces receipt by EPA of requests from ADAMA Agricultural Solutions, Gowan Company, Syngenta Crop Protection, BASF Corporation, and Monsanto Company to cancel certain product registrations and from Agriphar S.A. to amend certain registrations to terminate uses on strawberry.

Alachlor is an herbicide registered for on beans, corn, peanuts, sorghum, and soybeans. There are no non-agricultural use sites. Atrazine is an herbicide registered for use on corn, sorghum, and sugarcane. In a letter dated October 13, 2015, Monsanto requested that EPA cancel all alachlor product registrations identified in Table 1 of Unit III. Several of these alachlor products also contain atrazine. Such action would terminate the last alachlor pesticide products registered in the United States, but would not terminate the last atrazine

pesticide products registered in the United States.

Dodine is a fungicide registered for use on almonds, apples, bananas, cherries, nectarines, peaches, peanuts and pecans. There are no non-agricultural use sites. In a letter dated June 22, 2015, Ceres International LLC requested on behalf of Agriphar S.A. that EPA amend certain registrations identified in Table 2 of Unit III to delete the use of dodine on strawberry. This request would delete the strawberry use site from all dodine product labels registered for use in the United States, but would not terminate the last dodine pesticide products registered in the United States.

Fludioxonil is a broad spectrum contact fungicide and antimicrobial that is used on a variety of crops, berries, fruit trees, grasses, herbs, ornamentals, and residential turf, as a preservative for mold remediation and other non-food uses. Thiamethoxam is a broad spectrum nitroguanidine insecticide that is registered for use on several agricultural and non-agricultural commodities. In a letter dated November 19, 2015, Syngenta requested that EPA cancel one pesticide product registration containing both fludioxonil and thiamethoxam identified in Table 1 of Unit III. This action will not terminate the last fludioxonil or thiamethoxam pesticide products registered in the United States.

Glyphosate is a non-selective herbicide registered for use on many food and non-food crops as well as in non-crop and residential areas. Quizalofop-p-ethyl is a systemic herbicide registered for use to control annual and perennial weeds in various food/feed and non-food/feed crops. In a letter dated September 23, 2015, Monsanto Company requested that EPA cancel one pesticide product registration containing both glyphosate and quizalofop-p-ethyl identified in Table 1 of Unit III. This action will not terminate the last glyphosate or quizalofop-p-ethyl pesticide products registered in the United States.

POE isooctadecanol is registered for insect control including mosquitos as a larvicide and pupicide in flooded areas, swamps, sewage, irrigation and drainage systems, and other aquatic sites. In letters dated October 16, 2015, BASF Corporation requested that EPA cancel certain POE isooctadecanol product registrations identified in Table 1 of Unit III. This action will not terminate the last POE isooctadecanol pesticide products registered in the United States.

Pyrithiobac is a selective pre- and post-emergent herbicide used to control a variety of broadleaf weeds in cotton fields. In a letter dated October 1, 2015, ADAMA Agricultural Solutions requested that EPA cancel one pyrithiobac product registration identified in Table 1 of Unit III. This action will not terminate the last pyrithiobac pesticide products registered in the United States.

Thiophanate methyl is a systemic benzimidazole fungicide registered for use on row, field and orchard crops, greenhouses, nurseries, and for commercial seed and bulb dip treatment. In a letter dated May 19, 2015, Gowan Company requested that EPA cancel certain thiophanate methyl product registrations identified in Table 1 of Unit III. This action will not terminate the last thiophanate methyl pesticide products registered in the United States.

III. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain product registrations of alachlor, atrazine, fludioxonil, glyphosate, POE isooctadecanol, pyrithiobac, quizalofop-p-ethyl, thiamethoxam, and thiophanate methyl, and terminate uses on strawberries for certain dodine registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling the affected registrations and amending to terminate certain uses the affected registrations for which the Agency received use termination requests.

TABLE 1—ALACHLOR, ATRAZINE, FLUDIOXONIL, GLYPHOSATE, POE ISOOCTADECANOL, PYRITHIOBAC, QUIZALOFOP-p-ETHYL, THIAMETHOXAM, AND THIOPHANATE METHYL PRODUCT REGISTRATIONS WITH REQUESTS FOR CANCELLATION

Registration No.	Product name	Active ingredient
100–1249 [a]	Adage Maxim 4FS Twin-Pak	Fludioxonil and Thiamethoxam.
524–314	Lasso Herbicide	Alachlor.
524–316	Lasso 94% Stabilized Technical	Alachlor.
524–329	Lariat Herbicide	Alachlor and Atrazine.
524–344	Micro-Tech Herbicide	Alachlor.
524–418	Bullet Herbicide	Alachlor and Atrazine.
524–523 [a]	MON 78746 Herbicide	Glyphosate-isopropylammonium and Quizalofop-p-ethyl.
7969–333	Agnique MMF Mosquito Larvicide & Pupicide	POE Isooctadecanol.
7969–334	Agnique MMF–GR Mosquito, Larvicide, & Pupicide.	POE Isooctadecanol.
7969–340	Cando Poly Mosquito Film	POE Isooctadecanol.
10163–291 [a]	Thiophanate Methyl Technical 98.4	Thiophanate Methyl.
10163–292 [a]	Thiophanate Methyl Technical	Thiophanate Methyl.
83558–11	Pyrithiobac-sodium Technical	Pyrithiobac-Sodium.

[a] There are no existing stocks of these product registrations and no requests for existing stocks provisions. Therefore, no existing stocks provision will be provided for these product registrations.

TABLE 2—DODINE PRODUCT REGISTRATIONS WITH REQUESTS FOR AMENDMENT TO TERMINATE ONE OR MORE USES

Registration No.	Product name	Active ingredient	Use to be deleted
55260–4	Dodine Technical	Dodine	Strawberries.
55260–6	Syllit Flow Fungicide	Dodine.	
55260–11	Syllit 65WG	Dodine.	

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
100	Syngenta Crop Protections, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
524	Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005–7211.
7969	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569.
55260	Agriphar S.A., 15401 Weston Parkway, Suite 150, Cary, NC 27513.
83558	ADAMA Celsius Property B.V. Amsterdam (NL), 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The alachlor, atrazine, dodine, fludioxonil, glyphosate, pyrithiobac, POE isooctadecanol, quizalofop-p-ethyl, thiamethoxam, and thiophanate methyl registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to delete uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit III.

A. For Products 524–523, 10163–291, 10163–292, and 100–1249 in Table 1 of Unit III

The registrants reported to the Agency via written correspondence that there are no existing stocks of these products. Therefore, no existing stocks provision was requested by or is needed for these registrants. The registrants will be prohibited from selling or distributing these products upon cancellation of these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For All Other Products Identified in Table 1 of Unit III

Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation, EPA anticipates allowing the registrants to sell and distribute existing stocks these products for 1 year after the effective date of the cancellation; *i.e.,* one year after the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit III, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Persons other than the registrant will generally be allowed to sell, distribute, or use existing stocks of the affected canceled products until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

C. For All Products Identified in Table 2 of Unit III

Once EPA has approved product labels reflecting the requested amendments to terminate uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit III, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of the products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the products with the terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 23, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–33179 Filed 1–4–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comments on Insurance Programs

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft, *Insurance Programs*.

The Exposure Draft is available on the FASAB Web site at *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/*. Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by March 29, 2016, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mail Stop 6H19, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H20, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: December 30, 2015.

Wendy M. Payne,

Executive Director.

[FR Doc. 2015–33191 Filed 1–4–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposed Collection Renewal; Comment Request (3064–0114)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before March 7, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name and number of the information collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3016, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the name and number of the information collection. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

Title: Foreign Banks.

OMB Number: 3064–0114.

Form Number: N/A.

Affected Public: Insured branches of foreign banks.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 1314 hours.

General Description of Collection: The Foreign Banks information collection, 3064–0114, consist of applications to move an insured state-licensed branch of a foreign bank; applications to operate as such noninsured state-licensed branch of a foreign bank; applications from an insured state-licensed branch of a foreign bank to conduct activities that are not permissible for a federally-licensed branch; internal recordkeeping by such branches; and reporting and recordkeeping requirements relating to such a branch's pledge of assets to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 30th day of December 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–33131 Filed 1–4–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011516–009.

Title: Voluntary Intermodal Sealift Discussion Agreement.

Parties: American President Lines, Ltd.; Hapag-Lloyd USA LLC; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Matson Navigation Company; Farrell Lines, Inc. and American Roll-On Roll-Off Carrier.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The agreement would add Liberty Global Logistics LLC as a party to the agreement, and revise the address of Hapag-Lloyd USA.

Agreement No.: 012381.

Title: NYK/Waterman Steamship Space Charter Agreement.

Parties: Nippon Yusen Kaisha and Waterman Steamship Corporation.

Filing Party: Robert Shababb; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The agreement would authorize the parties to charter space from one another in the trade between the U.S. and Europe, the Middle East and Asia.

Agreement No.: 012382.

Title: Crowley/King Ocean Space Charter Agreement.

Parties: Crowley Caribbean Services, LLC and King Ocean Services Limited, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The agreement would authorize King Ocean to charter space to Crowley in the trade between the U.S. East Coast on the one hand and Aruba, Bonaire and Curacao on the other hand.

By Order of the Federal Maritime Commission.

Dated: December 29, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–33083 Filed 1–4–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

December 30, 2015.

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Hibbing Taconite Company,* Docket Nos. LAKE 2013–231–RM, *et al.* (Issues include whether the Judge erred in upholding failure to abate orders.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–33203 Filed 12–31–15; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

December 30, 2015.

TIME AND DATE: 10:00 a.m., Thursday, January 14, 2016

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Hibbing Taconite Company,* Docket Nos. LAKE 2013–231–RM, et al. (Issues include whether the Judge erred in upholding failure to abate orders.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–33201 Filed 12–31–15; 11:15 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0256 (Formerly 2007D–0089)]

Agency Information Collection Activities: Proposed Collection; Comment Request; Draft Guidance for Industry and Review Staff on Target Product Profile—A Strategic Development Process Tool

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements contained in the draft guidance for industry and review staff entitled ''Target Product Profile—A Strategic Development Process Tool.''

DATES: Submit either electronic or written comments on the collection of information by March 7, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0256 (formerly 2007D–0089) for ''Agency Information Collection Activities: Proposed Collection; Comment Request; Draft Guidance for Industry and Review Staff on Target Product Profile—A Strategic Development Process Tool.'' Received

comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

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.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, in the **Federal Register** of March 30, 2007 (72 FR 15141), FDA published a notice of availability of the draft guidance document with a 60-day notice requesting public comment on the collection of information. In response to a request by OMB, FDA is republishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The draft guidance is intended to provide sponsors and FDA review staff with information regarding target product profiles (TPPs). A TPP can be prepared by a sponsor and then shared voluntarily with the appropriate FDA review staff to facilitate communication regarding a particular drug development program. A Clinical Development Working Group recommended use of a template that provides a summary of drug labeling concepts to focus discussions and aid in the understanding between sponsors and FDA. The resulting TPP is a format for a summary of a drug development program described in terms of labeling concepts. With the TPP, a sponsor specifies the labeling concepts that are the goals of the drug development program, documents the specific studies that are intended to support the labeling concepts, and then uses the TPP to assist in a constructive dialogue with FDA. The draft guidance describes the purpose of a TPP, its advantages, and its optimal use. It also provides information on how to complete a TPP and relates case studies that demonstrate a TPP's usefulness.

Sponsors are not required to submit a TPP. The TPP does not represent an implicit or explicit obligation on the sponsor's part to pursue all stated goals. Submission of a TPP summary does not constrain the sponsor to submit draft labeling in a new drug application (NDA) or biologics license application (BLA) that is identical to the TPP. The TPP is part of the proprietary investigational new drug application (IND) file.

The TPP is organized according to the key sections of the drug labeling and links drug development activities to specific concepts intended for inclusion in the drug labeling. The TPP is not a long summary. Generally, the TPP is shorter than the ultimate annotated draft labeling because it captures only a summary of the drug development activities and labeling concepts. Early TPPs can be brief depending on the status of the drug's development process.

The Target Product Profile Template in Appendix C of the draft guidance details the suggested information to be included in each section of the TPP. The TPP includes information from each discipline comprising an NDA/BLA. Within each discipline, the TPP briefly summarizes the specific studies that will supply the evidence for each conclusion that is a labeling concept. A TPP is organized according to key sections in the drug's labeling. Typical key sections are:

- Indications and Usage
- Dosage and Administration
- Dosage Forms and Strengths
- Contraindications
- Warnings and Precautions
- Adverse Reactions
- Drug Interactions
- Use in Specific Populations
- Drug Abuse and Dependence
- Overdosage
- Description
- Clinical Pharmacology
- Nonclinical Toxicology
- Clinical Studies
- References
- How Supplied/Storage and Handling
- Patient Counseling Information

Description of Respondents: Sponsors of applications seeking FDA approval to perform clinical investigations of a human drug before applying for marketing approval of the drug from FDA.

Burden Estimate: FDA estimates that sponsors of approximately 10 percent of the number of active INDs submitted to FDA annually would prepare and submit TPPs. This would equal

approximately 132 TPPs per year. Based on data received from the Pharmaceutical Research and Manufacturers of America, we estimate that approximately 20 sponsors would submit TPPs and that each TPP would take approximately 20 hours to prepare and submit to FDA. Based on the previous methodology and assumptions, the following table provides an estimate of the annual reporting burden for the voluntary submission of TPPs under the draft guidance. FDA requests comments on this analysis of information collection burdens.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Target Product Profiles (TPPs)	20	6.6	132	20	2,640

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33127 Filed 1–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Advisory Committee; Food Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Food Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Food Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the December 18, 2017.

DATES: Authority for the Food Advisory Committee will expire on December 18, 2017, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Karen Strambler, Center for Food Safety and Applied Nutrition, Office of Regulations, Policy, and Social Sciences, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2589, *karen.strambler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Food Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

I. Objectives and Scope of Activities

The Food Advisory Committee (the Committee) advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

II. Description of Duties

The Committee reviews and evaluates emerging food safety, nutrition, and other food- or cosmetic-related health issues that FDA considers of primary importance for its food and cosmetics programs. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to: (1) Broad scientific and technical food- or cosmetic-related issues; (2) the safety of food ingredients and new foods; (3) labeling of foods and cosmetics; (4) nutrient needs and nutritional adequacy; and (5) safe exposure limits for food contaminants. The Committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

III. Membership and Designation

The Committee shall consist of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of physical sciences, biological and life sciences, food science, risk assessment, nutrition, food technology, molecular biology, epidemiology, and other relevant scientific and technical disciplines. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include two technically qualified member(s), selected by the Commissioner or designee, who are identified with consumer interests and are recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include two non-voting member(s) who are identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/FoodAdvisoryCommittee/ucm120646.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33171 Filed 1–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on

Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should email *OMH–ACMH@hhs.gov.*

DATES: The meeting will be held on Thursday, January 28, 2016, from 9:00 a.m. to 5:00 p.m. and on Friday, January 29, 2016, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Omni Shoreham Hotel, 2500 Calvert St. NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. Minh Wendt, Alternate Designated Federal Officer, ACMH; Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–8222, Fax: 240–453–8223; *OMH–ACMH@hhs.gov*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at this meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Designated Federal Officer, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business on Thursday, January 21, 2016.

Dated: December 29, 2015.

Minh Wendt,

Alternate Designated Federal Officer, ACMH, Office of Minority Health, U.S. Department of Health and Human Services.

[FR Doc. 2015–33157 Filed 1–4–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will be holding a meeting to continue discussions and possibly develop recommendations regarding People Living with HIV/AIDS. PACHA members will have discussions regarding Health System Transformations, community approaches to implementing the Updated National HIV/AIDS Strategy, and food as medicine. The meeting will be open to the public.

DATES: The meeting will be held on January 28, 2016, from 8:30 a.m. to approximately 5:00 p.m. (ET) and January 29, 2016, from 9:00 a.m. to approximately 12:30 p.m. (ET).

ADDRESSES: 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the Council's Web site *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs, policies, and research to promote effective treatment, prevention, and cure of HIV disease and AIDS, including considering common co-morbidities of those infected with HIV as needed to promote effective prevention and treatment and quality services to persons living with HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.* PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies to promote effective prevention and cure of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the AIDS.gov Web site at *www.aids.gov/pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Caroline Talev at *caroline.talev@hhs.gov.* Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at *caroline.talev@hhs.gov* by close of business on January 21, 2016. Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must register with Caroline Talev at *caroline.talev@hhs.gov* by close of business on January 21, 2016; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for

accurate minute taking purposes. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting are asked to submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business on January 21, 2016.

Dated: December 17, 2015.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2015–33158 Filed 1–4–16; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–162: Pilot and Feasibility Clinical Research Grants in Urologic Disorders.

Date: January 29, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, (301) 435–0677, *mannl@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Long Beach Downtown, 500 East First Street, Long Beach, CA 90802.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–2409, *grossmanrs@mail.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: February 1–2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: February 2, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Le Meridien Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 3–4, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: February 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 29, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33085 Filed 1–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–10.

Date: February 16, 2016.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–9750, 240–276–6349, *ahmads@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Informatics Technologies (ITCR).

Date: February 23–24, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Nicholas J. Kenney, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850, 240–276–6458, *nicholas.kenney@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 29, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33094 Filed 1–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–14.

Date: March 1, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850, 240–276–6458, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Systems Biology Consortium, U54, U24.

Date: March 22–23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, MD 20850, 240–276–6368, *stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 29, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33084 Filed 1–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as atentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Multivariate Genetics & Genomics of Reading Comprehension & Related Cognition.

Date: January 6, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NICHD T32 Review.

Date: January 7, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference).

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6878, *wedeenc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS) imposed by the review and funding cycle.

Dated: December 29, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33086 Filed 1–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 27, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G13B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–7616, (240) 669–5048, *yong.gao@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 29, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–33087 Filed 1–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4245–DR; Docket ID FEMA–2015–0002]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4245–DR), dated November 25, 2015, and related determinations.

DATES: *Effective Date:* December 24, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 25, 2015.

Bastrop, Caldwell, Comal, Guadalupe, Hays, Hidalgo, Liberty, Navarro, Travis, Willacy, and Wilson Counties for Public Assistance (already designated for Individual Assistance).

Bosque, Hill, Jasper, Newton, and Walker Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–33200 Filed 1–4–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4246–DR; Docket ID FEMA–2015–0002]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–4246–DR), dated December 23, 2015, and related determinations.

DATES: *Effective Date:* December 23, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 23, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Idaho resulting from a severe storm and straight-line winds on November 17, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Idaho have been designated as adversely affected by this major disaster:

Benewah, Bonner, Boundary, and Kootenai Counties and the Coeur d'Alene Tribe for Public Assistance.

All areas within the State of Idaho are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–33199 Filed 1–4–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4247–DR; Docket ID FEMA–2015–0002]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4247–DR), dated December 29, 2015, and related determinations.

DATES: *Effective Date:* December 29, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 29, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe winter storms and flooding during the period of November 27–29, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Alfalfa, Beckham, Blaine, Caddo, Canadian, Custer, Dewey, Ellis, Grady, Grant, Kingfisher, Kiowa, Logan, Major, Oklahoma, Roger Mills, Washita, and Woods Counties for Public Assistance.

All areas within the State of Oklahoma are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–33204 Filed 1–4–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–01]

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 possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 30, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2015–33188 Filed 1–4–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5843–N–12]

Privacy Act of 1974; Notice of a Computer Matching Program Between the U.S. Department of Housing and Urban Development (HUD) and the U.S. Small Business Administration (SBA)

AGENCY: Office of Administration, HUD.

ACTION: Notice of a Computer Matching Program between U.S. Department of Housing and Urban Development and the U.S Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989); and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' HUD is issuing a public notice of its intent to conduct a recurring computer matching program with SBA for the purpose of incorporating SBA debtor files into the Credit Alert Verification Reporting System (CAIVRS), which is a HUD computer information system.

DATES: *Effective Date:* The effective date of the matching program shall begin *February 4, 2016,* or at least 40 days from the date that copies of the Computer Matching Agreement, signed by both HUD and SBA Data Integrity Boards (DIBs), are sent to OMB and Congress, whichever is later, provided that no comments that would result in a contrary determination are received.

Comments Due Date: February 4, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 10110, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The ''Recipient Agency,'' Acting Departmental Privacy Officer, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0001; telephone number 202–402–6147, or the ''Source Agency'' U.S. Small Business Administration, 409 Third Street SW., Suite 8300, Washington, DC, telephone number 202–205–7736. (These are not a toll-free numbers). Persons who are deaf or hard hard hearing and person with speech impairments can assess these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (This is a toll free number).

SUPPLEMENTARY INFORMATION: HUD's CAIVRS database includes delinquent debt information from the U.S. Departments of Veteran's Affairs (VA), Education (ED), Justice (DOJ), Agriculture (USDA) and the Small Business Administration (SBA). This data match will allow the prescreening of applicants for Federal direct loans or federally guaranteed loans, for the purpose of determining the applicant's credit worthiness, by ascertaining whether the applicant is delinquent or in default on a loan owed directly to, or federally guaranteed by, the Federal Government. Lending Federal agencies and authorized private lending institutions will be able to use the CAIVRS debtor file to verify that the loan applicant is not in default, or delinquent on a Federal direct or federally guaranteed loan, prior to granting the applicant a loan. The CAIVRS database contains Personally Identifiable Information (PII) contributed by participating Federal agencies, including Social Security numbers (SSNs) and other records of borrowers delinquent or in default on debts owed to, or guaranteed by HUD and other Federal agencies. Authorized users may not deny, terminate, or make a final decision concerning any loan assistance to an applicant or take other adverse action against such applicant based on the information produced by data matches conducted under CAIVRS, until such authorized users have independently verified such adverse information.

Reporting of Matching Program

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 as amended, and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' copies of this notice and report are being provided to the U.S. House Committee on Oversight Government Reform, the U.S. Senate Homeland Security and Governmental Affairs Committee, and OMB.

Authority

HUD has authority to collect and review mortgage data pursuant to the National Housing Act, as amended, 12 U.S.C. 1701 *et seq.,* and related laws. This computer matching will be conducted pursuant to Public Law 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and OMB Circulars A–129 (Managing Federal Credit Programs). One of the purposes of all Executive departments and agencies is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996; section 2653 of Public Law 98–369; the Federal Credit Reform Act of 1990, as amended; the Federal Debt Collection Procedures Act of 1990, the Chief Financial Officers Act of 1990, as amended; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and preexisting common law authority to charge interest on debts and to offset payments to collect debts administratively.

Objectives To Be Met by the Matching Program

The objective of this matching program is to give program agencies access to a system that allows them to prescreen applicants for loans made or loans guaranteed by the Federal Government, to ascertain if the applicant is delinquent in paying a debt owed to or guaranteed by the Federal Government. As part of this process, HUD will be provided access to SBA's debtor data, for prescreening purposes.

The use of CAIVRS will allow HUD to better monitor its credit programs and to reduce the credit extended to individuals with outstanding delinquencies on debts owed to HUD and other Federal agencies. SBA expects to achieve savings through risk reduction and debt recovery. By the very nature of debt prevention, expected savings must be the subject of some assumptions, including the anticipated behavior of the matching subjects. SBA also participates in CAIVRS as a cooperative effort in a Governmentwide credit plan that may benefit other agencies as much, if not more, than SBA.

Under this computer matching program, HUD/CAIVRS receives limited information on borrowers who have defaulted on loans administered by

participating Federal agencies each month. The information includes: Borrower ID Number—The Social Security Number (SSN), Employer Identification Number (EIN) or Taxpayer Identification Number (TIN) of the borrower on a delinquent or defaulted Federal direct loan or federally guaranteed loan. Federal agency personnel and authorized lenders must enter a user authorization code followed by either an SSN or EIN to access CAIVRS. Only the following information is returned or displayed:

- Yes/No as to whether the holder of that SSN/EIN is in default on a Federal loan; and
- If Yes, then CAIVRS provides to the lender:
  - Loan case number;
  - Record type (claim, default, foreclosure, or judgment);
  - Agency administering the loan program;
  - Phone number at the applicable Federal agency (to call to clear up the default); and
  - Confirmation code associated with the query.

Federal law mandates the suspension of the processing of applications for Federal credit benefits (such as Government-insured loans) if the applicants are delinquent on Federal or federally guaranteed debt. Processing may continue only after the borrower satisfactorily resolves the debt (*e.g.,* pays in full or renegotiates a new payment plan). To remove a CAIVRS sanction, the borrower must contact the Federal agency that reported their SSN or EIN to HUD/CAIVRS, using the information provided.

Records To Be Matched

HUD will use records from the Single Family Default Monitoring System (SFDMS/F42D) (72 FR 65350, November 20, 2007, and Single Family Insurance System—Claims Subsystem, CLAIMS, A43C (79 FR 10825, February 26, 2014), as combined in CAIVRS to provide an up-to-date dataset to be used in records matching. SFDMS maintains data on mortgages that are 90 or more days delinquent. The mortgagee or servicer must submit a Monthly Delinquent Loan Report (form HUD–92068–A) to HUD on a monthly basis until the mortgage status has been completed by all mortgagees, or is otherwise terminated or deleted. Mortgagees and servicers provide default data to HUD via the Electronic Data Interchange (EDI) or using the Internet via FHA Connection, through which the data is sorted, prescreened, key entered, edited, and otherwise processed. Reports are generated for HUD Headquarters and field offices to review.

CLAIMS provides automated receipt, tracking, and processing of form HUD–27011, ''Single Family Application for Insurance Benefits.'' CLAIMS provides online update and inquiry capability to Single Family Insurance and Claims databases, and to cumulative history files. Claims payments are made by Electronic Funds Transfer (EFT), via a Hitachi Data Systems (HDS) platform (IBM mainframe/Treasury interface), on a daily basis.

For the actual data match, SBA will use records from the system of records entitled Disaster Loan Case File (SBA 20) and the Loan System (SBA 21).

Notice Procedures

HUD and SBA have separate procedures for notifying individuals that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD will notify individuals at the time of application for a HUD/FHA mortgage, and SBA will notify individuals at the time of application for SBA loan services. SBA may disclose information from the applications to other Federal agencies under a published ''routine use,'' without the applicants' consent, as permitted by law.

HUD and SBA published notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government. The Privacy Act also requires that a copy of each computer matching agreement entered into with a recipient agency shall be available, upon request, to the public.

Categories of Records/Individuals Involved

Data elements disclosed in computer matching governed by this Agreement are PII from the specified SBA system of record. The data elements supplied by SBA to CAIVRS are the following:

- Borrower ID Number—The SSN, EIN, or TIN of the borrower on a delinquent or defaulted Federal direct loan or Federally guaranteed loan.
- Case Number—A reference number issued by the reporting agency for the delinquent or defaulted Federal direct loan or federally guaranteed loan.
- Agency Code—A code assigned to the reporting agency.
- Type Code—A code that indicates the type of record claim, default, foreclosure, or judgment.
- Borrower ID Type—A code that indicates whether the Borrower ID Number is a SSN, an EIN, or a TIN.

Period of the Match

Matching will begin at least 40 days from the date that copies of the computer, matching agreement, signed by HUD and SBA Data Integrity Boards, are sent to both Houses of Congress and to OMB or at least 30 days from the date this notice is published in the **Federal Register,** whichever is later, provided that no comments that would result in a contrary determination are received. The matching program will be in effect and continue for 18 months, with an option to renew for 12 additional months, unless one of the Parties to the Agreement advises the other in writing to terminate or modify the Agreement.

Dated: December 28, 2015.

Patricia A. Hoban-Moore,

Chief Administrative Officer.

[FR Doc. 2015–33195 Filed 1–4–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N242; FXES11130800000–167–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before February 4, 2016.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–82102B–0

Applicant: Zoological Society of San Diego, San Diego, California

The applicant requests a permit to take (harass by survey, capture, handle, conduct nest monitoring, release, collect biological samples, fit with radio transmitters, transport, band, captive rear, display publically, and conduct daily husbandry) the California condor (*Gymnogyps californianus*) in conjunction with captive rearing, research, reintroduction into the wild, and survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–82155B

Applicant: Johanna Page, Pasadena, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–096745

Applicant: Scott Larson, Oakhurst, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–134370

Applicant: Brant Primrose, San Marcos, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–17827A

Applicant: Summit Lake Paiute Tribe, Sparks, Nevada

The applicant requests a permit amendment to take (harass by survey, capture, handle, collect and sacrifice for diet and isotope analysis, collect scales, implant passive integrated transponder (PIT) and visible implant elastomer (VIE) tags, and release) the Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) in conjunction with surveys and population studies within the Summit Lake Paiute Reservation, Nevada, for the purpose of enhancing the species' survival.

Permit No. TE–839078

Applicant: Spencer Langdon, San Pedro, California

The applicant requests a permit amendment and renewal to take (harass by survey and locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with surveys and population studies throughout the range of the species in Los Angeles County, California for the purpose of enhancing the species' survival.

Permit No. TE–797665

Applicant: RECON Environmental, Inc., San Diego, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*); take (harass by survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) and San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*); take (harass by survey, capture, handle, collect hair samples, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey and population monitoring activities throughout the range of each of the species in California; take (harass by survey, locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of the species in Arizona, California, Colorado, New Mexico, and Utah; and to remove/reduce to possession the following species on Federal lands, in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival:

- *Pogogyne abramsii* (San Diego mesa-mint)
- *Orcuttia californica* (California orcutt grass)
- *Eryngium aristulatum* var. *parishii* (San Diego button-celery)
- *Pogogyne nudiuscula* (Otay mesa-mint)
- *Deinandra conjugens* (*Hemizonia c.*) (Otay tarplant)
- *Allium munzii* (Munz's onion)
- *Arctostaphylos glandulosa* subsp. *crassifolia* (Del Mar manzanita)
- *Monardella viminea* (*M. linoides* subsp. *v.*) (willowy monardella)
- *Ambrosia pumila* (San Diego ambrosia)

Permit No. TE–002243

Applicant: Bighorn Institute, Palm Desert, California

The applicant requests a permit renewal to take (capture, handle, collect biological samples, radio-collar, survey, euthanize critically ill or injured wild or captive-reared individuals unable to recover, and release) the Nelson bighorn sheep (Peninsular Ranges distinct population segment; Peninsular bighorn sheep) (*Ovis canadensis nelsoni*) in conjunction with surveys and population studies throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–005535

Applicant: Gilbert Goodlett, Ridgecrest, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–052159

Applicant: Jeff Ahrens, Irvine, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–83957B

Applicant: Monica Brick, San Luis Obispo, California

The applicant requests a permit to take (harass by survey, capture, handle, release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with surveys throughout the range the species in California for the purpose of enhancing the species' survival.

Permit No. TE–83958B

Applicant: Jared Elia, Concord, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–785564

Applicant: Bumgardner Biological Consulting, Gold River, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, collect tissue samples, and release) the California tiger salamander (Santa Barbara County and Sonoma County DPS) (*Ambystoma californiense*); take (harass by survey) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with surveys and population studies throughout the range of the species in California; and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population studies throughout the range of the species in Arizona, California, and Nevada for the purpose of enhancing the species' survival.

Permit No. TE–090990

Applicant: Santa Catalina Island Conservancy, Avalon, California

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, measure, implant PIT tags, radio-collar, vaccinate, collect and test biological samples, transport, maintain in captivity, release to the wild, and euthanize for humane reasons) the Santa Catalina Island fox (*Urocyon littoralis catalinae*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–031850

Applicant: Gretchen Cummings, Ramona, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–97450A

Applicant: James Hobbs, Davis, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, release, and collect) the delta smelt (*Hypomesus transpacificus*) in conjunction with scientific research throughout the range of the species in Petaluma River and Sonoma Creek, Sonoma County; Napa River and Napa–Sonoma Marsh Wildlife Area in Napa County; San Pablo Bay in Alameda and Marin Counties; Suisun Bay and Suisun Marsh in Alameda and Solano Counties; and the Bay Delta in Sacramento, Yolo, and San Joaquin Counties in California for the purpose of enhancing the species' survival.

Permit No. TE–84031B

Applicant: Jessica Self, Riverside, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) and take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–48149A

Applicant: Tammy Lim, Oakland, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) and take (harass by survey, capture, handle, mark, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2015–33146 Filed 1–4–16; 8:45 am]

BILLING CODE 4310–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N240; FXES11120800000–145–FF08EVEN00]

Habitat Conservation Plan for the Operation, Repair, Maintenance, and Replacement of State Water Pipeline and Facilities From the Polonio Pass Water Treatment Plant, San Luis Obispo County to Lake Cachuma, Santa Barbara County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Central Coastal Water Authority (CCWA) for a 30-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and federally threatened California red-legged frog (*Rana draytonii*) and California tiger salamander (*Ambystoma californiense*) that may occur incidental to the operations and maintenance of an existing potable water delivery system from near Polonio Pass in northeastern San Luis Obispo County to Lake Cachuma in Santa Barbara. We invite comments from the public on the application for an incidental take permit, which includes the Habitat Conservation Plan (HCP). This proposed action has been determined to be eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA).

DATES: To ensure consideration, please send your written comments by February 4, 2016.

ADDRESSES: You may download a copy of the draft HCP and draft environmental action statement and low-effect screening form on the Internet at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail or phone (see below). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, at the above address, or by calling (805) 644–1766, extension 222.

SUPPLEMENTARY INFORMATION: We invite comments from the public on the draft HCP and our NEPA compliance.

Background

Section 9 of the Act and its implementing regulations (16 U.S.C. 1531 *et seq.*) prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. The Act defines ''incidental take'' as take that is not the purpose of carrying out of an otherwise lawful activity. The Code of Federal Regulations (CFR) provides those regulations governing incidental take permits for threatened and endangered species at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plant species.

The Applicant's Proposed Project

Measures to minimize the amount and severity of take proposed by the applicant are discussed in detail in section 2.10 of the draft HCP. Mitigation for unavoidable take of California red-legged frog and California tiger salamander includes the purchase of credits in the Palo Prieto Conservation Bank in San Luis Obispo County, with an additional credit for California tiger salamander purchased in the La Purisima Conservation Bank in Santa Barbara County. Mitigation for San Joaquin kit fox was provided at the time of project construction as part of its compliance with the California Environmental Quality Act and its terms memorialized in a Memorandum of Understanding between applicant and the California Department of Fish and Game (now California Department of Fish and Wildlife). The mitigation requirements were included in the project description of our biological opinion 1–8–93–F–20. As such, no additional mitigation is deemed necessary for San Joaquin kit fox.

The draft HCP provides for, and discusses, five alternatives to the proposed project: No Project, No Action, Maintenance Alternative, Minimum Conservation, and Maximum Conservation. These are discussed in detail in section 9 of the HCP.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the HCP qualifies for processing as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (November 1996). Three criteria form the basis for our determination: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. It is our preliminary determination that HCP approval and ITP issuance qualify for categorical exclusion under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, we may revise our determination based upon review of public comments received in response to this notice.

Next Steps

We will evaluate the permit application, including the HCP, and comments we receive to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act regarding jeopardy for federally listed fish, wildlife, or plant species by conducting an intra-Service consultation pursuant to section 7(a)(2) of the Act.

Public Review

We are requesting comments on our determination that the applicant's proposal will have a minor or negligible effect on the San Joaquin kit fox, California red-legged frog, and California tiger salamander and that the plan qualifies as a low-effect HCP. We will evaluate the permit application, including the HCP and comments we receive, to make a final determination regarding whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our intra-Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the ITP. If all permit issuance requirements are met, we will issue the permit to the applicant to authorize incidental take of San Joaquin kit fox, California red-legged frog, and California tiger salamander. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the HCP and associated documents, you may submit comments by any one of the methods provided in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6).

Dated: December 29, 2015.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2015–33148 Filed 1–4–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Veterans Supplement to the Current Population Survey (CPS),'' to be conducted in August 2016, August 2017, and August 2018.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before March 7, 2016.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, 202–691–7763 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of official Government statistics on employment and unemployment since 1940 (75 years). Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans Supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. Also, Afghanistan, Iraq, and Vietnam veterans are identified by location of service. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information on veterans' participation in various transition and employment and training programs. The data collected through this supplement will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS. An extension without change of a currently approved collection is needed to continue to provide the Nation with timely information about the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, recently discharged veterans, and veterans who have served in Afghanistan, Iraq, or Vietnam.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 9,000.

Frequency: Annually.

Total Responses: 9,000.

Average Time per Response: Approximately 2 minutes.

Estimated Total Burden Hours: 300 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 29th day of December 2015.

Kimberly D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2015–33143 Filed 1–4–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Eating and Health Supplement to the American Time Use Survey.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before March 7, 2016.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period ''yesterday,'' from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

Time use data allows researchers to analyze the choices people make in how they spend their time, along with the time and income constraints they face. The data from the proposed Eating and Health module supplement can be used for research on the inter-relations and inter-associations of time use patterns and body mass index (BMI), food assistance participation, grocery shopping, and meal preparation. These data enhance the understanding of peoples' overall well-being.

The Eating and Health module supplement includes questions about peoples' eating and drinking behaviors, food assistance participation, grocery and meal shopping, food preparation, and food sufficiency. It also includes questions on general health and physical exercise. Information collected in the supplement will be published as a public use data set to facilitate research on numerous topics, such as: The association between eating patterns, physical activity, and BMI; time-use patterns of food assistance program participants and low-income nonparticipants; and how time-use varies by health status. Sponsored by the Economic Research Service (ERS) of the United States Department of Agriculture (USDA), the supplement is asked of respondents immediately upon their completion of the American Time Use Survey (ATUS).

The Eating and Health supplement supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues, specifically the association between time-use patterns and eating and physical activity behavior and health. The data from the Eating and Health Module Supplement also closely support the mission of its sponsor, ERS, to improve the nation's nutrition and health. The supplement surveys individuals aged 15 and up from a nationally representative sample of approximately 2,190 sample households each month.

II. Current Action

Office of Management and Budget clearance is being sought for the Eating and Health Supplement to the American Time Use Survey. An extension without change of a currently approved collection is needed to continue collecting data on time-use and how it relates to BMI, food assistance participation, grocery shopping, and meal preparation. Fielding the Eating and Health Module Supplement in calendar year 2016 will allow researchers to monitor changes in Americans' time use patterns along with changes in Americans' eating activities, BMI values, and food assistance participation.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Eating and Health Supplement to the American Time Use Survey.

OMB Number: 1220–0187.

Affected Public: Individuals or Households.

Total Respondents: 11,200.

Frequency: One time.

Total Responses: 11,200.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 933 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 29th day of December 2015.

Kimberly D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2015–33142 Filed 1–4–16; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16–CRB–0001–SR/PSSR (2018–2022)]

Determination of Rates and Terms for Satellite Radio and ''Preexisting'' Subscription Services (SDARS III [1])

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges announce commencement of a proceeding to determine reasonable rates and terms for the digital performance of sound recordings and the making of ephemeral recordings by satellite radio and ''preexisting'' subscription services [2] for the period beginning January 1, 2018, and ending December 31, 2022. The Copyright Royalty Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2016.

ADDRESSES: This notice and request is also posted on the agency's Web site (*www.loc.gov/crb*) and on Regulations.gov (*www.regulations.gov*). Parties who plan to participate should see How to Submit Petitions to Participate in the **SUPPLEMENTARY INFORMATION** section below for physical addresses and further instructions.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Under the Copyright Act, the Copyright Royalty Judges (Judges) must commence a proceeding every five years to determine reasonable rates and terms to license the digital transmission of sound recordings and the making of ephemeral recordings to facilitate those transmissions by preexisting subscription services and preexisting satellite digital audio radio services. *See* 17 U.S.C. 112 (e), 114(d)(2), 804(b)(3)(B), 803(b)(1)(A)(i)(III). This notice commences the rate determination proceeding for the license period 2018–2022.

Petitions To Participate

Parties with a significant interest in the outcome of the rate proceeding must file Petitions to Participate in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Parties must send the $150 filing fee with each Petition to Participate. The Copyright Royalty Board (CRB) will not accept payment by cash; therefore, parties must pay the filing fee with a check or money order made payable to ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Only attorneys who are admitted to the bar in one or more states or the District of Columbia and are members in good standing will be allowed to represent parties before the Judges. Only an individual may represent herself or himself and appear without legal counsel. 37 CFR 350.2.

How To Submit Petitions To Participate

Any party wishing to participate in the proceeding to determine cable royalty rates for 2015 through 2019 must submit to the Copyright Royalty Board the filing fee (U.S. $150), an original (paper) Petition to Participate, five paper copies, and an electronic copy on a CD or other portable memory device in Portable Document Format (PDF) that contains searchable, accessible text (not a scanned image of text). Participants should conform all filed electronic documents to the Judges' Guidelines for Electronic Documents posted on the Copyright Royalty Board Web site at *www.loc.gov/crb/docs/Guidelinesfor_Electronic_Documents.pdf.* Participants shall deliver Petitions to Participate to only one of the following addresses.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. *Deliver to:* Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Dated: December 29, 2015.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2015–33119 Filed 1–4–16; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16–CRB–0003–PR (2018–2022)]

Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges announce commencement of a proceeding to determine reasonable rates and terms for making and distributing phonorecords for the period beginning January 1, 2018, and ending December 31, 2022. The Copyright Royalty Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2016.

ADDRESSES: This notice and request is also posted on the agency's Web site (*www.loc.gov/crb*) and on Regulations.gov (*www.regulations.gov*). Parties who plan to participate should see How to Submit Petitions to Participate in the **SUPPLEMENTARY INFORMATION** section below for physical addresses and further instructions.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist,

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline

by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act provides that the Copyright Royalty Judges (Judges) commence a proceeding every fifth year to determine rates and terms for making and distributing phonorecords pursuant to the statutory license in 17 U.S.C. 115. 17 U.S.C. *See* 803(b)(1)(A)(i)(V); 804(b)(4). This notice commences the rate determination proceeding for the license period 2018–2022, inclusive.

Petitions To Participate

Parties with a significant interest in the outcome of the phonorecords royalty rate proceeding must file Petitions to Participate in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Parties must send the $150 filing fee with each Petition to Participate. The Copyright Royalty Board will not accept payment by cash. Parties must pay the filing fee with a check or money order made payable to the ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Only attorneys admitted to the bar in one or more states or the District of Columbia and members in good standing will be allowed to represent parties before the Judges. Only an individual may represent herself or himself and appear without legal counsel. 37 CFR 350.2.

How To Submit Petitions To Participate

Any party wishing to participate in the proceeding to determine phonorecord royalty rates for 2018 through 2022 must submit to the Copyright Royalty Board the filing fee (US $150), an original (paper) Petition to Participate, five paper copies, and an electronic copy on a CD or other portable memory device in Portable Document Format (PDF) that contains searchable, accessible text (not a scanned image of text). Participants should conform all filed electronic documents to the Judges' Guidelines for Electronic Documents posted on the Copyright Royalty Board Web site at *www.loc.gov/crb/docs/Guidelinesfor_Electronic_Documents.pdf.* Participants shall deliver Petitions to Participate to only one of the following addresses.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. *Deliver to:* Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Dated: December 29, 2015.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2015–33118 Filed 1–4–16; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16–CRB–0002–PBR (2018–2022)]

Determination of Rates and Terms for Public Broadcasting (PB III) [1]

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges announce commencement of a proceeding to determine reasonable rates and terms for the use of certain copyrighted works by public broadcasting entities [2] for the period beginning January 1, 2018, and ending December 31, 2022. The Copyright Royalty Judges also announce the date by which a party wishing to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2016.

ADDRESSES: This notice and request is also posted on the agency's Web site (*www.loc.gov/crb*) and on Regulations.gov (*www.regulations.gov*). Parties who plan to participate should see How to Submit Petitions to Participate in the **SUPPLEMENTARY INFORMATION** section below for physical addresses and further instructions.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act provides that the Copyright Royalty Judges (Judges) commence a proceeding every fifth year to determine rates and terms for the reproduction, distribution, performance or display of certain works by public broadcasting entities (as defined in 17 U.S.C. 118(f)) in the course of the activities described in 17 U.S.C. 118(c). 17 U.S.C. 803(b)(1)(A)(i)(V); *see also* 804(b)(6). This notice commences the rate determination proceeding for the license period 2018–2022, inclusive.

Petitions To Participate

Parties with a significant interest in the outcome of this royalty rate proceeding must file Petitions to Participate in accordance with 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Parties must send the $150 filing fee with each Petition to Participate. The Copyright Royalty Board (CRB) will not accept payment by cash; therefore, parties must pay the filing fee with a check or money order made payable to the ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Only attorneys who are admitted to the bar in one or more states or the District of Columbia and are members in good standing will be allowed to represent parties before the Judges. Only an individual may represent herself or himself and appear without legal counsel. 37 CFR 350.2.

How To Submit Petitions To Participate

Any party wishing to participate in the proceeding to determine cable royalty rates for 2015 through 2019 must submit to the Copyright Royalty Board the filing fee (US $150), an original (paper) Petition to Participate, five paper copies, and an electronic copy on a CD or other portable memory device in Portable Document Format (PDF) that contains searchable, accessible text (not a scanned image of text). Participants should conform all filed electronic documents to the Judges' Guidelines for Electronic Documents posted on the Copyright Royalty Board Web site at *www.loc.gov/crb/docs/Guidelinesfor_Electronic_Documents.pdf.* Participants shall deliver Petitions to Participate to only one of the following addresses.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty

[1] The case name for this proceeding differs in format from the prior two proceedings for this license. The prior names used ''noncommercial educational broadcasting'' and related acronyms. ''Public broadcasting'' is more accurate.

[2] ''Public broadcasting entity'' is defined in 17 U.S.C. 118(f).

Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. *Deliver to:* Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Dated: December 29, 2015.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2015–33120 Filed 1–4–16; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0288]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 8, 2015, to December 21, 2015. The last biweekly notice was published on December 22, 2015.

DATES: Comments must be filed by February 4, 2016. A request for a hearing must be filed March 7, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0288. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mable Henderson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3760, email: *Mable.Henderson@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0288 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0288.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0288, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov,* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day

comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 7, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by March 7, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these license amendment applications,

see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 24, 2015. A publicly-available version is in ADAMS under Accession No. ML15268A149.

Description of amendment request: The amendment would modify technical specification requirements to address Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' as described in TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises or adds Surveillance Requirement(s) (SRs) that require verification that the Emergency Core Cooling System (ECCS), the Residual Heat Removal (RHR) System, and the Reactor Core Isolation Cooling (RCIC) System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. Gas accumulation in the subject systems is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed SRs ensure that the subject systems continue to be capable to perform their assumed safety function and are not rendered inoperable due to gas accumulation. Thus, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR System, and the RCIC System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR System, and the RCIC System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change adds new requirements to manage gas accumulation in order to ensure the subject systems are capable of performing their assumed safety functions. The proposed SRs are more comprehensive than the current SRs and will ensure that the assumptions of the safety analysis are protected. The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226.

NRC Branch Chief: David L. Pelton.

Duke Energy Progress Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Unit 1, New Hill, North Carolina

Date of amendment request: October 29, 2015. A publicly-available version is in ADAMS under Accession No. ML15302A542.

Description of amendment request: The amendment would revise several HNP, Unit 1, Technical Specifications (TSs) to allow the 'A' Emergency Service Water (ESW) pump to be inoperable for 14 days to allow for the replacement of the 'A' Train ESW pump. The proposed license amendment request (LAR) would be applicable on a one-time basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The 'B' Train ESW supply and supported equipment will remain fully operable during the 14 day completion time. The 'A' ESW pump and supported equipment function as accident mitigators. Removing the 'A' Train ESW pump from service for a limited period of time does not affect any accident initiator and therefore cannot change the probability of an accident. The proposed changes and the 'A' Train ESW pump replacement activity have been evaluated to assess their impact on the systems affected and upon the design basis safety functions.

The activities covered by this LAR also include defense-in-depth actions. Weather patterns will be monitored and this activity schedule will be adjusted if tornado/high wind conditions become imminent.

In addition, completing the lineups required by the operations work procedure (OWP) for the Service Water (SW) system, OWP–SW, ''Service Water,'' which is necessary when an ESW pump is inoperable, provides defense in depth for prevention of core damage and containment failure. The lineup steps for time periods when the 'A' ESW pump is inoperable include the lifting of leads to disable the Safety Injection (SI) close signal to service water valve '1SW–39' and service water valve 'SW–276.' This allows the breakers to be maintained on and allows expeditious isolation capability in the event of a SW leak in the Reactor Auxiliary Building. This lineup also defeats the SI signal to service water valve 'SW–276' to maintain it open. As long as service water valves '1SW–274' and '1SW–40' are operable, the 'B' Train ESW header is isolable, and operable. The simplified flow diagrams provided in Attachment 5 (enclosed in original document) illustrate the flow paths affected by the valves discussed above. Quantitative measures and qualitative measures will be taken during the planned ESW pump replacement, which are identified in Attachment 7 (enclosed in original document) as Regulatory Commitments.

There will be no effect on the analysis of any accident or the progression of the accident since the operable ESW 'B' train is capable of serving 100 percent of all the required heat loads. As such, there is no impact on consequence mitigation for any transient or accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of

accident from any accident previously evaluated?

The proposed amendment is a one-time extension of the required completion times from 72 hours for the Charging Pumps, Emergency Core Cooling Systems Subsystems, Containment Spray System, Spray Additive System, Containment Cooling System, Auxiliary Feedwater System, Component Cooling Water System, ESW System, Essential Services Chilled Water System, and AC [Alternating Current] Sources systems to 336 hours. Additionally, proposed amendment is a one-time extension of the required completion times from 7 days for the Control Room Emergency Filtration System and the Reactor Auxiliary Building Emergency Exhaust Systems to 336 hours. The requested change does not involve the addition or removal of any plant system, structure, or component.

The proposed temporary TS changes do not affect the basic design, operation, or function of any of the systems associated with the TS impacted by the amendment. Implementation of the proposed amendment will not create the possibility of a new or different kind of accident from that previously evaluated.

HNP intends to isolate and replace the 'A' ESW pump. During the period in which the 'A' Train ESW pump is not available, the (NSW System will remain available to supply the 'A' Train ESW loads and the 'B' Train ESW Train will be operable.

Throughout the pump replacement project, compensatory measures will be in place to provide additional assurance that the affected systems will continue to be capable of performing their intended safety functions.

In conclusion, this proposed LAR does not impact any plant systems that are accident initiators and does not impact any safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding, reactor coolant, and containment systems will not be impacted by the proposed LAR.

Additionally, the proposed amendment does not involve a change in the operation of the plant. The activity only extends the amount of time the 'A' Train ESW system is allowed to be inoperable for the replacement of the 'A' ESW pump to improve design margin.

The estimated incremental conditional core damage probability (ICCDP) during the 14 day completion time extension is much less than the limits presented in Regulatory Guide 1.177. Therefore, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Benjamin G. Beasley.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: November 5, 2015. A publicly-available version is in ADAMS under Accession No. ML15310A064.

Description of amendments request: The amendments would revise the Calvert Cliffs Technical Specifications (TSs) to relocate certain Surveillance Requirements Frequencies to the previously approved Surveillance Frequency Control Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff revisions provided in [brackets]:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed License Amendment Request is an administrative change. The proposed change relocates the specified [f]requencies for periodic Surveillance Requirements [SRs] to licensee control under the SFCP. Surveillance Frequencies (SF) are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the TS for which the SF are relocated are still required to be operable, meet the acceptance criteria for the SR, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed License Amendment Request is an administrative change. The proposed change relocates the specified [f]requencies for periodic SR to licensee control under the SFCP. No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed License Amendment Request is an administrative change. The proposed change relocates the specified [f]requencies for periodic SR to licensee control under the SFCP. The design, operation, testing methods, and acceptance criteria for systems, structures, and components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Final Safety Analysis Report and Bases to TS), since these are not affected by [relocating] the SF[s]. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: March 26, 2015. This Notice is regarding the application dated May 12, 2015, which superseded the application dated March 26, 2015, ADAMS Accession Nos. ML15089A231 and ML15089A233. A publicly-available version is in ADAMS under Accession No. ML15134A232.

Description of amendment request: The NRC staff has previously made a proposed determination that the amendment request dated March 26, 2015, involves no significant hazards

consideration (80 FR 58518; September 29, 2015). Subsequently, by application dated May 12, 2015, the licensee superseded the March 26, 2015, amendment request in its entirety. Accordingly, this Notice of the May 12, 2015, application supersedes the previous Notice in its entirety.

This amendment request involves the adoption of approved changes to NUREG–1433, ''Standard Technical Specifications [STS] General Electric BWR/4 Plants,'' Revision 4.0, to allow relocation of specific Technical Specifications (TS) surveillance frequencies to a licensee-controlled program. The proposed changes are described in Technical Specification Task Force (TSTF) Traveler 425 ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk Informed TSTF] Initiative 5b,'' Revision 3 (TSTF–425) ADAMS Accession No. ML090850642, and are described in the Notice of Availability published in the FR on July 6, 2009 (74 FR 31996). The proposed changes are consistent with NRC-approved TSTF–425. The proposed changes relocate surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP). The changes are applicable to licensees using probabilistic risk guidelines contained in NRC-approved NEI (Nuclear Energy Institute) 04–10, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies'' (ADAMS Accession No. ML071360456).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the LAR changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Exelon will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1, in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Date of amendment request: October 8, 2015. A publicly-available version is in ADAMS under Accession No. ML15281A028.

Description of amendment request: The amendments would allow the proposed changes to Nine Mile Point, Unit 1 (NMP1) and Nine Mile Point, Unit 2 (NMP2) TSs to provide an allowance for brief, inadvertent, simultaneous opening of redundant secondary containment personnel access doors during normal entry and exit conditions. Specifically, NMP1 Limiting Condition for Operation (LCO) 3.4.3 and Surveillance Requirement (SR) 4.4.3 are modified to acknowledge that secondary containment access openings may be open for entry and exit. Further, the definition for Reactor Building Integrity, specified in NMP1 TS Definition 1.12, is revised for consistency to reflect the changes proposed to TS Section 3.4.3 LCO and SR 4.4.3. The NMP2 SR 3.6.4.1.3 is modified to acknowledge that secondary containment access openings may be open for entry and exit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes address temporary conditions during which the secondary containment SRs are not met. The secondary containment is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. The consequences of an accident previously evaluated while using the proposed changes are not impacted and are bounded by the existing design bases calculations and analyses. As a result, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the protection system design, create new failure modes, or change any modes of operation. The proposed changes do not involve a physical alteration of the plant, and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes would provide an allowance for brief, inadvertent, simultaneous opening of redundant secondary containment personnel access doors during normal entry and exit conditions. The allowance for both an inner and outer secondary containment access door to be open simultaneously for entry and exit does not affect the safety function of secondary containment as the doors are promptly closed after entry or exit, thereby restoring the secondary containment boundary. In addition, brief, inadvertent, simultaneous opening and closing of redundant secondary containment personnel access doors during entry and exit conditions does not affect the ability of the Emergency Ventilation System (NMP1) or the Standby Gas Treatment (SGT) System (NMP2) to establish the required secondary containment vacuum.

Therefore, the safety function of the secondary containment is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: December 15, 2015. A publicly-available version is in ADAMS under Accession No. ML15349A800.

Description of amendment request: The proposed amendments would reduce the reactor steam dome pressure stated in the Technical Specifications (TSs) for the reactor core safety limits. The proposed change addresses a 10 CFR part 21 issue concerning the potential to violate the safety limits during a pressure regulator failure maximum demand (open) (PRFO) transient.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the reactor steam dome pressure in Reactor Core Safety Limits 2.1.1.1 and 2.1.1.2 does not alter the use of the analytical methods used to determine the safety limits that have been previously reviewed and approved by the NRC. The proposed change is in accordance with an NRC approved critical power correlation methodology, and as such, maintains required safety margins. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained.

The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not require any physical change to any plant SSCs nor does it require any change in systems or plant operations. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Lowering the value of reactor steam dome pressure in the TS has no physical effect on plant equipment and therefore, no impact on the course of plant transients. The change is an analytical exercise to demonstrate the applicability of correlations and methodologies. There are no known operational or safety benefits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed reduction in the reactor dome pressure safety limit from 785 psig [pounds per square inch gauge] to 685 psig is a change based upon previously approved documents and does not involve changes to the plant hardware or its operating characteristics. As a result, no new failure modes are being introduced. There are no hardware changes nor are there any changes in the method by which any plant systems perform a safety function. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change.

The proposed change does not introduce any new accident precursors, nor does it involve any physical plant alterations or changes in the methods governing normal plant operation. Also, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, and through the parameters for safe operation and setpoints for the actuation of equipment relied upon to respond to transients and design basis accidents. Evaluation of the 10 CFR part 21 condition by General Electric determined that since the Minimum Critical Power Ratio improves during the PRFO transient, there is no decrease in the safety margin and therefore there is no threat to fuel cladding integrity. The proposed change in reactor steam dome pressure supports the current safety margin, which protects the fuel cladding integrity during a depressurization transient, but does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. The change does not alter the behavior of plant equipment, which remains unchanged.

The proposed change to Reactor Core Safety Limits 2.1.1.1 and 2.1.1.2 is consistent with and within the capabilities of the applicable NRC approved critical power correlation for the fuel designs in use at PBAPS Units 2 and 3. No setpoints at which protective actions are initiated are altered by the proposed change. The proposed change does not alter the manner in which the safety limits are determined. This change is consistent with plant design and does not change the TS operability requirements; thus, previously evaluated accidents are not affected by this proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 11, 2015, as supplemented by letter dated November 5, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15254A387 and ML15309A750, respectively.

Description of amendment request: The amendments would revise the technical specifications to support planned plant modifications to implement chiller replacements and for performing maintenance on common line components.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Auxiliary Building Chilled Water (AB CH) system will continue to meet the design cooling requirements for both normal and accident conditions. The Two chiller and Cross Tied configuration analyses verify the capability of the system to perform its design function. The configuration analyses were performed assuming that one of the required chillers is out of service for the supplying unit to account for a possible failure of a chiller, demonstrating that only the remaining required chillers are required to be operating for normal operation and accident conditions. This supports operating with the required chillers available and the potential loss of a chiller during an accident as the single failure, or the unexpected loss of a chiller during normal operation.

The AB CH system is not an initiator or precursor to any anticipated (or abnormal) operational transients or postulated design basis accidents. Operating with only two chillers required does not alter the design requirements of the system; the required cooling capability is still met. The AB CH systems for Salem Unit 1 and Unit 2 are designed to allow the systems to be cross-tied; allowing for the pumps and chillers of one Unit to cool the heat loads of both Units. In cross-tie configuration the analyses demonstrate the system will continue to provide required cooling capability to the control room and safety related areas during normal operation and in the event of an accident.

Therefore there is no increase in the probability of any previously evaluated accident.

Two Chiller or Cross-Tied operation has no effect on the consequences of any previously analyzed accident. Evaluations were performed assuming that one of the required chillers is out of service to account for a possible failure of a chiller. The two chiller analyses determined that certain heat loads are required to be isolated, certain environmental conditions are required, and that single filtration alignment of the CREACS [Control Room Emergency Air Conditioning System] must be restricted. The cross-tied analyses determined that certain heat loads are required to be isolated, certain environmental conditions are required, and both trains of the CREACS must be in service. The proposed TS changes incorporate these restrictions ensuring the design requirements of the system will continue to be met. The temperatures of the Control Area Rooms continue to be below the acceptance criteria during AB CH system Two Chiller and Cross-Tied operations for both normal operation and accident conditions.

Therefore this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the TS permitting AB CH system Two Chiller and Cross-Tied operation do not introduce any new accident initiators or create any new failure mechanisms or malfunctions. The analyses demonstrate the system continues to perform its design functions for both normal and accident conditions. To ensure the system has adequate cooling capability, restrictions are placed in TS isolating non-safety related loads, verifying certain environmental conditions, and restricting single filtration train alignment operation. These restrictions do not cause the system to be operated outside its design basis and therefore do not create any new failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not alter setpoints or limits established or assumed by any accident analyses. The proposed change does not exceed or alter a design basis or safety limit (*i.e.*, Control Room Area temperatures remain below design requirements), therefore it does not significantly reduce the margin of safety. In Two Chiller and Cross-Tied configuration, restrictions are placed in the TS ensuring the AB CH system will continue to provide adequate cooling during normal and accident conditions. The Control Room area ambient air temperature will not exceed the allowable temperature for continuous duty rating for the equipment and instrumentation and the control room will remain habitable for operations personnel during and following all credible accident conditions.

The sharing of the AB CH system between Units in the Cross-Tied configuration does not impair its ability to perform its safety function for both normal and accident conditions. Design cooling requirements for the accident condition unit continue to be met, and the operating unit cooling requirements are also met such that there can be an orderly shutdown and cool down.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 12, 2015. A publicly-available version is in ADAMS under Accession No. ML15285A014.

Description of amendment request: The amendments would revise the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specification (TS) 3.6.2.3, ''Containment Cooling System,'' to correct a discrepancy between TS mode applicability and the shutdown mode in the associated action statements. The request also proposes changes to the Unit Nos. 1 and 2, TS 3.7.1.1, ''Safety Valves,'' to correct discrepancies between TS mode applicability and action statement shutdown modes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Neither the Containment Fan Cooling Units (CFCUs) nor the MSSVs [main steam line code safety valves] are accident initiators. These proposed changes will not increase the probability of occurrence of any design basis accident since the corrections to the affected Technical Specifications, in and of themselves, cannot initiate an accident. Should a previously evaluated accident occur, the proposed changes will ensure that the plant equipment is operable in all required applicable modes of operation and that the Technical Specification action statements are consistent with those applicable modes. There will be no impact on the source term or pathways assumed in accidents previously evaluated. No design functions of structures, systems and components required to mitigate the consequences of an accident are affected. Therefore, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve physical changes (installing new equipment or modifying existing equipment) related to the design functions or operations of the CFCUs or MSSVs. In addition, the proposed changes to the affected Technical

Specification applicability modes and action statement modes will not create the potential for any new initiating events or transients to occur in the physical plant.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes, which correct a non-conservative TS and eliminate an inconsistency between applicability mode and action statement, do not exceed or alter a setpoint, design basis or safety limit.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Douglas A. Broaddus.

South Carolina Electric and Gas Company Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: September 30, 2015. A publicly-available version is in ADAMS under Accession No. ML15273A115.

Description of amendment request: The proposed change, if approved, would depart from certain plant-specific Tier 1 information by adding two turbine building sump pumps to accommodate the increased flow that will be experienced during condensate polishing system rinsing operations. The proposed change also indicates that there is more than one main turbine building sump. Because flow into the turbine building sumps may be radiologically contaminated, the turbine building sump pumps will cease operation if a high radiation signal is present. The proposed changes to Tier 1 would have corresponding changes to the Combined License (COL) Appendix C, however there are no associated Tier 2 changes required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to identify that there is more than one turbine building sump and to add two turbine building sump pumps (WWS–MP–07A and B) to [combined license] COL Appendix C, Section 2.3.29, and corresponding Table 2.3.29–1 will provide consistency within the current licensing basis. The main turbine building sumps and sump pumps are not safety-related components and do not interface with any systems, structures, or components (SSC) accident initiator or initiating sequence of events; thus, the probability of accidents evaluated within the plant-specific [Updated Final Safety Analysis Report] UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to accident conditions, thus the consequences of accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to identify that there is more than one turbine building sump and to add two turbine sump pumps to the non-safety waste water system (WWS) do not affect any safety-related equipment, nor does it add any new interface to safety-related SSCs. No system or design function or equipment qualification is affected by this change. The changes do not introduce a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The WWS is a non-safety-related system that does not interface with any safety-related equipment. The proposed changes to identify that there is more than one turbine building sump and to add two turbine building sump pumps do not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence J. Burkhart.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units (BFN) 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 16, 2015 (ADAMS Accession No. ML15260B125).

Description of amendment request: The amendments would revise the Technical Specifications (TSs) for Units 1 and 2, by adding a new Specification (*i.e.*, TS 3.3.8.3) to consolidate the requirements governing the safety functions for the Emergency Core Cooling System (ECCS) Preferred Pump Logic, Common Accident Signal (CAS) Logic, and the Unit Priority Re-Trip Logic and for Unit 3, by adding a new Specification (*i.e.*, TS 3.3.8.3) to consolidate the requirements governing the safety functions for the CAS Logic, and the Unit Priority Re-Trip Logic for consistency with the changes to the, Units 1 and 2 TSs. The proposed change would relocate the existing requirements for the CAS Logic from Units 1, 2, and 3, TS 3.8.1, ''AC Sources—Operating,'' to the proposed TS 3.3.8.3. In addition, TS 3.3.5.1, Table 3.3.5.1–1, ''Emergency Core Cooling System Instrumentation,'' would be revised to incorporate references to the proposed TS 3.3.8.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate and clarify the requirements currently addressed in the BFN TS governing the safety functions for the ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. Requirements are neither added nor deleted. The proposed TS 3.3.8.3 continues to provide LCO [Limiting Condition for Operation], Required Actions and Completion Times, and Surveillance Requirements for ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. A TVA risk assessment has determined that the risk of changing the Completion Time for the ECCS Preferred Pump Logic from 24 hours to seven days, and maintaining the current

Surveillance Test Intervals as the current Surveillance Test Interval for the rest of the ECCS Instrumentation in the technical specifications is acceptable. Because the proposed changes do not require modification of the plant or change the way the logic systems are used, the proposed changes do not affect the current LOCA [loss-of-coolant accident] analysis of record.

Based on the above discussions, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate and clarify the requirements currently addressed in the BFN TS governing the safety functions for the ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. Requirements are neither added nor deleted. The proposed TS 3.3.8.3 continues to provide LCO, Required Actions and Completion Times, and Surveillance Requirements for ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. The proposed changes result in no physical change to the plant configuration or method of operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes relocate and clarify the requirements currently addressed in the BFN TS governing the safety functions for the ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. Requirements are neither added nor deleted. The proposed TS 3.3.8.3 continues to provide LCO, Required Actions and Completion Times, and Surveillance Requirements for ECCS Preferred Pump Logic (BFN, Units 1 and 2 only), Common Accident Signal Logic, and the Unit Priority Re-Trip Logic. A TVA risk assessment has determined that the risk of changing the Completion Time for the ECCS Preferred Pump Logic from 24 hours to seven days, and maintaining the current Surveillance Test Intervals as the current Surveillance Test Interval for the rest of the ECCS Instrumentation in the technical specifications is acceptable.

Accordingly, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Benjamin G. Beasley.

III. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of amendment request: December 30, 2014, as supplemented by letters dated May 8, and July 30, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML14364A100, ML15128A305, and ML15215A336, respectively.

Brief description of amendment request: The NRC is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Exelon Generation Company, LLC (the licensee), for operation of DNPS, Units 2 and 3. The proposed amendment uses a new Criticality Safety Analysis (CSA) methodology for performing the criticality safety evaluation for legacy fuel types in addition to the new ATRIUM 10XM fuel design in the DNPS spent fuel pools. In addition, the licensee's amendment request proposes a change to the DNPS Technical Specification (TS) 4.3.1, ''Criticality,'' in support of the new CSA.

Date of publication of individual notice in ***Federal Register****:* November 5, 2015 (80 FR 68573).

Expiration date of individual notice: December 7, 2015 (public comments); January 5, 2015 (hearing requests).

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Florida, Inc. and Seminole Electric Cooperative, Inc., Docket No. 50–302, Crystal River, Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 7, 2015.

Brief description of amendment: The amendment revised Technical Specifications 5.1.1, 5.2.1.b, 5.3.2, and 5.6.2.3 by changing the title of the position with overall responsibility for the safe handling and storage of nuclear fuel and licensee initiated changes to the Offsite Dose Calculation Manual from either the Plant Manager or the Decommissioning Director to the General Manager Decommissioning.

Date of issuance: November 27, 2015.

Effective date: As of the date of its issuance and shall be implemented within 30 days of issuance.

Amendment No.: 249. A publicly-available version is in ADAMS under Accession No. ML15261A452; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–72: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* July 21, 2015 (80 FR 43127).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2015.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 15, 2014 as supplemented by letters dated May 6, October 12, November 6, and November 24, 2015.

Brief description of amendment: The amendment modified Surveillance Requirement (SR) 3.6.4.3.1 of TS 3.6.4.3, ''Standby Gas Treatment (SBT) System''; SR 3.7.3.1 of TS 3.7.3 ''Control Room Fresh Air (CRFA) System''; and TS 5.5.7, ''Ventilation Filter Testing Program (VFTP).'' The changes to SRs 3.6.4.3.1 and 3.7.3.1 are consistent with the adoption of Technical Specifications Task Force (TSTF) Standard Technical Specification (STS) Traveler TSTF–522, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.'' Additionally, the change to TS 5.5.7 provided consistency with the above TS changes that was not addressed in TSTF–522.

Date of issuance: December 17, 2015.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 208. A publicly-available version is in ADAMS under Accession No. ML15336A256; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 28, 2015 (80 FR 23603). The supplemental letters dated May 6, October 12, November 6, and November 24, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2015.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VY), Vernon, Vermont

Date of amendment request: June 12, 2014, as supplemented by letters dated October 21, 2014; February 5, 2015; June 18, 2015; and July 16, 2015.

Brief description of amendment: The amendment revised the permanently defueled emergency plan and emergency action level (EAL) scheme to reflect the reduced scope of offsite and onsite emergency planning and the significantly reduced spectrum of credible accidents that can occur for the permanently defueled condition.

Date of issuance: December 11, 2015.

Effective date: As of April 15, 2016, and shall be implemented within 90 days of the amendment effective date.

Amendment No.: 264. A publicly-available version is in ADAMS under Accession No. ML15233A166; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–28: The amendment revised the VY permanently defueled emergency plan and EAL scheme.

Date of initial notice in ***Federal Register****:* December 9, 2014 (79 FR 73109). The supplemental letters dated October 21, 2014; February 5, 2015; June 18, 2015; and July 16, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 11, 2015.

No significant hazards consideration comments received: Yes. The Safety Evaluation dated December 11, 2015, provides the discussion of the comments received from the State of Vermont and the public.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: December 14, 2014, as supplemented by letters dated June 25, and September 16, 2015.

Brief description of amendment: The changes increase the voltage limit for the diesel generator full load rejection test specified by technical specification (TS) and surveillance requirement (SR) 3.8.1.10. Additionally, the proposed amendment adds Note 3 to TS SR 3.8.1.10 that allows for full load reject testing.

Date of issuance: December 17, 2015.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No(s).: 187/187, and 194/194. A publicly-available version is in ADAMS under Accession No. ML15293A589. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos.NPF–72 and NPF–77 and Renewed Facility Operating License Nos. NPF–37 and NPF–66: The amendments revise the TSs and License.

Date of initial notice in ***Federal Register****:* March 17, 2015 (80 FR 13907). The June 25, and September 16, 2015, supplements contained clarifying information and did not change the scope of the proposed action or affect the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2015.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: November 17, 2014, as supplemented by letters dated April 21, June 24, and November 16, 2015.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.2, ''Primary Coolant Sources Outside Containment,'' The approved change requires integrated leak testing to be performed at least once per 24 months and adds a provision to apply surveillance

requirement 3.0.2 to TS 5.5.2 requirements.

Date of issuance: December 18, 2015.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No: 208. A publicly-available version is in ADAMS under Accession No. ML15251A584; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register****:* February 17, 2015 (80 FR 8361). The April 21, 2015 supplement, contained clarifying information, which changed the NRC staff's initial proposed finding that the amendments involve no significant hazards consideration, therefore the notice was later supplemented on May 12, 2015 (80 FR 27197). The June 24, and November 16, 2015 supplements did not affect the revised no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2015.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois and Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: April 24, 2014, as supplemented by letters dated April 30, 2015, and October 9, 2015.

Brief description of amendment: The amendments add new low degraded voltage relays and timers, with appropriate settings, on each engineered safety features bus. The technical specifications and surveillance requirements are changed to add appropriate operational and testing requirements for the new relays and timers.

Date of issuance: December 21, 2015.

Effective date: As of the date of issuance and shall be implemented during subsequent refueling outages as specified in the amendments.

Amendment No(s).: 188/188 and 195/195. A publicly-available version is in ADAMS under Accession No. ML15307A776. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos.NPF–72 and NPF–77 and Renewed Facility Operating License Nos. NPF–37 and NPF–66: The amendments revises the Technical Specifications and License.

Date of initial notice in ***Federal Register****:* September 2, 2014 (79 FR 52065).

The April 30, 2015, and October 9, 2015, supplements contained clarifying information and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2015.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: December 22, 2014, as supplemented by letter dated September 29, 2015.

Brief description of amendments: The amendments add a new Technical Specification (TS) 3.10.8, ''Inservice Leak and Hydrostatic Testing,'' to allow reactor operations to remain in Mode 4 for specified testing with reactor coolant temperatures above the Mode 4 limit. TS 3.10.8 may only be used for (1) performance of an inservice leak or hydrostatic test, (2) as a consequence of maintaining adequate pressure for an inservice leak or hydrostatic test, or (3) as a consequence of maintaining adequate pressure for control rod scram time testing initiated in conjunction with an inservice leak or hydrostatic test.

Date of issuance: December 17, 2015.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 248, 241, 219, 205, 261, and 256. Publicly-available versions can be found in ADAMS under Accession No. ML15324A439; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–19, DPR–25, NPF–11, NPF–18, DPR–29, and DPR–30: The amendments revised the Technical Specifications and the Licenses.

Date of initial notice in ***Federal Register****:* March 31, 2015 (80 FR 17089). The supplemental letter dated September 29, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2015.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2), Beaver County, Pennsylvania

Date of amendment request: April 1, 2015, as supplemented by letter dated August 10, 2015.

Brief description of amendments: The amendments revised the BVPS–1 and BVPS–2 Renewed Facility Operating Licenses (RFOLs) and Technical Specifications (TSs). Specifically, the license amendments revised various sections associated with steam generators, including changes consistent with the guidance provided in Technical Specification Task Force Traveler-510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection'' (ADAMS Accession No. ML110610350).

Date of issuance: December 16, 2015.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 296 (Unit 1) and 184 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML15294A439; documents related to these amendments are listed in the Safety Evaluation (SE) enclosed with the amendments.

RFOL Nos. DPR–66 and NPF–73: Amendments revised the RFOLs and TSs.

Date of initial notice in ***Federal Register****:* May 12, 2015 (80 FR 27198). The supplemental letter dated August 10, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in an SE dated December 16, 2015.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: December 17, 2014, as supplemented by letters dated July 9, 2015, and October 30, 2015.

Brief description of amendments: The amendments revise the Donald C. Cook Nuclear Plant, Units 1 and 2, technical specifications to allow surveillance testing of the onsite standby emergency diesel generators during modes in which it was previously restricted. Specifically, the changes remove the mode restrictions in the notes of the surveillance requirements 3.8.1.10, EDG single largest load rejection test, 3.8.1.11, EDG full load rejection test, and 3.8.1.15, EDG endurance run.

Date of issuance: December 11, 2015.

Effective date: These amendments are effective as of the date of issuance and shall be implemented within 140 days of issuance.

Amendment No(s).: 330 for Unit 1 and 311 for Unit 2. A publicly-available version is in ADAMS under Accession No. ML15327A217; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: The amendments revise the Renewed Facility Operating Licenses and the Technical Specifications.

Date of initial notice in ***Federal Register****:* March 17, 2015 (80 FR 13909). The supplemental letters dated July 9, 2015, and October 30, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2015.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 26, 2014, as supplemented by letters dated September 11, September 18, November 2, and December 8, 2015.

Brief description of amendment: The amendment revised the current emergency action level scheme to a scheme based on Nuclear Energy Institute (NEI) 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' November 2012.

Date of issuance: December 15, 2015.

Effective date: As of the date of issuance and shall be implemented by June 30, 2016.

Amendment No.: 285. A publicly-available version is in ADAMS under Accession No. ML15288A005; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–40: The amendment revised the operating license.

Date of initial notice in ***Federal Register****:* February 3, 2015 (80 FR 5801). The supplemental letters dated September 11, September 18, November 2, and December 8, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2015.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: December 11, 2014, as supplemented by letter dated September 30, 2015.

Brief description of amendments: The amendments revised the stored diesel fuel oil and lube oil numerical volume requirements in the Technical Specifications (TSs) by replacing them with diesel operating time requirements consistent with Technical Specifications Task Force Traveler-501, Revision 1, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control.''

Date of issuance: December 14, 2015.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No(s).: 292 (Unit 1), 317 (Unit 2), and 275 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML15324A247; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* March 31, 2015 (80 FR 17104). The supplemental letter dated September 30, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 2015.

No significant hazards consideration comments received: A comment was received on the initial **Federal Register** notice regarding a Grand Gulf amendment, but the comment was unrelated to this licensing action.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: December 11, 2014, as supplemented by letters dated June 3, 2015, and July 30, 2015.

Brief description of amendment: The amendments revised Technical Specification (TS) 2.1.1, ''Reactor Core SLs [Safety Limits],'' to lower the value of the reactor steam dome pressure safety limit from the current 785 pounds per square inch gauge (psig) to 585 psig. Lowering of this safety limit will effectively expand the validity range for the units' critical power correlations and the calculation of the minimum critical power ratio. Specifically, the revised value of 585 psig is consistent with the lower range of the critical power correlations currently in use at the units. The revised value will also adequately bound a pressure regulator failure open transient event. No hardware, design or operational change is involved with this amendment.

Date of issuance: December 16, 2015.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment Nos.: 293 (Unit 1), 318 (Unit 2), and 276 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML15287A213; documents related to these amendments are listed in the Safety Evaluation (SE) enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* May 5, 2015 (80 FR 25721). The supplemental letters dated June 3, 2015, and July 30, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in an SE dated December 16, 2015.

No significant hazards consideration comments received: Yes. The comment received on Amendment Nos. 293, 318, and 276 is addressed in the SE dated December 16, 2015.

V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or

fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 7, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by March 7, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has

been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

STP Nuclear Operating Company, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: December 3, 2015, as supplemented by letter dated December 9, 2015.

Brief description of amendment: The amendment added a footnote to Technical Specification (TS) 5.3.2, ''Control Rod Assemblies,'' to permit operation with 56 full-length control rods during Unit 1 Cycle 20 instead of the normal 57 full-length control rod assemblies. This extension will allow completion of plans to repair or replace a single unreliable control rod. This amendment was necessitated by the discovery of the unreliable control rod during start up testing following the recently completed Unit 1 refueling outage.

Date of issuance: December 11, 2015.

Effective date: As of the date of issuance and shall be implemented within 24 hours of its date of issuance.

Amendment No.: Unit 1—208. A publicly-available version is in ADAMS under Accession No. ML15343A128; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–76: The amendment revised the Facility Operating License and TSs.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated December 11, 2015.

Attorney for licensee: Steve Frantz, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, this 29th day of December, 2015.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–33260 Filed 1–4–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0277]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Limerick Generating Station, Unit 1, and Browns Ferry Nuclear Plant, Unit 1. The NRC proposes to determine that the amendment requests involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by February 4, 2016. A request for a hearing must be filed by March 7, 2016.

Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by January 15, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0277. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0277 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0277.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html* .To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0277, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room

O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 7, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by March 7, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for

hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to the license amendment applications, see the applications for amendment which are available for public inspection at the NRC's PDR. For additional direction on obtaining information related to this document, see the ''Obtaining Information and Submitting Comments,'' section of this document.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 19, 2015. A publicly-available version is in ADAMS under Accession No. ML15323A257.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed change modifies Technical Specification (TS) 2.1, ''Safety Limits,'' related to the Safety Limit Minimum Critical Power Ratios (SLMCPRs). Specifically, the proposed change results from a cycle specific analysis performed to support the operation of LGS, Unit 1, in the upcoming Cycle 17. The proposed change involves revising the SLMCPRs contained in TS 2.1 for two recirculation loop operation and single recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with the NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology

discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 21.

The basis of the SLMCPR calculation is to reasonably assure that during normal operation and during anticipated operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling.

The MCPR safety limit is reevaluated for each reload using NRC-approved methodologies. The analyses for LGS, Unit 1 Cycle 17, have concluded that a two recirculation loop MCPR safety limit of ≥1.10, based on the application of Global Nuclear Fuel's NRC-approved MCPR safety limit methodology, will ensure that this acceptance criterion is met. For single recirculation loop operation, a MCPR safety limit of ≥1.14 also ensures that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the LGS, Unit 1, Core Operating Limits Report (COLR).

The requested TS changes do not involve any additional plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The SLMCPR is a TS numerical value, calculated to ensure that during normal operation and during anticipated operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs are calculated using [the] NRC-approved methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 21. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed revised MCPR safety limits have been shown to be acceptable for Cycle 17 operation with the MELLLA+ operating domain. The core operating limits will continue to be developed using NRC-approved methods. The proposed MCPR safety limits or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs. The new SLMCPRs are calculated using methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 21. The SLMCPRs ensure that, during normal operation and during anticipated operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limits are not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, Illinois 60555.

NRC Branch Chief: Douglas A. Broaddus.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant (BFN), Unit 1, Limestone County, Alabama

Date of amendment request: September 25, 2015. A publicly-available version is in ADAMS under Accession No. ML15268A566.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify the Technical Specification (TS) 2.1.1.2 value of the safety limit minimum critical power ratio (SLMCPR) for two-loop operation to 1.06 and the SLMCPR for single loop operation to 1.08. The revised SLMCPR values would reflect a reduction from the current values, supported by the application of the SAFLIM3D methodology approved by addition of analytical methodologies to TS 5.6.5 for BFN, Units 1, 2, and 3 (ADAMS Accession No. ML14113A286).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS revision is based on the implementation of a previously approved methodology [by the NRC staff for BFN Unit 2 in 2014 (ML14108A334). Based on experience with the methodology as implemented at BFN Unit 2, this revision will involve] no changes to the operation of any system or component during normal, accident, or transient operating conditions. The change does not affect the initiators of any accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed reduction of the SLMCPR values is based upon previously approved methodologies and does not involve changes to the plant hardware or its operating characteristics. As a result, no new failure modes are being introduced.

Therefore, the change does not introduce a new or different kind of accident from those previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The margin of safety is established through the design of plant structures, systems, and components, and through the parameters for safe operation and setpoints of equipment relied upon to respond to transients and design basis accidents. The proposed change in SLMCPR does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. The change does not alter the behavior of the plant equipment.

The reduction of the SLMCPR values does not change the requirement that no more than 0.1% of fuel rods in the core experience boiling transition during normal operation and anticipated operational occurrences.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., WT 6A, Knoxville, Tennessee 37902.

NRC Branch Chief: Benjamin G. Beasley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 16th day of December, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2015–32363 Filed 1–4–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–90; Order No. 2962]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 7, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On December 29, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–90 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 7, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Derrick D. Dennis to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–90 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than January 7, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–33133 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 29, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–89; Order No. 2961]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Reseller Expedited Package Contracts 2 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 7, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On December 29, 2015, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Contracts 2 (GREP 2) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–89 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 7, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–89 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than January 7, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–33132 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement, December 29, 2015 (Notice).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 178 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–60, CP2016–75.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33100 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–70, CP2016–85.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33117 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 183 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2016–67, CP2016–82.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33110 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 181 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–65, CP2016–80.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33103 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 180 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–64, CP2016–79.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33102 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 179 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–63, CP2016–78.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33101 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 182 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–68, CP2016–83.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33111 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 41 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–73, CP2016–88.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33099 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–72, CP2016–87.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33112 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Maria W. Votsch, 202–268–6525.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 185 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–69, CP2016–84.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33107 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 186 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–71, CP2016–86.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33104 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 24, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 184 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–66, CP2016–81.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–33109 Filed 1–4–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 7, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 31, 2015.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33314 Filed 12–31–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76789; File No. SR–NYSE–2015–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Modify Certain Fees for Executions at the Close

December 29, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 16, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to modify certain fees for executions at the close, effective January 4, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to change certain fees for executions at the close, effective January 4, 2016. The proposed change would only apply to transactions in securities priced $1.00 or more.

Other than for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders, the Exchange does not charge for orders executed at the close, including Floor broker orders swept into the close. However, member organizations that execute during the billing month average daily volume (''ADV'') of at least 1,000,000 shares through orders executed at the close (except MOC and LOC orders) and Floor broker orders swept into the close, are charged $0.0003 per share for such orders. The Exchange proposes to increase this fee to $0.00035 per share, but to apply that fee only to shares executed in excess of 750,000 ADV during the billing month. For example, a member organization that has an ADV of 3 million shares during a billing month consisting of 20 trading days would pay the $0.00035 per share fee on the 2.25 million shares that exceed 750,000 on average each day. For the 20 trading days, this would be a total of 45 million shares for that month, and a total fee of $15,750. By comparison with the current fee, the member organization that has an ADV of 3 million shares would pay the $0.0003 per share fee on an ADV of 3 million shares over 20 trading days, or a total of 60 million shares for that month, for a total fee of $18,000. Member organizations with execution volumes below an ADV of 750,000 shares during the billing month would continue not to be charged for these trades.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee increases for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,[6] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that it is equitable and not unfairly discriminatory to modify fees for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close for member organizations that execute an ADV of at least 750,000 of such executions on a combined basis, by increasing the applicable fee but to apply that fee only to shares executed over 750,000 ADV during the billing month, because member organizations that reach 750,000 ADV threshold are generally larger member organizations that are deriving a substantial benefit from this high volume of closing executions. Nonetheless, the Exchange must continue to encourage liquidity from multiple sources. Allowing member organizations with execution volumes of an ADV below 750,000 shares during the billing month to continue to obtain executions at the close at no charge, and to charge the fee only with respect to shares executed over 750,000 ADV during the billing month, continues to encourage member organizations to send orders to the Exchange for the closing auction. The Exchange believes that its proposal would equitably balance these interests and continue to encourage order flow from multiple sources, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants. The proposed fee is also reasonable, in that it is lower than applicable closing rates on the NASDAQ Stock Market, LLC (''NASDAQ'').[7] For example, the default fee for executions in NASDAQ's ''Closing Cross'' is $0.0008 per share.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[7] *See* NASDAQ Rule 7018(d).

[8] 15 U.S.C. 78f(b)(8).

Exchange must continually adjust its fees and rebates 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 and credits 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. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–66. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–66 and should be submitted on or before January 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33116 Filed 1–4–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76787; File No. SR–NSCC–2015–009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Fees Related to Automated Customer Account Transfer Service, Obligation Warehouse, Fund/SERV®, Insurance and Retirement Processing Services, and Alternative Investment Product Services

December 29, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2015, National Securities Clearing Corporation (''NSCC'') 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 NSCC. NSCC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to Addendum A (Fee Structure) of the Rules & Procedures (''Rules'') of NSCC in order to adjust fees related to NSCC's Automated Customer Account Transfer Service, Obligation Warehouse, Fund/SERV®, Insurance and Retirement Processing Services, and Alternative Investment Product Services, as more fully described below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Terms not otherwise defined herein have the meaning set forth in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Fee Changes for Automated Customer Account Transfer Service

The proposed rule change would adjust fees associated with NSCC's Automated Customer Account Transfer Service (''ACATS'') in order to align these fees with the costs of providing these services. ACATS is a non-guaranteed service offered by NSCC that enables its Members to effect automated transfers of customer accounts among themselves.[6] Currently, the anticipated revenue for ACATS for 2016, based on revenue for the service in 2015 and the existing fee structure, is not expected to meet the budgeted expenses associated with providing this service. The proposed fee adjustments would allow NSCC to meet expenses associated with this service, which include costs of maintenance, future development projects, and amortization of past enhancements to the service.

Therefore, NSCC is proposing to increase the following fees: (1) Fee for transfer initiation input, per submission, from $0.15 to $0.18; (2) settling fee for assets received, per item settled, from $0.05 to $0.06; (3) fee for adding, changing or deleting assets from a record, per asset entered, from $0.05 to $0.06; (4) fee for each receive/deliver instruction, per instruction issued, from $0.10 to $0.12; and (5) fee for each account transfer reject, per full account per side, from $1.00 to $1.20.

Fee Changes for Obligation Warehouse

The proposed rule change would also adjust fees associated with NSCC's Obligation Warehouse (''OW''), a non-guaranteed, automated service that tracks, stores, and maintains unsettled ex-clearing and failed obligations, as well as obligations exited from NSCC's Continuous Net Settlement (''CNS'') system, non-CNS ACATS Receive and Deliver Instructions, Balance Orders, and Special Trades, as such terms are defined in the Rules.[7] The OW service provides transparency, serves as a central storage of open (*i.e.*, failed or unsettled) broker-to-broker obligations, and allows users to manage and resolve exceptions in an efficient and timely manner.

NSCC is proposing to adjust the fee for matching within OW to align this fee with the fees charged for matching through NSCC's Real Time Trade Matching platform through which fixed income securities (corporate and municipal bonds, and unit investment trusts) are validated and matched.[8] Therefore, NSCC is proposing to increase the fee for matching within OW from $0.75 to $0.85.

NSCC is also proposing to align the fees associated with closing obligations from OW. Obligations that are identified as eligible for NSCC's CNS service may be closed from OW to be processed through CNS, for a fee of $0.20. Obligations may also be closed from OW as a result of the Reconfirmation and Pricing Service (''RECAPS''), for a fee of $0.20. Obligations may also be closed from OW if paired off with other obligations in the same CUSIP, pursuant to NSCC's Pair Off function, for a $1.50 fee.[9] Finally, obligations may be closed from OW if they are settled through NSCC's Envelope Settlement Service, and currently no fee is charged for this service.[10] Therefore, NSCC is proposing to align each of these fees by (1) increasing the fees for closing obligations that are processed through CNS or as a result of RECAPS processing from $0.20 to $0.35, (2) decreasing the fee for closing obligations in connection with the OW Pair Off service from $1.50 to $0.35, and (3) adding a fee for closing obligations that settle through its Envelope Settlement Service for $0.35.

Finally, NSCC is proposing to adjust the fee charged to the recipient of a delivery notification request advisory that informs the recipient that the submitting party has acknowledged that an OW obligation between those parties has settled, if that notification is aged two days or older (''Aged Delivery Advisories''); and the fee charged to the recipient of a pending cancel request advisory that requests that the recipient cancel a previously compared OW obligation, if that request is aged two days or older (''Aged Cancel Advisories''). NSCC is proposing to increase these fees from $2.00 to $2.50. NSCC is also proposing to adjust the fee charged to the recipient of a comparison advisory that requests that the recipient affirm the comparison of an obligation, if that advisory is aged five days or older (''Aged Comparison Advisories''). NSCC is proposing to increase this fee from $5.00 to $5.50.

The proposed increase in fees for Aged Delivery Advisories, Aged Cancel Advisories, and Aged Comparison Advisories would encourage more timely action by the recipients of these advisories, which, in turn, would reduce the frequency of these fees and align the fees associated with the OW service with the costs of delivering that service to NSCC's Members.

Fee Changes for Fund/SERV

The proposed rule change would also reduce the transaction fees associated with NSCC's Fund/SERV (''Fund/SERV'') service, a non-guaranteed service offering within NSCC's Mutual Fund Services that enables its members to process and settle mutual fund transactions through automated, standardized formats and a centralized platform.[11] NSCC is proposing to reduce Fund/SERV transaction fees from $0.07 to $0.06, per side, per order or transfer request, as it has determined that the reduction aligns these fees with the costs of providing this service.

Fee Changes for Insurance and Retirement Processing Services

The proposed rule change would also adjust the fee schedule, as well as introduce new fees, associated with NSCC's Insurance and Retirement Processing Services (''I&RS''), as more fully described below. NSCC's I&RS is a suite of non-guaranteed services that enables its members to exchange information, and settle payments, with respect to insurance products, retirement plans or programs, and other benefit plans or programs.[12] NSCC proposes the following changes for the reasons described below:

Implement Monthly Membership Fee—NSCC proposes to introduce a $250 minimum monthly account fee for all I&RS accounts. NSCC would waive this minimum fee if the aggregate transaction and other service fees attributable to I&RS activity in a given month equals or exceeds $250. The proposed change is intended to

[6] *See* Rule 50 (Automated Customer Account Transfer Service) of NSCC's Rules, *supra* note 5.

[7] *See* Rule 51 (Obligation Warehouse) and Procedure IIA (Obligation Warehouse), *supra* note 5.

[8] *See* Section C of Procedure II (Trade Comparison and Recording Service), *supra* note 5.

[9] *See* Section E of Procedure IIA (Obligation Warehouse), *supra* note 5.

[10] *See* Rule 9 (Envelope Settlement Service) and Procedure IIA (Obligation Warehouse), *supra* note 5.

[11] *See* Rule 52 (Mutual Fund Services), A (Fund/Serv), and Addendum D (Statement of Policy/Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing Services and Other Services Offered by the Corporation), *supra* note 5.

[12] *See* Rule 57 (Insurance and Retirement Processing Services) and Addendum D (Statement of Policy/Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing Services and Other Services Offered by the Corporation), *supra* note 5.

encourage I&RS activity with respect to dormant I&RS accounts.

Implement Multiple Destination Fee—NSCC proposes to charge members directing NSCC to deliver I&RS files to more than two destinations an additional monthly fee. NSCC members directing NSCC to deliver I&RS files to three or four destinations would be charged an additional $50 per month, per I&RS product. NSCC members directing NSCC to deliver I&RS files to five or more destinations would be charged an additional $100 per month, per I&RS product. The proposed change would align the fees charged with the cost of providing these products and services to members with multiple file destinations.

In Force Transactions (''IFT'') Adjustments—IFT is an I&RS offering that automates data processing with respect to ''in force'' policy transactions among participating NSCC members. In force policy transactions are transactions that take place after the underlying insurance contract has become effective. NSCC proposes the following adjustments to the IFT product offering:

- *Eliminate Broker Identification Number (''BIN'')/Representative of Record (''REP'') Incentives.* Currently, NSCC members who utilize IFT's BIN/REP product are given a monthly credit of up to $350 toward their BIN/REP charges, as well as a 30% credit of their BIN/REP transaction costs to be applied to NSCC fees with respect to other I&RS products. These BIN/REP credit programs were originally implemented in 2009 to encourage growth and adoption of the BIN/REP product. As BIN/REP is now widely utilized, the proposed change would eliminate these incentive credits.
- *Reduce REP Change Request Fee.* The current fee for REP change requests is $0.65, per transaction, per side. The proposed change would reduce this fee to $0.35, per transaction, per side. The proposed change is consistent with the fees currently charged for similar I&RS transactions.
- *Introduce New IFT Transaction Functionality Fees.* NSCC proposes to introduce the fees applicable to three new IFT transaction functionalities: Policy Administration Inquiries would be $0.35 (per inquiry/per side); Policy Administration Requests would be $1.25 (per inquiry/per side); and Death Notification Requests would be $1.25 (per request/per side).

Implement IFT Tiered Pricing Program (other than BIN/REP). NSCC proposes to implement a new tiered pricing program, which includes member directed activity level designations correlating to identified monthly minimum fees. The proposed change is intended to incentivize greater use of the IFT product by discounting transaction fees after once [*sic*] the chosen level's minimum monthly fee has been met for higher activity level designations. Set forth below are the transaction fees that would apply to IFT transactions (not including BIN/REP) until the Minimum Monthly Fee is met for the chosen Activity Level (as reflected in the chart below). Thereafter, the transaction fees would be as reflected in the chart. Thus, the transaction fees applicable to Level 1 designations are the same whether before meeting the Minimum Monthly Fee of $1,000 or after. However, Level 2 or Level 3 designations will benefit from discounted fees per transaction once their Minimum Monthly Fee is met.

Values Inquiry	$0.35 (per inquiry, per side).
Policy Administration Inquiry	$0.35 (per inquiry, per side).
Policy Administration Request	$1.25 (per request, per side).
Death Notification Request	$1.25 (per request, per side).
Fund Transfer	$1.25 (per request, per side).
Withdrawals	$1.25 (per request, per side).
Arrangements	$1.25 (per request, per side).

Activity level	Minimum monthly fee	Fee per transaction over minimum requests/inquiries
Level 1	$1,000	$1.25/$0.35
Level 2	3,000	$1.00/$0.28
Level 3	5,000	$0.75/$0.21

Fee Changes for Alternative Investment Product Services

The proposed rule change would also adjust the fee schedule associated with NSCC's Alternative Investment Product (''AIP'') Services, a non-guaranteed processing platform for the exchange of information and settlement of payments with respect to alternative investment products such as hedge funds, funds of hedge funds, commodities pools, managed futures, and real estate investment trusts.[13] NSCC proposes the following changes for the reasons described below:

Reduce Fee for Higher Volume Eligible AIP Product Account Transfers—Currently, there is no transaction activity with respect to higher volume Eligible AIP Product transfers. To encourage activity, NSCC proposes to reduce higher volume Eligible AIP Product transfer fees from $1.50 per transaction to $0.50 per transaction.

Reduce Fee for Lower Volume Eligible AIP Product Fee Trades—Currently, there is no transaction activity with respect to lower volume Eligible AIP Product trades. To encourage activity, NSCC proposes to reduce lower volume Eligible AIP Product trade fees from $30 per trade to $10 per trade.

Increase AIP Distributor Cap—The AIP Distributor cap of $50,000 per calendar year with respect to certain Eligible AIP Product transactions was initially introduced to encourage AIP adoption by broker/dealers and has been successful. The cap continues to be an effective enticement for additional activity, but NSCC believes it should be increased to align AIP fees with the cost of providing the service. Accordingly, NSCC is proposing to increase the AIP Distributor cap from $50,000 per calendar year to $250,000 per calendar year.

No other changes to the Rules are contemplated by this proposed rule change. The proposed changes would take effect on January 1, 2016.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act [14] requires that NSCC's Rules provide for the equitable allocation of reasonable

[13] *See* Rule 53 (Alternative Investment Product Services and Members) and Addendum D (Statement of Policy/Envelope Settlement Service, Mutual Fund Services, Insurance and Retirement Processing Services and Other Services Offered by the Corporation), *supra* note 5.

[14] 15 U.S.C. 78q–1(b)(3)(D).

dues, fees, and other charges among its participants. The proposed rule changes would align NSCC's fees with the costs of delivering services to NSCC members, and would allocate those fees equitably among the NSCC members that use those services. Further, the proposed increase to fees for Aged Delivery Advisories, Aged Cancel Advisories, and Aged Comparison Advisories would encourage more timely action by the recipients of these advisories, which, in turn, would reduce the frequency of these fees and align the fees associated with the OW service with the costs of delivering that service to NSCC's Members. Therefore, the proposed rule changes would comply with section 17A(b)(3)(D).[15]

(B) Clearing Agency's Statement on Burden on Competition

The proposed rule changes would not have any impact, or impose any burden, on competition. As stated above, the proposed changes would align NSCC's fees with the costs of delivering associated services to its members, and would not disproportionally impact any NSCC members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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)[16] of the Act and paragraph (f) of Rule 19b–4[17] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2015–009 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–NSCC–2015–009. 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 NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2015–009 and should be submitted on or before January 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33114 Filed 1–4–16; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78q–1(b)(3)(D).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76786; File No. SR–ICC–2015–019]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Single Name Backloading Incentive Program

December 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on December 14, 2015, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, so that the proposal was 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 Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend ICC's single name backloading incentive program for client account clearing of single name credit default swap (''CDS'') contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended to extend a single name backloading incentive program for client account

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

clearing of single name CDS contracts.[5] The changes are designed to incentivize market participants to submit additional transactions to ICC for clearing. Under the program, clients receive a 50% discount on ICC clearing fees for backloaded single name CDS contracts. The discount is paid back as a rebate directly to the client or through the client's Clearing Participant. ICC plans to extend the existing backloading program, set to expire December 1, 2015, until March 18, 2016. As a result of the extended program, contracts must have an execution date prior to February 1, 2016 to be eligible for the rebate program. This date was chosen to incentivize clients to backload positions which were established after the original program start date.

ICC believes the proposed rule changes are consistent with the requirements of the Act including Section 17A of the Act.[6] More specifically, the proposed rule changes establish or change a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii)[7] of the Act and Rule 19b–4(f)(2)[8] thereunder. ICC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),[9] because the proposed fee changes apply equally to all market participants clearing backloaded single name CDS contracts in client accounts and therefore the proposed changes provide for the equitable allocation of reasonable dues, fees and other charges among its participants. As such, the proposed changes are appropriately filed pursuant to Section 19(b)(3)(A)[10] of the Act and paragraph (f)(2) of Rule 19b–4 thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes modify pricing for client account clearing of single name CDS contracts. There is no limit to the number of client participants that may participate in the backloading incentive program; it will be open to all clients and rebates will be applied to all transaction fees for client accounts clearing eligible single name CDS contracts. As such, the proposed changes apply consistently across all eligible market participants and the implementation of such changes does not preclude the implementation of similar incentive programs by other market participants. Therefore, ICC does not believe the changes impose any burden on competition that is inappropriate 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 relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(2)[12] thereunder because the extension of the single name backloading incentive program for client account clearing of single name CDS contracts results in changes which establish or change a due, fee, or other charge applicable ICC's participants. 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.* Please include File Number SR–ICC–2015–019 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–ICC–2015–019. 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 ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2015–019 and should be submitted on or before January 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33113 Filed 1–4–16; 8:45 am]

BILLING CODE 8011–01–P

[5] On July 30, 2015, ICE Clear Credit initially filed the proposed rule changes to implement a single name backloading incentive program for client account clearing of single name CDS contracts. See Securities Exchange Act Release No. 34–75656 (August 10, 2015), 80 FR 48938 (August 14, 2015) (SR–ICC–2015–014). The text of the proposed rule change for rule filing SR–ICC–2015–014 can also be found on ICC's Web site at *https://www.theice.com/clear-credit/regulation.*

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76788; File No. SR–C2–2015–036]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 29, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), 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 December 16, 2015.[3] Currently, in all equity, multiply-listed index (excluding RUT), ETF and ETN options, if a quote is updated such that it executes against a resting complex order or if a simple, non-complex order (''simple order'') is submitted such that it executes against a resting complex order, that order or quote is treated as a ''Taker'' and assessed the Taker fees listed in section 1A of the C2 Fees Schedule. The remaining leg(s) are treated as ''Makers'' and assessed the rebates listed in section 1A of the Fees Schedule, and the complex order is also treated as ''Maker'' and assessed the fees (or rebates) listed in section 1B of the Fees Schedule. By way of background, when a market participant submits an order, they likely do not know whether it will trade with a simple or complex order. As the simple order book displays the market for all resting orders and quotes, a market participant would readily know however, whether their simple order or quote would make a resting simple order in that series on the opposite side marketable and execute (thereby being a ''Taker''). Conversely, the market participant would likely not know whether their simple order or quote would make a resting complex order with a leg in that series marketable (thereby being a ''Taker''). More specifically, while the Complex Order Book (''COB'') displays the market of resting complex orders along with the legs that comprise a complex order, market participants cannot as easily and readily discern whether an incoming simple order or quote will trigger a resting complex order execution. Rather, in order to determine whether such an execution would occur, a market participant would have to simultaneously compare both the COB and simple order book and analyze the various markets on the different legs in the simple order book to determine whether or not their simple order or quote would make a resting complex order marketable (and therefore execute). As many market participants cannot easily make this determination upon submission of their simple order or quote, the majority of market participants are surprised when their order or quote triggers a resting complex order making them a Taker (when they otherwise expected to be a Maker based on the simple order book). The Exchange additionally notes that while the order or quote that triggers the execution of a resting complex order is charged Taker fees, any remaining simple orders or quotes that also trade against that resting complex order are still treated as Maker and as such receive the Maker rebates set forth in section 1A of the C2 Fees Schedule.

In light of the above, the Exchange proposes to amend the Fees Schedule to provide that for all equity, multiply-listed index (excluding RUT), ETF and ETN options classes, transactions in which simple orders or quotes execute against a resting complex order, no fees or rebates will be assessed to any component of the resting complex order or the simple orders or quotes. In conjunction with the proposed change, the Exchange proposes to clarify in section 1B of the C2 Fees Schedule that for transactions in which resting simple orders or quotes execute against an incoming marketable complex order, each component of the complex order will be assessed the complex order fees listed in section 1B of the C2 Fees Schedule, while the simple orders and quotes will be assessed the transaction fees listed in section 1A of the C2 Fees Schedule. Particularly, the Exchange notes that it does not wish to assess transaction fees on any simple orders or quotes that make a resting complex order marketable because, as discussed above, the sender of a simple order or quote would likely not know at the time of submission whether that order or quote would trigger the execution of a resting complex order and be assessed Taker fees instead of receive Maker rebates as otherwise expected. Additionally, when a Market-Maker updates a quote, that improved quote may make a resting complex order marketable unexpectedly. Upon execution of that transaction that Market-Maker would then be assessed fees as a Taker. In order to avoid discouraging Market-Makers from improving their markets (so as to avoid transaction fees as a Taker) the Exchange proposes to waive transaction fees in these instances as well. As the Exchange would not be assessing transaction fees on the simple order or quote that triggers the execution of a resting complex order, the Exchange similarly also proposes to not assess a fee or provide a rebate on the components of the resting complex order that executed against the simple order or updated quote. Additionally, since the Exchange is not generating any fees on these transactions, the Exchange proposes to not provide rebates to the other simple order(s) or quote(s) that execute against the resting complex order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change on December 3, 2015 (SR–C2–2015–035). On December 16, 2015, the Exchange withdrew that filing and submitted this filing.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [5] 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 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. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is reasonable because market-participants won't be assessed fees for transactions in which a simple order or quote triggers the execution of a resting complex order. The Exchange also believes it's reasonable, equitable and not unfairly discriminatory to not assess transaction fees for these transactions because market participants will likely not know whether their submitted order or quote will trade against a resting complex order resulting in that market participant being assessed Taker fees when they might otherwise have expected to be treated as a Maker based on the resting simple orders and quotes. Also as mentioned above, the Exchange does not want to discourage Market-Makers from improving their quotes by charging Taker fees when they unexpectedly execute against a resting complex order. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to not provide rebates to the Makers in these transactions, as the Exchange is not generating a fee from these transactions. Finally, the Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies to all Permit Holders and because the Exchange wants to encourage liquidity and price improvement. The Exchange does not believe that the proposed change will impose any burden on intermarket competition because it only effects trading on C2. Should the proposed change make C2 a more attractive trading venue for market participants at other exchanges, such market participants may elect to become market participants at C2. Additionally, the Exchange notes that it operates in a highly competitive market, comprised of thirteen options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate.

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 [7] and paragraph (f) of Rule 19b–4 [8] 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.* Please include File Number SR–C2–2015–036 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–C2–2015–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–036 and should be submitted on or before January 26, 2016.

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(5).
[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–33115 Filed 1–4–16; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0074]

Rate for Assessment on Direct Payment of Fees to Representatives in 2016

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (Act), 42 U.S.C. 406(d) and 1383(d)(2)(C), is 6.3 percent for 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: A claimant may appoint a qualified individual as a representative to act on his or her behalf in matters before the Social Security Administration (SSA). If the claimant is entitled to past-due benefits and was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: a specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate. (Sections 206(d), 206(e), and 1631(d)(2) of the Act, 42 U.S.C. 406(d), 406(e), and 1383(d)(2).)

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living. (Sections 206(d)(2)(A) and 1631(d)(2)(C)(ii)(I) of the Act, 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).) The maximum dollar limit for the assessment currently is $91, as we announced in the **Federal Register** on October 30, 2015 (80 FR 66963).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees. (Sections 206(d)(2)(B)(ii) and 1631(d)(2)(C)(ii)(II) of the Act, 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).)

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2016. We will continue to review our costs for these services on a yearly basis.

Dated: December 28, 2015.

Michelle King,

Acting Deputy Commissioner for Budget, Finance, Quality, and Management.

[FR Doc. 2015–33135 Filed 1–4–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS) are inviting interested persons to apply to fill two upcoming openings on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The upcoming openings will represent commercial air tour operator and environmental interests, respectively. The selected members will serve 3-year terms.

DATES: Persons interested in applying for these NPOAG openings representing air tour operator and environmental interests need to apply by February 12, 2016.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director-

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

The current NPOAG consists of Melissa Rudinger representing general aviation; Alan Stephen, Mark Francis, and Matthew Zuccaro representing commercial air tour operators; Michael Sutton, Nicholas Miller, Mark Belles, and Dick Hingson representing environmental interests; and Leigh Kuwanwisiwma and Martin Begaye representing Native American interests. The 3-year membership terms of Mr. Francis and Mr. Sutton expire on May 19, 2016.

Selection

In order to retain balance within the NPOAG ARC, the FAA and NPS are

[9] 17 CFR 200.30–3(a)(12).

seeking candidates interested in filling Mr. Francis' and Mr. Sutton's soon to be expiring seats. The open seats to be filled will represent air tour operator and environmental interests, respectively. The FAA and NPS invite persons interested in serving on the ARC to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Lusk in writing and postmarked or emailed on or before February 12, 2016. The request should indicate whether or not you are a member of an association or group related to air tour operations or environmental concerns or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to issues and concerns with aircraft flights over national parks. The term of service for NPOAG ARC members is 3 years. Current members may re-apply for another term.

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in Hawthorne, CA, on December 28, 2015.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2015–33159 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0480]

Commercial Driver's License Standards: Application for Exemption; CRST Expedited (CRST)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that CRST Expedited (CRST) has applied for an exemption from the requirement in 49 CFR 383.25(a)(1) that requires a commercial learner's permit (CLP) holder to always be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. CRST requests an exemption to allow CLP holders who have successfully passed the CDL skills test to be able to drive a commercial motor vehicle (CMV) without having a CDL holder seated beside them in the CMV. CRST states that the CDL holder would remain in the CMV at all times while the CLP holder is driving, but not necessarily in the passenger seat. CRST believes that the exemption, if granted, would promote greater productivity and help individuals who have passed the CDL skills test return to actively earning a living faster while achieving a level of safety that is equivalent to or greater than the level of safety provided by complying with the regulations. FMCSA requests public comment on CRST's application for exemption.

DATES: Comments must be received on or before February 4, 2016

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2015–0480 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0480), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2015–0480'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. An option to upload a file is provided. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

CRST is one of the nation's largest transportation companies with a fleet of more than 4,500 commercial motor vehicles (CMVs). CRST seeks an exemption from 49 CFR 383.25(a)(1) that would allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, to be able to drive without having a CDL holder seated beside them in the vehicle. CRST, however, indicates in their exemption request that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. CRST further requests that the exemption include that the CLP holder could drive for the remainder of the time available on the driver's CLP before expiration, provided the driver can supply evidence of passing the CDL exam to law enforcement personnel. This would allow such a driver to operate more freely and in a way that benefits the driver, the carrier, and the economy as a whole.

CRST states that FMCSA is aware that the trucking industry is facing a shortage of qualified and well-trained drivers to meet the ever-growing shipping demands. CRST believes that 49 CFR 383.25(a)(1) limits its ability to effectively recruit, train, and employ new entrants to the trucking industry. Prior to the implementation of section 383.25(a)(1), States routinely issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL allowed CRST time to route the new driver to his or her State of domicile to obtain a CDL, and to place the new driver into an on-the-job training position with a driver-trainer. In this scenario, a more experienced driver could mentor and observe the new driver, but was not required to be on duty and in the front seat at all times. Thus, the new driver could become productive immediately, allowing more freight movement for CRST and compensation for the new driver.

CRST contends that compliance with the CDL rule places them in a very difficult position regarding how they return the CLP holder who has passed his or her skills testing back to their State of domicile to obtain their CDL. According to CRST, the two possible courses of action in this scenario are simple, yet costly: (1) CRST sends CLP holders to their home State by public transportation to obtain the CDL and hopes the drivers return to CRST for employment; and (2) CRST sends CLP holders back to their home State as passengers on one of its trucks. CRST goes on to detail the negative consequences of these courses of action, including: (1) The new drivers would suffer financially because it could be several days or even weeks before they obtain their home State CDL and are available to return to work; (2) safety would also be degraded in these situations because there will be a break in driving for CLP holders who have passed the skills test until they can receive their CDL and return to CRST to start work; (3) increased costs to CRST for public transportation to return CLP holders who have passed the skills test in another State to their home State for issuance of the CDL; (4) further financial loss as CRST would undoubtedly lose control of some CLP holders once they returned home and obtained their CDL—as they may find employment elsewhere, or in a different industry; and (5) if CRST elected to send CLP holders who have passed their skills test home on a CRST truck, CRST must operate at double the cost for half of the productivity.

CRST asserts that the exemption is consistent with FMCSA's comments in the preamble to the final rule published on May 9, 2011, that promulgated 49 CFR 383.25(a). The Agency said: ''FMCSA does not believe that it is safe to permit inexperienced drivers who have not yet passed the CDL skills test to drive unaccompanied.'' (76 FR 26861). The exemption sought would apply only to those CRST drivers who have passed the CDL skills test and hold a CLP.

IV. Method To Ensure an Equivalent or Greater Level of Safety

CRST states that granting this exemption will result in a level of safety that is equal to or greater than the level of safety of the rule without the exemption. The practical result of the exemption is that a CLP holder who has passed a CDL skills test would be able to drive without the requirements of § 383.25(a)(1) and begin immediate and productive on-the-job training. This allows these drivers to continue to use and sharpen their recently acquired driving skills and put them to work—in addition to immediately earning an income—under the mentoring and observation of a more experienced driver until they can return to their home State to be issued a CDL.

In the June 11, 2015, **Federal Register**, FMCSA granted a similar exemption from 49 CFR 383.25(a)(1) to C.R. England, Inc. Under the terms and conditions of that exemption, a CLP holder who has documentation of passing the CDL skills test may drive a CMV for C.R. England without being accompanied by a CDL holder in the front seat. The Agency believed that C.R. England's request for exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (80 FR 33329).

A copy of CRST's application for exemption is available for review in the docket for this notice.

Issued on: December 18, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–33136 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2015–0051]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: The DOT invites public comments about our intention to request the Office of Management and Budget (OMB) approval for new information

collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB. A **Federal Register** Notice with a 60 day comment period soliciting comments on the following information collection was published on June 17, 2015 (79 CFR14922). No comments were received on this matter during the first public review on that notice. OMB will accept comments from the public during the 30 day review and approval period.

DATES: Written comments should be submitted by February 4, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. (Identify by Docket No. DOT–NHTSA–2015–0051).

FOR FURTHER INFORMATION CONTACT: Susan McHenry, (202) 366–6540, Office of Emergency Medical Services, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: New.

Title: National Emergency Medical Services Information System (NEMSIS)—State Submission to National Emergency Medical Services (EMS) Database.

Type of Review: New Information Collection.

Abstract: NHTSA supports and funds NEMSIS to further its goal of reducing death and disability on the Nation's roadways. The NEMSIS Technical Assistance Center (TAC) assists State and local EMS agencies and software vendors in implementing NEMSIS Version 3.0 (and higher)-compliant EMS data systems and the corresponding XML standard to support data transmission and interoperability. NHTSA also maintains the National EMS Database and a national reporting system. NHTSA supported the initial development of the National EMS Information System, including the supporting Data Dictionary and technology infrastructure, at the request of the National Association of State EMS Officials. This effort developed the first-ever standardized EMS patient care reporting mechanism, which would provide essential information that could lead to improved patient care at local, State and national levels. Both the Senate and House included NEMSIS language in FY05 NHTSA Appropriations, directing NHTSA to continue implementation of NEMSIS and the National EMS Database. Congress has continued to support funding for the NEMSIS TAC and the National EMS Database.

The information collected in the National EMS Database will be used to: (1) Better describe EMS across the country, (2) provide information that will help NHTSA better understand the serious injuries sustained as a result of motor vehicle crashes, (3) inform the NHTSA Office of EMS on changes in clinical practices/protocols, medications and other factors that impact National EMS Education Standards, developed by NHTSA, (4) support EMS research, and (5) support a comprehensive set of local and State EMS Performance Measures that are currently under development, with support of NHTSA.

The National EMS Database is populated by collecting data from State EMS databases. State EMS databases are populated with patient care records from local or regional EMS agencies. The most complete report is the local EMS electronic patient care report completed for each EMS response. A subset of each the local EMS report is submitted electronically to the State EMS database and the State EMS office electronically transmits a smaller subset of all the local data to the NEMSIS TAC for inclusion in the National EMS Database. The data at the national level contains no personally identifiable information, and is reported in the aggregate.

Affected Public: State and territory EMS offices, and, in some cases, EMS software vendors.

Estimated number of Respondents: 56.

Frequency: Through web services, within a few hours of when the State receives the local record.

Number of Responses: Depends on each State and how many patient calls are responded to. All transmissions are machine to machine.

Total Annual Burden: Estimate total annual burden to be approximately12 hours per respondent and cumulative total of 672 hours.

Form Numbers: No forms.

Public Comments Invited: You Are Asked To Comment On Any Aspect Of This information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued on: December 29, 2015.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2015–33134 Filed 1–4–16; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 2 January 5, 2016

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0754; FRL–9940–21–Region 6]

Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a revision to the Texas State Implementation Plan (SIP) submitted on March 31, 2009, to address the regional haze requirements of the Clean Air Act (CAA). The EPA is partially approving this SIP revision as meeting certain requirements of the regional haze program, including the Best Available Retrofit Technology (BART) requirements for facilities other than Electric Generating Units (EGUs). The EPA is partially disapproving the Texas SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, the long-term strategy, and the calculation of natural visibility conditions. The EPA is promulgating a Federal Implementation Plan (FIP), which includes sulfur dioxide (SO_2) emission limits for fifteen EGUs located at eight coal-fired power plants, to address these deficiencies.

In a previous rulemaking, the EPA had issued a limited disapproval of the Texas regional haze SIP with regard to Texas' reliance on the Clean Air Interstate Rule (CAIR), without promulgating a FIP. The EPA is not taking final action to address this deficiency at this time. The EPA is also disapproving portions of several separate infrastructure SIP revisions submitted by Texas for the purpose of addressing the requirements of the CAA regarding interference with other states' programs for visibility protection (interstate visibility transport) triggered by the issuance of the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), the 1997 ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, the 2010 Nitrogen Dioxide (NO_2) NAAQS, and the 2010 SO_2 NAAQS. The EPA is deferring action at this time on promulgating a FIP to address these deficiencies.

Finally, the EPA is finalizing its proposed partial disapproval of a revision to the Oklahoma SIP submitted on February 19, 2010, to address the regional haze requirements of the CAA. Specifically, the EPA is disapproving portions of the Oklahoma SIP related to reasonable progress and the establishment of reasonable progress goals for the Class I area located within the state. The EPA is promulgating a FIP to address these deficiencies.

The EPA takes seriously its disapproval of SIPs, or portions thereof, and stands ready to work with the States to develop SIPs that would replace the Federal plans the EPA is promulgating today.

DATES: This final rule is effective on February 4, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–EPA–R06–OAR–2014–0754. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute therefore is not posted to regulations.gov. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi at 214–665–7186; or *Kordzi.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Also throughout this document, when we refer to the Oklahoma Department of Environmental Quality (ODEQ), or the Texas Commission on Environmental Quality (TCEQ), we mean Oklahoma and Texas, respectively.

Table of Contents

I. Introduction
A. Our Proposed Action
B. Summary of Our Final Decision
1. Texas
2. Oklahoma Reasonable Progress Goals
3. Federal Implementation Plan
II. Summary and Analysis of Major Issues Raised by Commenters
A. General Comments
B. State and Federal Roles in the Regional Haze Program
C. Our Clarified Interpretation of the Reasonable Progress and Long-Term Strategy Requirements
D. Consideration of Visibility in the Reasonable Progress Analysis
E. Consultation Between Oklahoma and Texas
F. Source Category and Individual Source Modeling
G. Constitutional Law
H. Stay of Effective Date, Consolidated Appropriations Act, and Executive Orders 13405 and 13211
I. Controls in Addition to CAIR/CSAPR, and CSAPR Better Than BART
J. Installation of Controls Beyond the First Planning Period
K. Cost
L. Cost versus Visibility Benefit
M. Natural Conditions
N. Consistency With Our Other Regional Haze Actions
O. Modeling
P. Interstate Visibility Transport
Q. Disapproval of the Oklahoma and Texas Reasonable Progress Goals
R. International Emissions
S. Grid Reliability
T. Determination of Nationwide Scope and Effect
III. Final Action
A. Texas Regional Haze
B. Oklahoma Regional Haze
C. Interstate Visibility Transport
D. Federal Implementation Plan
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews
VI. Judicial Review

I. Introduction

The purpose of Federal and state regional haze plans is to achieve a national goal, declared by Congress, of restoring and protecting visibility at 156 Federal Class I areas across the United States, most of which are national parks and wilderness areas with scenic vistas enjoyed by the American public. The national goal, as described in CAA Section 169A, is ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution.'' States are required to submit SIPs that ensure reasonable progress toward the national goal of remedying anthropogenic visibility impairment in Federal Class I areas, such as Big Bend National Park in Texas and the Wichita Mountains National Wildlife Refuge in Oklahoma.

In today's action, we are partially approving and partially disapproving portions of a SIP revision submitted by Texas to address the requirements of the regional haze program. Texas' regional haze SIP submittal included long-term strategies for making reasonable progress towards improving visibility at all Class I areas impacted by emissions from Texas sources and set reasonable progress goals for the two Class I areas

located within the state, the Big Bend and the Guadalupe Mountains National Parks. Texas addressed a key element of the regional haze program, the BART requirements, in part through reliance on CAIR. Specifically, for its EGUs, Texas relied on CAIR, which was issued in 2005, to meet the BART requirements for emissions of SO_2 and oxides of nitrogen (NO_X). For particulate matter (PM) from its EGUs and for other categories of sources subject to the BART requirements, Texas concluded that no other BART controls were appropriate. Texas also considered whether additional measures beyond BART would be appropriate to ensure reasonable progress at its Class I areas and in Class I areas in nearby states, but concluded that no additional measures were needed to ensure reasonable progress. In its SIP submittal, Texas anticipated emissions reductions from CAIR, Federal mobile source standards, and other anticipated air pollution control requirements would adequately ensure reasonable progress toward improving visibility by 2018, the end of the first planning period.

We took partial action in 2012 on Texas' regional haze SIP submittal. In our 2012 action, we issued a limited disapproval of the SIP revision because of Texas' reliance on CAIR to satisfy SO_2 and NO_X BART and to meet the long-term strategy requirements for its EGUs.[1] As explained in that action, our limited disapproval of Texas' regional haze SIP (and the SIPs of thirteen other states addressed in the 2012 action) was the result of a decision by the D.C. Circuit remanding CAIR to the EPA.[2] We concluded that because CAIR had been remanded and would remain in place only temporarily, we could not fully approve regional haze SIP revisions that relied on temporary reductions from CAIR. By issuing a limited disapproval rather than a full disapproval, however, we allowed Texas and these states to rely on CAIR for so long as CAIR was in place.[3] We addressed the resulting deficiencies in the regional haze SIPs of a number of the fourteen states through FIPs that relied on CAIR's successor, the Cross State Air Pollution Rule (CSAPR), to achieve improvements in visibility. However, we did not finalize a FIP for Texas in that action.[4] As a result, the deficiencies in Texas' regional haze SIP associated with its reliance on CAIR have not been addressed.

We are also disapproving several SIP revisions submitted by Texas to address the requirements of CAA Section 110(a)(2)(D)(i)(II) with respect to visibility. This provision of the CAA requires that each state's SIP have adequate provisions to prohibit in-state emissions from interfering with measures required to protect visibility in any other state. To address this requirement, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. In its SIP submittals addressing these requirements, Texas indicated that its regional haze SIP fulfilled its obligation for addressing emissions that would interfere with measures required to be included in the SIP for any other state to protect visibility.

Finally, we are taking action on an element of the Oklahoma regional haze SIP submitted in February 2010. We previously issued a partial approval, and partial disapproval of the Oklahoma SIP in 2011, and promulgated a FIP to address the deficiencies that we had identified in our partial disapproval.[5] Our FIP required the installation of scrubber retrofits at six units, located at three facilities in Oklahoma in order to meet BART requirements.[6] Due to the special interrelationship of the visibility impairing transport of pollution between Texas and Oklahoma, we delayed action on the reasonable progress goals for the Wichita Mountains until we could review and evaluate Texas' SIP submittal. In today's action, we address the reasonable progress goals established by Oklahoma for this Class I area.

A. Our Proposed Action

When we reviewed the Oklahoma regional haze SIP, we noted that sources in Texas had significant impacts on visibility in the Wichita Mountains. Given the magnitude of these interstate impacts, we determined that the Oklahoma and Texas regional haze SIPs were interconnected, especially considering the relationship between upwind and downwind states in the reasonable progress and long-term strategy provisions of the Regional Haze Rule. Although we were able to act on the majority of Oklahoma's SIP at that time, we deferred action on Oklahoma's reasonable progress goals for the Wichita Mountains until we could first assess whether Texas had reasonably considered the potential for controls on those of its sources that were impacting visibility at the Wichita Mountains.[7] Having now reviewed the Texas regional haze SIP, it is clear that both Texas and Oklahoma acknowledged in their SIP submittals that sources in Texas have a large impact on visibility at the Wichita Mountains; indeed, the visibility impacts at this Class I area from Texas point sources are several times greater than the impacts from Oklahoma's own point sources.

During the interstate consultation required by the Regional Haze Rule, Oklahoma and Texas discussed the significant contribution of sources in Texas to visibility impairment at the Wichita Mountains, but Texas concluded that no additional controls were warranted for its sources during the first planning period to ensure reasonable progress at the Wichita Mountains, or at its own Class I areas, the Big Bend and the Guadalupe Mountains National Parks. In reaching this conclusion, Texas relied on an analysis that obscured the benefits of potentially cost-effective controls on those sources or groups of sources with the largest visibility impacts in these Class I areas by inclusion of those controls with little visibility benefit, but which served to increase the total cost figures. This flawed analysis deprived Oklahoma of the information it needed to properly assess the reasonableness of controls on Texas sources during the consultation process and prevented Texas from properly assessing the reasonableness of controls to remedy visibility at Big Bend and the Guadalupe Mountains. As a result, Oklahoma established reasonable progress goals for the Wichita Mountains that did not reflect any emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA. Texas established reasonable progress goals for its own Class I areas based on a similar assessment.

Our proposed action on the Texas regional haze and interstate visibility transport SIP submittals and the Oklahoma regional haze SIP is discussed in detail in our notice of proposed rulemaking promulgated on

[1] 77 FR 33642 (June 7, 2012).

[2] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008) (modified by 550 F.3d 1176).

[3] 77 FR at 33647.

[4] 77 FR at 33654 (explaining that the EPA was not finalizing a FIP for Texas in order to allow more time for the EPA to assess the SIP submittal from Texas addressing regional haze and noting that extra time was needed given ''the variety and number of BART eligible sources and the complexity of the SIP'').

[5] 76 FR 81728.

[6] 76 FR 81728.

[7] 76 FR 16177 (''[W]e believe that to properly assess whether Oklahoma has satisfied the reasonable progress requirements of Section 51.308(d)(1), we must review and evaluate Texas' submittal. We will do this in the course of processing the Texas [regional haze] SIP.'')

December 16, 2014.[8] In brief, we proposed to partially approve portions of the Texas regional haze SIP, including the determination by Texas that none of its non-EGU BART-eligible sources are subject to BART. We proposed to find, however, that Texas did not satisfy a number of requirements related to establishment of its reasonable progress goals and long-term strategy. We therefore proposed to disapprove Texas' reasonable progress goals. We proposed to disapprove Texas' calculation of natural visibility conditions and the uniform rates of progress for its two Class I areas. We proposed to disapprove the portions of SIP revisions separately submitted by Texas to meet the interstate visibility transport requirements for the 1997 $PM_{2.5}$ and ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, the 2010 NO_2 NAAQS, and the 2010 SO_2 NAAQS. These submittals relied on the Texas regional haze SIP which, in turn, relied on CAIR to achieve the necessary emissions reductions. We proposed to find that as CAIR had been replaced by CSAPR, and CSAPR was scheduled to go into effect in 2015, Texas could not rely on its regional haze SIP to ensure that emissions from Texas do not interfere with the measures to protect visibility in nearby states. In addition, we proposed disapproval of these SIP submittals based on our proposed conclusion that additional control of SO_2 emissions in Texas is needed to prevent interference with measures required to be included in the Oklahoma SIP to protect visibility.

Finally, we also proposed to disapprove Oklahoma's reasonable progress goals for the Wichita Mountains because Oklahoma did not satisfy several of the requirements related to setting those goals. In assessing the measures necessary to achieve the uniform rate of progress, Oklahoma demonstrated that eliminating all emissions from Oklahoma sources would not be sufficient to meet the uniform rate of progress in 2018. Oklahoma realized that the efforts to meet natural visibility conditions would require emission reductions from other states. The work done by the Central Regional Air Planning Association (CENRAP) showed that SO_2 point sources in Texas were a significant contributor to haze at the Wichita Mountains. However, Oklahoma did not pursue this information in its consultations with Texas. As explained more fully in our proposed rule, we believe that the lack of development of critical information regarding reasonable reductions from Texas sources prevented Oklahoma from having adequate information to establish its reasonable progress goals for the Wichita Mountains. Oklahoma should have requested that Texas further investigate its sources, or requested additional reductions from Texas sources to ensure that all reasonable measures to improve visibility were included in Texas' long-term strategy and incorporated into the reasonable progress goals for the Wichita Mountains. We proposed to find that due to these flawed consultations, Oklahoma did not consider the emission reduction measures necessary to achieve the uniform rate of progress for the Wichita Mountains and did not adequately demonstrate that its reasonable progress goals were reasonable.

We proposed FIPs for Texas and Oklahoma to remedy these deficiencies. Our proposed Texas FIP included SO_2 emission limits on fifteen EGUs located at eight Texas facilities in order to make reasonable progress at the three Class I areas in Texas and Oklahoma. We estimate that our FIP will reduce the emissions of SO_2 from Texas sources by approximately 230,000 tons per year. We proposed that compliance with these emission limits be based on 30-Boiler-Operating-Day (BOD) averages.[9] The SO_2 emission limits were based on seven scrubber retrofits, seven scrubber upgrades, and the continued operation of an existing upgraded scrubber at the San Miguel power plant. We proposed that compliance with these limits be achieved within five years of the effective date of our final rule for the control assessments based on scrubber retrofits, and within three years of the effective date of our final rule for the control assessments based on scrubber upgrades. We proposed that compliance be achieved within one year for San Miguel.

We proposed new reasonable progress goals for 2018 for Big Bend and the Guadalupe Mountains in Texas and for the Wichita Mountains in Oklahoma that take into account the additional emission reductions required in our proposed FIP for Texas. We proposed new estimates of natural conditions for the two Class I areas in Texas and proposed new uniform rates of progress for these areas. We proposed to rely on CSAPR to satisfy the SO_2 and NO_X BART requirements for EGUs in Texas. Finally, we proposed to rely on CSAPR and the SO_2 emission limits in our proposed FIP to address the deficiencies identified in Texas' infrastructure SIP revisions. Our proposed FIP for Oklahoma did not include any additional requirements on emission sources within Oklahoma.

Our electronic docket at *www.regulations.gov* contains Technical Support Documents (TSDs) and other materials that supported our proposal. Some information is protected as CBI and thus is not available to the public or posted electronically. Due to several requests from the public and due to the complex nature of our proposal, we provided for an extended public comment period, which closed on April 20, 2015.

B. Summary of Our Final Decision

Below we present a summary of the major points of our final decision regarding the Texas regional haze SIP, the portions of Texas SIP submittals addressing interstate visibility transport, and those parts of the Oklahoma regional haze SIP that we have not previously acted upon. We summarize which parts of the Texas and Oklahoma regional haze SIPs and the interstate visibility transport portions of Texas' SIP submittals we are disapproving, which parts are cured by our FIP, and which parts we are deferring action upon.

1. Texas

In this action, we are partially approving and partially disapproving portions of the SIP revision submitted by Texas to address the requirements of the regional haze program. We are also disapproving portions of several SIP revisions addressing the requirements of the CAA that prohibit air pollutant emissions from interfering with measures required to protect visibility in any other state, as described below.

a. Reasonable Progress Goals

We are finalizing our disapproval of Texas' reasonable progress goals for Big Bend and the Guadalupe Mountains. We have determined that Texas has not demonstrated that its reasonable progress goals provide for reasonable progress towards meeting the national visibility goal. Specifically, we find that Texas did not satisfy several of the requirements of the regional haze rule at 40 CFR 51.308(d)(1) (hereinafter referred to as § 51.308(d)) with regard to setting reasonable progress goals, most notably the requirement to reasonably consider

[8] 79 FR 74818.

[9] We explained in our proposed rule that the BART Guidelines describe a boiler-operating-day ''to be any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.'' See 70 FR 39172 (July 6, 2005). To calculate a 30 day rolling average based on the boiler-operating-day, the average of the last 30 ''boiler-operating-days'' is used.

the four statutory reasonable progress factors under § 51.308 (d)(1)(i)(A) and the requirement to adequately justify reasonable progress goals that are less stringent than the uniform rate of progress under § 51.308 (d)(1)(ii).

At the outset and as we discussed in detail in our proposal, we find the set of potential controls identified by Texas and how it analyzed and weighed the four reasonable progress factors under § 51.308(d)(1)(i)(A) was inappropriate.[10] We are finalizing our determination that Texas' analysis was deficient and not approvable because the large control set it selected was not appropriately refined, targeted, or focused on those sources having the most significant and potentially cost-effective visibility benefits. We conclude this control set included controls on sources that would increase total cost figures, but would achieve very little visibility benefit. As discussed in our proposal, because Texas only estimated the visibility benefit of all the controls together, it was not able to assess the potential benefit of controlling those sources with the greatest visibility impacts, and potentially cost-effective controls. Therefore, the effects of those controls with the greatest visibility benefits were obscured by the inclusion of those controls with little visibility benefit. This only served to increase the total cost figure, making Texas' potential control set seem less attractive.[11] We therefore finalize our disapproval of the portions of the Texas regional haze SIP addressing the requirements of § 51.308 (d)(1)(i)(A), regarding Texas' reasonable progress four-factor analysis.[12]

We are also finalizing our disapproval of Texas' assessment of the emission reduction measures needed to achieve the uniform rate of progress for the period covered by the SIP, under § 51.308(d)(1)(i)(B). Although Texas correctly followed the procedures for analyzing and determining the rate of progress needed to attain natural visibility conditions by the year 2064, we find that Texas calculated this rate of progress on the basis of, and compared baseline visibility conditions to, a flawed estimation of natural visibility conditions for Big Bend and the Guadalupe Mountains.[13] As discussed in the section below, we are finalizing our disapproval of Texas' calculation of natural visibility conditions for Big Bend and the Guadalupe Mountains in this action.

We also find that Texas failed to adequately justify reasonable progress goals that are less stringent than the uniform rate of progress under § 51.308(d)(1)(ii).[14] Although we agree with Texas that a rate of improvement necessary to attain natural visibility conditions by 2064 is not reasonable, we do not find that the rate of improvement that Texas has selected is reasonable, because we have determined that Texas' four-factor analysis and the analysis of emission measures needed to meet the uniform rate of progress does not meet the requirements of the Regional Haze Rule. We therefore finalize our disapproval of the reasonable progress goals for Big Bend and the Guadalupe Mountains under § 51.308(d)(1)(ii). In so doing, we rely on the specific directive in § 51.308(d)(1)(iii) that in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the State pursuant to paragraphs (d)(1)(i) and (ii).

With regard to the requirement under § 51.308(d)(1)(iv) to consult with other states which may reasonably be anticipated to cause or contribute to visibility impairment at its Class I areas, we find that Texas appropriately identified those states with the largest impacts on Texas Class I areas and invited them for consultation. Based on our review of the CENRAP's source apportionment modeling and given the small modeled contributions from individual nearby states, especially when only considering anthropogenic sources that can be easily controlled in comparison with the size of impacts from Texas sources and international sources, we find that it was reasonable for Texas to have focused the analysis of additional controls on sources within Texas. We agree with Texas' determination that it was not reasonable to request additional controls from other states at this time. Therefore, we are finalizing our determination that Texas has satisfied the requirement under § 51.308(d)(1)(iv).

Under § 51.308(d)(1)(vi), Texas may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period. As discussed in our proposal, we find that Texas' reasonable progress goals for 2018, based on the CENRAP model projections, represent at least as much visibility improvement as was expected to result from implementation of other requirements of the CAA (*i.e.,* requirements other than regional haze) during the applicable planning period.[15] In this action we are finalizing our approval of the portion of the Texas regional haze SIP addressing the requirement under § 51.308(d)(1)(vi).

b. Calculations of Baseline and Natural Visibility Conditions

As required by § 51.308(d)(2)(i) of the Regional Haze Rule, Texas calculated baseline/current conditions for its two Class I areas, Big Bend and the Guadalupe Mountains, on the most impaired and least impaired days. Texas calculated baseline visibility conditions for Big Bend and the Guadalupe Mountains using available monitoring data over the 2000–2004 period and the new IMPROVE equation, as discussed in our proposal.[16] We are finalizing our approval that Texas has satisfied the baseline visibility requirements of § 51.308(d)(2)(i).

Under § 51.308(d)(2)(iii), Texas must determine natural visibility conditions for the most impaired and least impaired days for the Class I areas in the state. Our guidance [17] provides default natural conditions for the 20% worst and 20% best days for each Class I area based on the original IMPROVE equation. As documented in our guidance, states are allowed to use a ''refined'' approach or alternative approaches to the guidance defaults to estimate the values that characterize the natural visibility conditions of their Class I areas.[18] The default natural

[10] 79 FR 74838.

[11] 79 FR 74838. Additionally, the analysis of potential controls in the Texas SIP did not include any consideration of the reasonableness of control upgrades or increased utilization of existing controls to reduce emissions at sources with large visibility impacts at nearby Class I areas. These controls were validated as especially cost-effective by the technical record for this FIP. At costs ranging from $368/ton to $910/ton, over 100,000 tpy of SO_2 emission reductions can be achieved from a small number of scrubber upgrades, resulting in very cost-effective visibility benefits at Texas Class I areas and Class I areas in other states.

[12] The ''four-factor analyses'' or the ''four factors'' refers to the requirement in § 51.308(d)(1)(i)(A) that in establishing a reasonable progress goal a state must consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.

[13] 79 FR 74833.

[14] 79 FR 74843.

[15] 79 FR 74833.

[16] 79 FR 74832.

[17] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[18] States are ''free to develop alternative approaches that will provide natural visibility conditions estimates that are technically and scientifically supportable. Any refined approach should be based on accurate, complete, and unbiased information and should be developed using a high degree of scientific rigor.'' Guidance for Estimating Natural Visibility Conditions Under

Continued

conditions in our 2003 guidance were updated by the Natural Haze Levels II Committee utilizing the new IMPROVE equation and included some refinements to the estimates for the PM components.[19] These estimates are referred to as the ''NC II'' default natural visibility conditions. Texas chose to derive a ''refined'' estimate of natural visibility conditions rather than using the default NC II values. Texas started with this refined version of default natural visibility conditions, but further altered some of its parameters concerning the contributions of coarse mass and fine soil by assuming that 100% of the fine soil and coarse mass concentrations in the baseline period should be attributed to natural causes and that the corresponding estimates in the NC II values should be replaced. We are finalizing our determination that Texas has not adequately demonstrated that all coarse mass and fine soil measured in the baseline period can be attributed to 100% natural sources and we are therefore disapproving Texas' calculated natural visibility conditions under § 51.308(d)(2)(iii). We are also finalizing our disapproval of the portion of the Texas SIP that addresses the requirement to calculate the number of deciviews by which baseline conditions exceed natural conditions for the best and worst visibility days at the Texas Class I areas, under § 51.308(d)(2)(iv)(A). Because the calculation relies on the determination of natural visibility conditions, which we are disapproving, we must also disapprove Texas' calculation of the level of visibility impairment above natural conditions.

c. Long-Term Strategy

Section 51.308(d)(3)(i) requires that where Texas has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I area located in another state, it must consult with that state in order to develop coordinated emission management strategies. Texas also must consult with any other state having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I area within it (we have discussed this consultation requirement above). Texas and Oklahoma agreed that visibility impairment at the Wichita Mountains due to emissions from sources in Texas is significant and that the impacts from point sources in Texas are several times greater than the impact from Oklahoma point sources. Furthermore, the ODEQ asserted in its consultations with the TCEQ, and elsewhere in its regional haze SIP, that it would not be able to reach natural visibility by 2064 without additional reductions from Texas sources. Oklahoma and Texas discussed the significant contribution of sources in Texas to visibility impairment at the Wichita Mountains during the interstate consultation process required by the Regional Haze Rule. The results of the CENRAP analysis demonstrated that Texas point sources, and in particular EGUs in northeast Texas, have large visibility impacts at the Wichita Mountains and that cost-effective controls were potentially available for some of these sources. Ultimately, Texas unreasonably determined that no additional controls were warranted for its sources during the first planning period to help achieve reasonable progress at the Wichita Mountains. In analyzing whether additional controls should be required for some of its sources under the long-term strategy provisions of the Regional Haze Rule, Texas relied on the same flawed analysis discussed above that it relied on to evaluate additional controls under the reasonable progress provisions to address visibility impairment at Texas' own Class I areas. Texas' analytical approach obscured the contributions of individual sources that Texas' own analysis indicated could be cost-effectively controlled. This deprived Oklahoma of the information it needed to properly assess whether there were reasonable controls for Texas sources and to properly establish reasonable progress goals for the Wichita Mountains that included the resulting emission reductions. We are therefore finalizing our disapproval of the portion of the Texas regional haze SIP addressing the requirement in § 51.308(d)(3)(i) to ''consult with the other State(s) in order to develop coordinated emission management strategies.''

Section 51.308(d)(3)(ii) requires that if Texas emissions cause or contribute to impairment in another state's Class I area, it must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that since Texas participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As discussed in our proposal, we find that the technical analysis developed by CENRAP and supplemented by Texas did not provide the information needed to evaluate the reasonableness of controls on those sources with the greatest potential to impact visibility at the Wichita Mountains.[20] Texas' ''share of the emission reductions needed to meet the progress goal'' for the Wichita Mountains was not properly established because of the inadequacies in its technical analyses, which compromised its consultations with Oklahoma. We are finalizing our determination that Texas did not develop an adequate technical basis to inform consultations with Oklahoma in order to develop coordinated management strategies and to identify reasonable reductions from its sources. As a result, we find that Texas did not incorporate those reasonable reductions into its long-term strategy. For these reasons we are finalizing our determination that Texas did not adequately meet the requirement in § 51.308(d)(3)(ii).

Section 51.308(d)(3)(iv) requires that Texas identify all anthropogenic sources of visibility impairment considered by it in developing its long-term strategy. We proposed to find that Texas' 2002 and 2018 emission inventories are acceptable and that it satisfies § 51.308(d)(3)(iv) and today, we take final action to approve that finding. However, under § 51.308(d)(3)(iii), Texas must document the technical basis, including modeling, monitoring, and emissions information, on which it is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects. Texas addressed this requirement mainly by relying on technical analyses developed by CENRAP and approved by all state participants, but it also performed an additional analysis building upon the work of CENRAP in order to evaluate additional controls under the reasonable progress and long-term strategy provisions of the Regional Haze Rule. As discussed in our proposal, we find that this additional analysis was inadequate because the large control set Texas selected was not appropriately refined, targeted, or focused on those sources having significant and potentially cost-effective visibility benefits and did not provide the information necessary to determine the reasonableness of controls at those

the Regional Haze Rule, EPA– 454/B–03–005, September 2003, p 1–11

[19] The second version of the natural haze level II estimates based on the work of the Natural Haze Levels II Committee is available at: *http://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII_Format2_v2.xls.*

[20] 79 FR 74857.

sources in Texas that have the greatest visibility impacts at the Wichita Mountains.[21] Therefore, we are finalizing our disapproval of the portion of the Texas regional haze SIP that addresses the requirement in § 51.308(d)(3)(iii) to document the technical basis on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress at the Wichita Mountains.

In developing its long-term strategy, the state must consider a number of factors identified in § 51.308(d)(3)(v)(A)–(G). In this action, for the reasons discussed in our proposal,[22] we are approving several portions of the Texas regional haze SIP as adequately addressing the following provisions of § 51.308(d)(3)(v): (A) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI (Reasonably Attributable Visibility Impairment); (B) measures to mitigate the impacts of construction activities; (D) source retirement and replacement schedules; (E) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (F) enforceability of emissions limitations and control measures; and (G) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. However, we are disapproving the portion of the Texas regional haze SIP addressing paragraph (C) of § 51.308(d)(3)(v), the requirement to consider emissions limitations and schedules for compliance to achieve the reasonable progress goals. As discussed in depth elsewhere in this document and in our separate Response to Comment (RTC) document, we have determined that Texas' analysis is inadequate because it does not provide the information necessary to determine the reasonableness of controls at those sources in Texas that significantly impact visibility at the Wichita Mountains in Oklahoma, or the Texas Class I areas. Therefore, we find that Texas did not properly consider the emissions limitations and schedules for compliance necessary to achieve reasonable progress at its Class I areas or the Wichita Mountains Class I area in Oklahoma.

d. Monitoring Strategy and Other Requirements

Section 51.308(d)(4) requires that the Texas regional haze SIP contain a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network. Since the monitors used for the Guadalupe Mountains and Big Bend are IMPROVE monitors, we have determined that Texas has satisfied this requirement.[23] Section 51.308(d)(4)(i) requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I areas within the state are being achieved. We approve of Texas' determination under this section that the IMPROVE network monitors that are already in place are adequate to assess Texas' reasonable progress goals.

Section 51.308(d)(4)(ii) requires that Texas establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within Texas to regional haze visibility impairment at mandatory Class I areas both within and outside the state. The monitors at Big Bend and the Guadalupe Mountains are operated through the IMPROVE monitoring program, which is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. Section 51.308(d)(4)(iv) requires that the SIP must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I area in the state. Section 51.308(d)(4)(vi) also requires that Texas provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We are finalizing our determination that Texas has met these requirements through participation in the IMPROVE program.

Section 51.308(d)(4)(v) requires that Texas maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. Texas must also include a commitment to update the inventory periodically. As discussed in the proposal, Texas has provided in the SIP a baseline emission inventory, estimates of future emissions, and emissions for the most recent year for which data was available at the time the SIP was developed.[24] We approve the portion of the Texas regional haze SIP that addresses this requirement.

We also approve Texas' coordination with the Federal Land Managers (FLMs) under 40 CFR 51.308(i). As detailed in our proposal, Texas has satisfied these requirements through communications with the FLMs, providing for review of the draft Texas regional haze SIP by the FLMs, and describing how all FLM comments were addressed in the SIP. Texas also provided procedures for continuing consultations.[25]

e. Best Available Retrofit Technology

We approve Texas' BART determinations for non-EGUs under 40 CFR 51.308(e). We are approving Texas' determination of which non-EGU sources in the state are BART-eligible and the determination that none of the state's BART-eligible non-EGU sources are subject to BART because they are not reasonably anticipated to cause or contribute to visibility impairment at any Class I areas. We reviewed the various modeling techniques utilized by the TCEQ in evaluating and screening out the BART-eligible non-EGU sources and we concur with the results of analysis.[26] We are approving the provisions in Texas' BART rules at 30 Tex. Admin. Code (TAC) 116.1500–116.1540, with the exception of 30 TAC 116.1510(d), which contains regulatory language addressing EGUs' reliance on CAIR to meet the BART requirements.

However, we are not finalizing our proposed actions with regard to the state's BART-eligible EGU sources. As described above, we issued a limited disapproval of the Texas regional haze SIP in 2012 because of Texas' reliance on CAIR to meet certain requirements of the regional haze program. To address the deficiencies in Texas' plan arising from its reliance on CAIR to meet the SO_2 and NO_X BART requirements for its EGUs, we proposed to substitute reliance on CSAPR. We previously determined that CSAPR would provide for greater reasonable progress than BART and established regulations that

[21] 79 FR 74833.

[22] 79 FR 74862.

[23] 79 FR 74863.

[24] 79 FR 74863.

[25] 79 FR 74864.

[26] 79 FR 74844.

allow certain states to rely on CSAPR to meet the SO_2 and NO_X BART requirements for EGUs.[27] CSAPR has been subject to extensive litigation, however, and on July 28, 2015, the D.C. Circuit Court issued a decision upholding CSAPR but remanding without vacating the CSAPR emissions budgets for a number of states.[28] Specifically, the court invalidated a number of the Phase 2 ozone-season NO_X budgets and found that the SO_2 budgets for four states resulted in over-control for purposes of CAA section 110(a)(2)(D)(i)(I)(i). Texas' ozone-season NO_X budget and SO_2 budget are both involved with this remand, and we are currently in the process of determining the appropriate response to the remand. Given the uncertainty arising from the remand of Texas' CSAPR budgets, we have concluded that it would not be appropriate to finalize our proposed determination to rely on CSAPR as an alternative to SO_2 and NO_X BART for EGUs in Texas at this time. We note that some of the sources for which we are finalizing SO_2 controls in this action are also potentially subject to the BART requirements. Should we determine in the future that it is necessary to perform source-specific BART determinations for these sources instead of relying on CSAPR, we anticipate that the SO_2 controls we are finalizing today, which are currently the most stringent available, will also be sufficient to satisfy the SO_2 BART requirement.

In addition, we note that we proposed to approve Texas' determination that for its EGUs no PM BART controls were appropriate, based on a screening analysis of the visibility impacts from just PM emissions and the premise in our proposal that EGU SO_2 and NO_X were covered separately by participation in CSAPR allowing consideration of PM emissions in isolation. Because of the CASPR remand and resulting uncertainty regarding SO_2 and NO_X BART for EGUs, we have also decided not to finalize our proposed approval of Texas' PM BART determination. We will address PM BART for EGUs in Texas in a future rulemaking as well.

f. Interstate Visibility Transport

The EPA is also disapproving portions of several separate infrastructure SIP revisions submitted by Texas for the purpose of addressing the requirements of the CAA regarding interference with other states' programs for visibility protection (interstate visibility transport). Section 110(a) of the CAA directs states to submit a SIP that provides for the implementation, maintenance, and enforcement of each NAAQS, which is commonly referred to as an infrastructure SIP. Among other things, CAA 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states. We have concluded that to meet the requirements of CAA section 110(a)(2)(D)(i)(II): (1) Texas may not rely on its regional haze SIP, which relied heavily upon CAIR, to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states and (2) additional control of SO_2 emissions in Texas is needed to prevent interference with measures required to be included in the Oklahoma SIP to protect visibility. Because the Texas regional haze SIP does not ensure that Texas emissions would not interfere with measures required to be included in the SIP for any other state to protect visibility, as required by section 110(a)(2)(D)(i)(II) of the Act, we are taking final action to disapprove portions of the Texas SIP submittals that address CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Specifically, we are disapproving portions of the following SIP submittals made by Texas for new or revised NAAQS:

- April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- November 23, 2009: 2006 24-hour $PM_{2.5}$
- December 7, 2012: 2010 NO_2
- December 13, 2012: 2008 8-hour Ozone
- May 6, 2013: 2010 1-hour SO_2

We proposed to rely on CSAPR and the emission reductions required by our FIP for Texas to address these deficiencies in Texas' SIP submittals, but we have determined that it is not appropriate to finalize this determination at this time. Again, given the uncertainty following the D.C. Circuit Court's partial remand of the CSAPR budgets, we do not consider it appropriate to rely on CSAPR at this time to address the deficiencies on the Texas SIP, included those associated with interstate visibility transport obligation with respect to visibility. Therefore, this action does not finalize the portion of our proposed FIP addressing Texas' visibility transport obligations, as that portion of the FIP would have partially relied on CSAPR. We will address the visibility transport requirements for Texas in a future rulemaking, once the issues surrounding the partial remand are resolved.

2. Oklahoma Reasonable Progress Goals

We are taking final action to disapprove the reasonable progress goals established by Oklahoma, and we are approving one portion and disapproving the other portions of the Oklahoma regional haze SIP that address the requirements of § 51.308(d)(1). We find that Oklahoma's flawed consultation with Texas denied it the knowledge it needed—the extent to which cost-effective controls were available for those sources or groups of sources in Texas with the greatest potential to impact visibility at the Wichita Mountains—in order to properly construct its reasonable progress goal for the Wichita Mountains. Oklahoma and Texas discussed the significant contribution of sources in Texas to visibility impairment at the Wichita Mountains during the interstate consultation process required by the Regional Haze Rule. The results of the CENRAP analysis demonstrated that Texas point sources, and in particular EGUs in northeast Texas, have significant visibility impacts on the Wichita Mountains and that cost-effective controls were potentially available for some of these sources. However, Oklahoma did not pursue the point in its consultations with Texas under § 51.308(d)(1)(iv). Oklahoma did not have adequate information to establish its reasonable progress goal for the Wichita Mountains, and should have requested that the TCEQ further investigate these sources or requested additional reductions from Texas sources to ensure that all reasonable measures to improve visibility were included in Texas' long term strategy and incorporated into Oklahoma's reasonable progress goals for the Wichita Mountains. Furthermore, because of the flawed consultations with Texas, Oklahoma did not consider the emission reduction measures necessary to achieve the uniform rate of progress for the Wichita Mountains and did not adequately demonstrate that the reasonable progress goals it established were reasonable based on the four statutory factors under § 51.308(d)(1)(ii).[29] We therefore take final action to disapprove the reasonable progress goals as established by Oklahoma, and the portion of the Oklahoma regional haze SIP that addresses the requirements of

[27] 77 FR 33642.

[28] *EME Homer City Generation* v. *EPA,* 79 F.3d 118 (D.C. Cir.).

[29] 79 FR 74871, 74872.

§ 51.308(d)(1)(i) through (v) with respect to Oklahoma's establishment of its reasonable progress goals for the Wichita Mountains.

Under § 51.308(d)(1)(vi), Oklahoma may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period. As discussed in our proposal, we find that Oklahoma's reasonable progress goals for 2018, based on the CENRAP model projections, represent at least as much visibility improvement as was expected to result from implementation of other requirements of the CAA (*i.e.,* requirements other than regional haze) during the applicable planning period.[30] In this action we are approving the portion of the Oklahoma regional haze SIP that addresses the requirement under § 51.308(d)(1)(vi).

3. Federal Implementation Plan

As explained above, we have identified a number of deficiencies in the SIP revisions submitted by Texas and Oklahoma to address the CAA's regional haze requirements and are finalizing partial disapproval of those plans. Accordingly, in this action we are also finalizing a FIP to address the deficiencies identified by our partial Texas SIP disapproval, except for those identified in our prior disapproval of the provisions in the Texas SIP addressing the EGU BART requirements. In this rulemaking, we are also disapproving those portions of the Texas SIP addressing the interstate visibility transport provisions of section 110(a)(2)(D)(i)(II), and are also not finalizing a FIP to address these deficiencies.

a. Four-Factor Analysis

During our review of the reasonable progress and long-term strategy provisions of the Texas regional haze SIP, we realized that a more in-depth analysis of Texas sources was needed to determine whether additional measures should be required to ensure reasonable progress. Although our technical approach is more fully described in our proposal [31] and in our TSDs,[32] it can be summarized as follows:

- We used an analysis known as Q/d (*i.e.,* annual emissions divided by the distance between the source and Class I area) as an initial screening test on over 1,600 facilities in Texas to determine which of these sources have the greatest potential to impact visibility at Class I areas. We identified 38 facilities (many facilities had multiple units) that were potentially the largest contributors to visibility impairment at downwind Class I areas.
- We realized that, due to the particular challenges presented by the geographic distribution and number of sources in Texas and the ability of a full photochemical model to assess visibility impacts on the 20% worst days, CAMx photochemical modeling [33] was better technically suited to our needs than the more widely used CALPUFF model.[34] We therefore contracted to have CAMx source apportionment modeling performed to determine which, if any, of these facilities had significant impacts.
- The CAMx modeling revealed that a relative handful of the point sources in Texas (less than 1%) were responsible for a large percentage of the visibility impairment at impacted Class I areas.
- Based on our consideration of these modeled visibility impacts, we determined that nine facilities (with 21 units) merited further modeling to assess what the visibility benefits might be from requiring emission reductions at these units. We modeled high and low emissions scenarios that spanned the available control scenarios for each unit.

After identifying the sources with the largest visibility impacts at the three Class I areas of interest, and modeling the estimated visibility benefits corresponding to a robust range of potential controls, we considered whether controls on these sources would be necessary to ensure reasonable progress. As required by the CAA and the Regional Haze Rule, we took into account the following factors: [35] (1) Time necessary for compliance, (2) energy and non-air quality environmental impacts of compliance, (3) remaining useful life, and (4) the costs of compliance. This analysis is commonly referred to as a ''four factor analysis.'' Our Reasonable Progress Guidance [36] notes the similarity between some of the reasonable progress factors and the BART factors and suggests that the BART Guidelines be consulted regarding the consideration of costs, energy and non-air quality environmental impacts, and remaining useful life. We therefore relied upon our BART Guidelines for assistance in assessing the reasonable progress factors, as applicable.

We noted that, with one exception,[37] the issues relating to three of these factors—compliance time, energy and non-air quality environmental impacts, and remaining useful life—were common to all of the units we analyzed. Specifically, with the exception of the two units at the Tolk facility, these three factors did not present any issues that would impact the selection of the controls we analyzed. As a result, we proceeded to analyze the remaining factor, the costs of compliance.

A number of the sources with the largest visibility impacts had units with no current SO_2 controls. For each of these units, we analyzed Dry Sorbent Injection (DSI) at both a 50% control level and at either a 80% or 90% control level (depending on the type of particulate controls employed at the unit), thus bracketing our analyses between moderate and maximum levels of control. We also analyzed Flue Gas Desulfurization (FGD or ''scrubbers'') at these units. For both Spray Dryer Absorption (SDA—a type of dry scrubber), and wet FGD scrubbers, we analyzed control levels slightly below the maximum level of control these technologies have been demonstrated as capable of achieving at other EGUs.[38] We then adapted our Integrated Planning Model (IPM) [39] cost algorithms that had been developed for DSI, SDA, and wet FGD and performed our cost analyses for potential controls on these units.

[30] 79 FR 74870.

[31] 79 FR 74873.

[32] See Cost TSD and FIP TSD for detailed discussion of our technical approach.

[33] CAMx is a photochemical grid model (Comprehensive Air Quality Model with Extensions). CAMx model code and user's guide can be found at *http://www.camx.com/download/default.aspx.* Model code used in our analysis is available with the modeling files.

[34] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/verio/download/download.htm.*

[35] CAA Section 169A(g), Section 51.308(d)(1)(i)(A).

[36] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Geographic Strategies Group, Research Triangle Park, NC. See section 5.0.

[37] Our initial analysis of the Tolk facility indicated a potential shortage of water, meriting a special consideration of the energy and non-air quality environmental impacts of compliance.

[38] We analyzed SDA at 95% control with a floor of 0.06 lbs/MMBtu, and wet FGD at 98% control with a floor of 0.04 lbs/MMBtu.

[39] Documentation regarding our IPM Model can be found here: *http://www2.epa.gov/airmarkets/power-sector-modeling.*

Some of the units we analyzed were already fitted with underperforming [40] wet FGDs. For each of these units, we conducted control cost analyses for upgrading those scrubbers, using site-specific information obtained from the facilities under the authority provided by CAA section 114. Because the information we obtained was claimed as CBI, and our subsequent analyses that relied on it are also protected, we cannot share them with the public. However, our analyses were available for review by the affected facilities. Similarly, our responses to comments that incorporate information subject to CBI claims are in a separate document available to the CBI claimants that is part of the administrative record of this action but is not available for public review.

We also considered projected visibility benefits in our analysis. As we previously stated in proposing to take action on an Arizona regional haze SIP: [41]

> While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress.

Having identified the sources that have the greatest visibility impacts on the three Class I areas of interest, the visibility benefits that could be obtained by controlling those sources, and the costs of potential controls, we developed a strategy to determine which sources, if any, should be controlled under the reasonable progress and long-term strategy provisions of the CAA and Regional Haze Rule. To make this determination, we took into account the cost-effectiveness ($/ton of emissions removed) of the potential controls along with their projected visibility benefits. The ample precedent of other SIPs and FIPs has established a range of cost-effectiveness values within which controls have generally been required to meet provisions of the Regional Haze Rule. All of the new DSI, SDA, and wet FGD controls and upgraded scrubber controls we costed easily fell within this range. In fact, the highest cost-effectiveness value for the controls we analyzed was $3,221/ton for the Tolk Unit 172B SDA, a value that is less than the cost threshold adopted by Texas, after adjusting for the escalation of costs over time.[42] For sources other than Tolk, all of the controls we are requiring are more cost-effective than Texas' $2,700/ton threshold, even without an adjustment.

As explained above, due to the challenges presented by the geographic distribution and number of sources in Texas and the ability of a full photochemical model to assess visibility impacts on the 20% worst days, we determined that the CAMx photochemical model was best suited to our needs. While CALPUFF modeling was often used for assessing visibility benefits in other regional haze SIP actions, the large transport distances in Texas and our concerns about the technical capabilities of CALPUFF made the use of CALPUFF impractical.[43] As we have discussed in our FIP TSD and our separate RTC document, the results of our CAMx modeling cannot be directly compared to the results of CALPUFF modeling, which was used in the vast majority of other BART determinations and some reasonable progress determinations, because of differences between the models, model inputs, and metrics used.[44] Many of these differences result in CAMx modeled visibility impacts and benefits that are much lower than the CALPUFF modeled visibility impacts and benefits relied on in other actions. For a more thorough explanation of this complex issue, please refer to our FIP TSD and discussion in the RTC document. As a result, we were unable to rely on prior visibility analyses based on the use of CALPUFF in other actions as precedent for assessing the results of our CAMx visibility analysis in this action.[45]

To evaluate the projected visibility benefits of controls in our cost evaluation, we considered a number of metrics, such as change in deciviews under 2018 projected levels of air pollution at the three Class I areas and under estimated natural visibility conditions, change in light extinction, and change in the percentage of total light extinction.[46] We also considered the visibility benefit of emission reductions from recent actual emission levels versus CENRAP 2018 projected emission levels at these sources. As we discuss further in our FIP TSD and in responses in our RTC document, to provide context regarding the significance of individual source impacts, we compared the individual source impacts with CENRAP source apportionment modeling results for impacts from all emission sources within a state and impacts from all emission sources within a state within a specific source type. We also compared these individual source impacts to the impact levels used by the states for triggering consultation with another state about its overall impacts, and the estimated range of anticipated visibility benefits resulting from required controls in other actions.[47] Ultimately, after considering all four factors, we identified a set of reasonable controls for the first planning period for those sources with the largest visibility impacts that would provide for meaningful visibility improvements towards the goal of natural visibility conditions.

After extending our public comment period from the original date of February 17, 2015, to an extended date of April 20, 2015, we considered and responded to thousands of comments both for and against our proposal, the

[40] By ''underperforming,'' we mean scrubber systems that are meeting their permit limits, but are capable of achieving greater levels of control through increased utilization and optimization.

[41] See 79 FR 9353 n.137. We also used the same reasoning in our final action on the Arizona regional haze SIP. See 79 FR 52420.

[42] Texas used a $2,700/ton cost-effectiveness threshold, without regard to visibility benefit. While we found flaws in the way Texas established and used this threshold, it is illustrative of the cost-effectiveness of the controls required in this rulemaking. Conservatively escalating the $2,700/ton value from when it was first developed for the CAIR rule, which was finalized on March 10, 2005, to the time of our analysis, which was conducted in 2014, results in a value of $3,322/ton (i.e., the Chemical Engineering Plant Cost Index for 2005 = 468.2, and that for 2014 = 576.1; $2,700 × 576.1/468.2 = $3,322).

[43] The TCEQ conducted BART screening modeling with CAMx for the majority of the BART-eligible sources in Texas. The TCEQ requested to use CAMx instead of CALPUFF because of the advantages of CAMx to evaluate many sources individually in one or two modeling runs and the technical advantages of CAMx over CALPUFF when large distances are involved. As discussed in a response to comment in the modeling section of this document, we approved the TCEQ's approach of using CAMx for BART screening in 2007.

[44] See the Modeling section of the RTC document and our FIP TSD, beginning on page A–35, in which we explain why key differences in CALPUFF for BART and CAMx modeling for RP preclude the comparison of their respective results. Some of the major differences are: (1) CALPUFF uses maximum 24-hour emission rates, while CAMx uses annual average emission rates; (2) CALPUFF focuses on the day with the 98th percentile highest visibility impact from the source being evaluated, whereas CAMx focuses on the average visibility impacts across the 20% worst days regardless of whether the impacts from a specific facility are large or small; and (3) CAMx models all sources of emissions in the modeling domain, which includes all of the continental U.S., whereas CALPUFF only models the impact of emissions from one facility without explicit chemical interaction with other sources' emissions.

[45] Many commenters alleging inconsistency with our previous actions failed to appreciate this point and attempt to compare directly CALPUFF results to CAMx modeled results.

[46] For a full discussion on our review of all the modeling results, and factors that we considered in evaluating and weighing all the results, precedents, and other policy concerns please see Appendix A of our FIP TSD.

[47] See our FIP TSD at A–75.

most significant of which we summarize in section II below. While these comments resulted in some adjustments to our cost-effectiveness estimates for our proposed scrubber upgrades, ultimately these changes were not so significant as to change our proposed control decision. After careful consideration of all of the comments and the information provided, we find that the units and the control levels should be finalized as proposed.

b. Final SO_2 Emission Limits

As discussed further in our FIP TSD,[48] our emission limits are based on the installation of scrubber retrofits, scrubber upgrades, and in the case of San Miguel, the continued operation of its already performed scrubber upgrade. Consistent with our proposal, the final FIP requires that the SO_2 emission limits contained in Table 1 below be met on a 30 BOD period basis.

TABLE 1—FINAL 30-BOILER-OPERATING-DAY SO_2 EMISSION LIMITS

Unit	Final SO_2 emission limit (lbs/MMBtu)
Scrubber Upgrades:	
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
San Miguel*	0.60
Scrubber Retrofits:	
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06

*As we noted in our proposal, we do not anticipate that San Miguel will have to install any additional control in order to comply with this emission limit.

As we discuss in our proposal,[49] we find that five years is an adequate amount of time to allow for the installation of scrubber retrofits, and three years is an adequate amount of time to allow for the installation of scrubber upgrades. We also find that one year is an adequate amount of time for compliance for San Miguel, for which we do not anticipate the need for the installation of any additional equipment. We are therefore finalizing our requirements as proposed providing that compliance with the limits in Table 1 be achieved within:

- Five years of the effective date of our final rule for Big Brown Units 1 and 2, Monticello Units 1 and 2, Coleto Creek Unit 1, and Tolk Units 171B and 172B.
- Three years of the effective date of our final rule for Sandow 4; Martin Lake Units 1, 2, and 3; Monticello Unit 3; and Limestone Units 1 and 2.
- One year of the effective date of our final rule for San Miguel.

c. Treatment of Potential Error in Scrubber Upgrade Efficiency Calculations

In the Cost TSD that accompanied our proposal, we discussed how we calculated the SO_2 removal efficiency of the units we analyzed for scrubber upgrades.[50] We noted that, due to a number of factors that we were unable to accurately quantify, our calculations of current removal efficiencies could contain some error. Based on the results of our scrubber upgrade cost analysis, however, we did not believe that any such errors, if present, would affect our proposed decision to require the scrubber upgrades because they were all cost-effective (low $/ton of emissions removed). In other words, were we to make reasonable adjustments in the additional tons removed under the FIP limits to account for any potential error in our calculation of current scrubber removal efficiencies, we would still propose to upgrade these SO_2 scrubbers. After considering comments and other information submitted by the facility owners in response to our proposal, and as discussed more fully in our responses to comments on cost in the RTC document and section III below, we continue to conclude that upgrading an underperforming SO_2 scrubber is one of the most cost-effective pollution control measures a coal-fired power plant can implement to improve visibility at Class I areas.

We also proposed that the units required to conduct scrubber upgrades must meet SO_2 emission limits based on 95% removal in all cases. This removal efficiency is below the upper end of what an upgraded wet SO_2 scrubber can achieve, which is 98–99%, as we noted in our Cost TSD. We also noted that a 95% removal efficiency assumption provides an adequate margin of error, such that all of the units should be able to comfortably attain the emission limits we proposed. However, for the operator of any unit that disagreed with us on this point, our proposal included a pathway for such operators to seek and for us to consider revised emission limits in this final action by submitting specific comments on the issue and taking other specific steps.[51] We did not receive any comments from an owner or operator that was interested in using this pathway to potentially obtain a modified SO_2 emission limit. While we remain open to discussions concerning this procedure, we are finalizing the emission limits and compliance schedule for the affected units as proposed.

Similarly, to ensure that San Miguel can meet our final FIP emission limitation, we are finalizing the following compliance option for the owner and operator of San Miguel as an alternative to the final emission limit of 0.60 lbs/MMBtu based on a 30 day BOD average:

- Install a CEMS at the inlet of the scrubber system. The 30 BOD SO_2 average from the existing outlet CEMS must read at or below 6.0% (94% control) of a 30 BOD SO_2 average from the inlet CEMS.

By no later than its compliance date, San Miguel must inform us in writing of its decision to select this option for compliance. The FIP provides automatically for this compliance option and therefore if San Miguel chooses it, no SIP revision submittal is required from Texas.

d. Natural Conditions for the Texas Class I Areas

Consistent with our proposal and as discussed further in our FIP TSD,[52] we are finalizing the natural conditions for the Guadalupe Mountains and Big Bend as follows:

TABLE 2—NATURAL CONDITIONS (NC II) FOR THE GUADALUPE MOUNTAINS AND BIG BEND

Class 1 Area	20% Best days (dv)	20% Worst days (dv)
Guadalupe Mountains	0.99	6.65
Big Bend	1.62	7.16

We recommend that the State of Texas re-evaluate the natural conditions for its Class I areas in its next regional haze SIP in consultation with us and the FLMs.

[48] See our FIP TSD, Section 4.4 and 4.5. Our Cost TSD develops the bases for the costs and emission limits.

[49] 79 FR 74823.

[50] See Section 6 of our Cost TSD.

[51] 79 FR 74885.

[52] See discussion beginning on 79 FR 74885, and section 10 of our FIP TSD.

e. Calculation of Visibility Impairment for the Texas Class I Areas

Consistent with our proposal and as discussed further in our FIP TSD,[53] our final recalculated natural visibility conditions, and our calculation of visibility impairment for the Guadalupe Mountains and Big Bend are found in the table below. We recalculated the number of deciviews by which baseline visibility conditions exceed natural visibility conditions for these Class I areas pursuant to § 51.308(d)(2)(iv)(A). Specifically, in our calculations, we replaced Texas' calculations of natural visibility conditions for its Class I areas with the adjusted default values (NC II), as discussed in our proposal. We then determined the amount the baseline visibility values exceeded the natural visibility conditions to calculate visibility impairment for each area. We are finalizing the following estimates of visibility impairment for the Guadalupe Mountains and Big Bend:

TABLE 3—REVISED VISIBILITY METRICS FOR THE CLASS I AREAS IN TEXAS

Class I Area	Most Impaired (dv)	Least Impaired (dv)
	Baseline Visibility Conditions, 2000–2004	
Big Bend	17.30	5.78
Guadalupe Mountains	17.19	5.95
	Natural Visibility Conditions	
Big Bend	7.16	1.62
Guadalupe Mountains	6.65	0.99
	Extent Baseline Exceeds Natural Visibility Conditions	
Big Bend	10.14	4.16
Guadalupe Mountains	10.54	4.96

f. Consideration of the Uniform Rates of Progress

Consistent with our proposal and as discussed further in our FIP TSD,[54] we are finalizing the uniform rates of progress for the 20% worst days for the Guadalupe Mountains and Big Bend contained in Table 4 below. Specifically, in our calculations, we replaced Texas' calculations of natural visibility conditions for its Class I areas with the adjusted default values (NC II), as discussed in our proposal, and we recalculated the uniform rates of progress as follows:

TABLE 4—CLASS I AREA UNIFORM RATES OF PROGRESS

Class I Area	Baseline conditions (dv)	Annual improvement needed to meet URP (dv)	Visibility at 2018 (dv)	Improvement needed by 2018 (dv)	Natural conditions at 2064 (dv)
Big Bend	17.30	0.17	14.93	2.37	7.16
Guadalupe Mountains	17.19	0.18	14.73	2.46	6.65

g. Revised Reasonable Progress Goals for the Guadalupe Mountains and Big Bend

We are finalizing our technical analysis that was lacking in Texas' development of its reasonable progress goals for the Guadalupe Mountains and Big Bend. As discussed in our proposal and FIP TSD,[55] we are establishing new reasonable progress goals based on our technical analysis. The new reasonable progress goals are as follows:

TABLE 5—REASONABLE PROGRESS GOALS FOR 2018 FOR THE GUADALUPE MOUNTAINS AND BIG BEND

Class I area	20% Best days (dv)	20% Worst days (dv)
Guadalupe Mountains	5.70	16.26
Big Bend	5.59	16.57

[53] See discussion beginning on 79 FR 74886, and section 11 of our FIP TSD.

[54] See discussion beginning on 79 FR 74886, and section 12 of our FIP TSD.

[55] See discussion beginning on 79 FR 74886, and section 13 of our FIP TSD.

Our new reasonable progress goals for 2018 reflect only the additional estimated visibility benefit from the required controls anticipated to be in place by 2018, which are the scrubber upgrades. While the required scrubber retrofits will provide for additional visibility improvement at the Class I areas [56] that we consider necessary for reasonable progress towards natural visibility conditions, we do not anticipate these controls to be implemented until after 2018. As we note above, these estimates of future visibility conditions presume that CSAPR continues to be implemented and is a viable alternative to source-specific BART. As discussed above, given the uncertainty arising from the remand of some of the state CSAPR budgets, we have determined it would not be appropriate to finalize the portion of our FIP relying on CSAPR as an alternative to SO_2 and NO_X BART for EGUs in Texas. Should additional BART controls be required for any of the BART-eligible EGUs and should those controls in combination with other requirements on EGUs achieve emission reductions as of 2018 that are materially different than the emission reductions considered in quantifying the reasonable progress goals in this action, these reasonable progress goals would have to be revised at the same time any additional BART controls are proposed.

h. Revised Reasonable Progress Goals for the Wichita Mountains

We are finalizing our technical analysis that was lacking in Oklahoma's development of reasonable progress goals for the Wichita Mountains, including appropriate consideration of emission reduction measures in Texas that Oklahoma should have asked Texas explicitly to obtain during its consultations with Texas. We are establishing new reasonable progress goals, as discussed in more detail in our proposal and FIP TSD,[57] based on our technical analysis and accounting for the emission reductions required in Texas that we anticipate being in place by 2018. Consistent with our action regarding the Texas reasonable progress goals discussed in the previous section, our recalculated reasonable progress goals for 2018 in the table below reflect only the additional estimated visibility benefits from the required controls anticipated to be in place by 2018, which are the scrubber upgrades. While the required scrubber retrofits will provide for additional visibility improvement at the Class I areas,[58] we do not anticipate these controls to be implemented until after 2018. As we note above, these estimates of future visibility conditions presume that CSAPR is a viable alternative to source-specific BART. As discussed earlier in this document, given the uncertainty arising from the remand of some of the state CSAPR budgets, we have determined it would not be appropriate to finalize the portion of our FIP relying on CSAPR as an alternative to source-specific SO_2 and NO_X BART for EGUs in Texas. Should additional BART controls in Texas ultimately be required for any of the BART-eligible EGUs and should those controls in combination with other requirements on EGUs achieve emission reductions as of 2018 that are materially different than the emission reductions considered in quantifying the reasonable progress goals for Oklahoma in this action, the reasonable progress goals would have to be revised at the same time any additional BART controls are proposed.

TABLE 6—REASONABLE PROGRESS GOALS FOR 2018 FOR THE WICHITA MOUNTAINS

Class I Area	20% Best days (dv)	20% Worst days (dv)
Wichita Mountains	9.22	21.33

II. Summary and Analysis of Major Issues Raised by Commenters

We received both written and oral comments at the public hearings we held in Austin and Oklahoma City. We also received comments by the Internet and the mail. The full text of comments received from these commenters, except what was claimed as CBI, is included in the publicly posted docket associated with this action at *www.regulations.gov.* The CBI cannot be posted to *www.regulations.gov,* but is part of the record of this action. Our RTC document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received, with the exception of those responses that rely on CBI and is a part of the administrative record for this action. The responses that rely upon CBI are in a separate document that is part of the record of this action but is not available for public review. In total, we received approximately 2,500 pages of significant comments. Below we provide a summary of the more significant comments received and a summary of our responses to them. Our RTC document is organized similarly to the structure present in this section (*e.g.,* Cost, Modeling, etc.). Therefore, if additional information is desired concerning how we addressed a particular comment, the reader should refer to the appropriate section in the RTC document.

A. General Comments

Comment: We received 4,500 comments in support of our rulemaking, specifically regarding the requirements that Texas coal-fired EGUs reduce SO_2 emissions. These comments were from members representing various organizations, members of Congress, officials of government agencies, and members of the general public. At the public hearings in Austin, Texas, and Oklahoma City, Oklahoma, over 100 people expressed general support for the plan. The speakers at the public hearings included members of various organizations and members of the general public. Representatives of three Federal Land Management agencies also wrote comments in support of our action. Many of these same commenters also asked us to consider the impacts of NO_X pollution and to consider additional coal-fired EGUs for control.

Response: We thank the commenters for participating in the rulemaking and acknowledge their support of this action. We address NO_X emissions in our modeling section below. We address the inclusion of additional coal-fired EGUs in our cost and modeling sections below.

Comment: We received five comment letters and emails from citizens and a representative from one organization that stated general opposition.

Response: These comments were too general to give us a basis for a specific response. Please see our detailed responses in this action and additional

[56] Table 44 of our proposal (79 FR 74887) shows the additional visibility benefit anticipated from the scrubber retrofits. For Guadalupe Mountains, we estimate an additional 0.12 dv benefit on the 20% worst days based on 2018 projected background conditions resulting in a visibility goal of 16.14 dv if all required controls were in place by 2018. For Big Bend, we estimate an additional 0.09 dv benefit on the 20% worst days based on 2018 projected background conditions resulting in a visibility goal of 16.48 dv if all required controls were in place by 2018. We note that Table 45 provides the same visibility benefit estimates based on reducing recent actual emissions rather than 2018 CENRAP projected emission levels.

[57] See discussion beginning on 79 FR 74886, and section 13 of our FIP TSD.

[58] Table 44 of our proposal (79 FR 74887) shows the additional visibility benefit anticipated from the scrubber retrofits. For Wichita Mountains, we estimate an additional 0.30 dv benefit on the 20% worst days based on 2018 projected background conditions resulting in a visibility goal of 21.03 dv if all required controls were in place by 2018. We note that Table 45 provides the same visibility benefit estimates based on reducing recent actual emissions rather than 2018 CENRAP projected emission levels.

detail in our RTC document, in which we provide substantial explanations and reasons for disapproving elements of the Texas and Oklahoma SIPs and finalizing our FIP.

Comment: As a general matter, a number of commenters took issue with our usages of the terms ''reasonable'' and ''significant'' as used in our proposal and TSDs and contended they were inappropriate or extra-statutory terms.

Response: We consider the general use of ''reasonable'' and ''significant'' in this action to be appropriate. The word ''reasonable'' is not extra-statutory in this action because it is part of the statutory term ''reasonable progress,'' see CAA ection 169A(g). In turn, ''significant'' may be used according to its ordinary meaning (as in our reference above to ''significant comments''). This word is elsewhere employed consistent with our guidance and previous actions. See, *e.g.,* our Reasonable Progress Guidance at 3–2. These terms are generally used in rulemaking actions, including use by Texas and Oklahoma in their regional haze actions.[59] We use these terms appropriately throughout this rulemaking action, for example, when explaining it was ''reasonable'' to expect great variation in the effectiveness of emission reductions between two sources given the difference in distances between these two facilities and the Class I areas, or when describing CENRAP visibility modeling as demonstrating that a ''significant'' portion of the visibility impacts to Class I areas in a number of states on the worst 20% days for both 2002 and 2018 were attributable to Texas sources.[60]

B. State and Federal Roles in the Regional Haze Program

Some commenters argued that our proposal to disapprove Texas' and Oklahoma's regional haze SIPs disregarded the primary role of the states under the CAA, the Regional Haze Rule, and relevant case law. We do not agree. Congress designed the CAA to provide for states to take the lead in developing SIPs but also required EPA to review SIPs for compliance with statutory and regulatory requirements. We recognize that states have the primary responsibility of drafting a SIP to address the requirements of the regional haze program. We also recognize that we have the responsibility of ensuring that the state plans, including regional haze SIPs, conform to the CAA requirements. We have determined that the Texas and Oklahoma SIPs do not meet certain elements of these Federal requirements and are accordingly partially disapproving these SIPs.

Additionally, our review of SIPs is not limited to a ministerial review and approval of a state's decisions. Some commenters argued that the principles of cooperative Federalism in the CAA require EPA to defer to states in their development of SIPs, so long as necessary statutory requirements are met. Commenters stated that our proposal ignores such limits and would impose FIPs that ignore the primary implementation role given to Texas and Oklahoma. We disagree with the commenters' arguments regarding cooperative Federalism. Under this framework, the CAA directs us to act if a state fails to submit a SIP, submits an incomplete SIP, or submits a SIP that does not meet the statutory requirements. Thus, the CAA provides us with a critical oversight role in ensuring that SIPs meet the CAA's requirements.

Commenters stated that Texas' plan was complete by operation of law, met all requirements, and that we had no authority to impose a FIP. We disagree. The commenters confuse the action of merely submitting a SIP and having it deemed complete with the action of submitting a SIP that complies with the applicable Federal requirements. We agree that the CAA gives each state flexibility in developing a SIP, but in doing so, it must ensure the SIP meets Federal requirements. We must review the state's SIP and determine whether it meets such Federal requirements. If it does not, we must disapprove it (or portions thereof), and adopt a FIP to address the disapproved parts. In undertaking such a review, we do not ''usurp'' the state's authority arbitrarily, as some commenters stated, but rather we ensure that such authority is reasonably exercised. In this instance, portions of the states' SIPs were not approvable for reasons discussed elsewhere in this document, the responses to comments, and the proposed rulemaking.

Some commenters argued that the appropriate remedy for a substantially inadequate plan under our Regional Haze Rule is periodic updates, as opposed to a FIP. We disagree. The Regional Haze Rule's requirements for comprehensive periodic revisions (*see* 40 CFR 51.308(f)) and periodic progress reports (*see* 40 CFR 51.308(g)) are very different from the authority to impose a FIP when there is a determination that a SIP is not approvable. As we have stated elsewhere, we have the authority and obligation to impose a FIP to fill in such gaps. The provisions of the Regional Haze Rule regarding states' ongoing responsibility to periodically revise their regional haze SIPs do not override this responsibility.

C. Our Clarified Interpretation of the Reasonable Progress and Long-Term Strategy Requirements

Several commenters criticized the aspect of our proposal that provided potential commenters and states with clarification regarding our interpretation of the reasonable progress and long-term strategy provisions found at 40 CFR 51.308(d)(1) and (3). Some of these commenters alleged that our proposal did not clarify an existing interpretation, but rather outlined a new one that was being applied to Texas and Oklahoma after the fact. They argued that the provisions in question require upwind states to include in their long-term strategy only those measures necessary to achieve the reasonable progress goals set by downwind states, regardless of whether the goals were based on sound analyses and adequate interstate consultation or reflect all reasonable control measures. Some commenters argued that upwind states have no obligation to conduct four-factor analyses with respect to downwind Class I areas at all. In essence, these commenters asserted that the only obligation that the CAA and Regional Haze Rule impose upon upwind states is a requirement to consult with their neighbors and make good on any commitments made during the consultation process. They further argued that their preferred interpretation is mandated by the plain language of the Regional Haze Rule, such that the interpretation laid out in our proposal is plainly erroneous and not entitled to judicial deference. Other commenters asserted the opposite. They agreed with our clarifications and argued that our interpretation of the provisions found at 40 CFR 51.308(d)(1) and (3) is not only reasonable, but mandated by the CAA and the plain language of the provisions themselves.

After carefully considering these comments, we stand by our clarified interpretation as outlined in the proposal. The alternative interpretations offered by some of the commenters are not in accord with the plain language of CAA sections 169A(b)(2) and (g)(1),

[59] *See, e.g.,* our proposal at 79 FR 74844 (noting our agreement with ''Texas' determination that was not reasonable to request additional controls from other states at this time'') and 74823 (describing how Oklahoma's response to public comments on its regional haze SIP ''acknowledged that sources in Texas had significant impacts on visibility in Wichita Mountains, but maintained that it did not have the regulatory authority to require emission reductions in other states'').

[60] 79 FR 74841 and 74854.

which require both upwind and downwind states to include in their SIPs ''emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the national goal'' and to determine what controls are necessary to make reasonable progress by considering the four statutory factors. The commenters' view that upwind states are not required to conduct four-factor analyses for downwind Class I areas is inconsistent with Texas' own view of the requirements of the CAA and the Regional Haze Rule. Texas itself conducted a four-factor analysis for downwind Class I areas (albeit a flawed one) and stated in its own response-to-comments document that it was required to do so.[61] Indeed, the commenters' alternative interpretations are premised largely on a fundamental misunderstanding of the regional haze planning process. The commenters seem to suggest that states set their reasonable progress goals first and then determine what controls are necessary to achieve them. In their view, if a downwind state sets a reasonable progress goal that does not assume emission reductions from an upwind state, then the upwind state has no obligation to include control measures in its long-term strategy. Such an interpretation is not consistent with the CAA, our regulations and guidance, or how such analyses are conducted in reality. To set their reasonable progress goals, states consider the anticipated visibility conditions at a Class I area in a future year. In order to do so, they must first determine the level of emission reductions that will result once the control measures necessary to make reasonable progress are installed and estimate the visibility benefit anticipated from those reductions. In determining the control measures necessary to make reasonable progress, states must conduct four-factor analyses, considering costs and other factors. If an upwind state were not required to participate or if emission reductions from upwind sources were not considered in this process, there would be no way for downwind states to set reasonable progress goals that account for all reasonable control measures.

[61] *See, e.g.,* Appendix 2–2 to the Texas Regional Haze SIP at 24 (''Further, a four-factor analysis is *necessary* for the set of sources in the respective areas of influence that impact *each* of the Class I areas that Texas' emissions impact.'') (emphases added) (''The TCEQ has used the four-factor analysis, *as required,* for the set of Texas sources impacting Class I areas, to determine whether all reasonable reductions have been required.'') (emphasis added).

D. Consideration of Visibility in the Reasonable Progress Analysis

Comment: Many commenters maintained that, unlike with BART, visibility is not one of the statutory or regulatory factors that states must consider in determining reasonable progress and setting reasonable progress goals. As a result, some commenters argued that EPA is not permitted to disapprove a state's four-factor analysis based on the manner in which a state considered visibility impacts or visibility benefits in determining reasonable progress. They argued that EPA's statutory role does not extend to dictating ''how'' a state considers the four factors, especially considering the flexibility states have when determining reasonable progress. Other commenters asserted that EPA placed too much weight on visibility, a non-statutory factor, in analyzing Texas' SIP and in promulgating a FIP. Some commenters alleged that states and EPA were barred from considering visibility in a reasonable progress analysis altogether. Several commenters suggested that, had we not considered visibility benefits when promulgating a FIP for Texas, we would not have required any SO_2 controls. One commenter cited to *WildEarth Guardians* v. *EPA* [62] to support its contention that neither the CAA nor the Regional Haze Rule requires source-specific analysis in the determination of reasonable progress. Other commenters cited to *American Corn Growers Ass'n* v. *EPA* [63] to support their assertion that we impermissibly isolated visibility as a factor and in so doing constrained authority Congress conferred on the states.

Response: We disagree with these comments. The commenters appear to be stating that states (or EPA when promulgating a FIP) either cannot or need not consider visibility in any way in determining reasonable progress and that we therefore must approve a state's reasonable progress goals and long-term strategy as long as all four mandatory reasonable progress factors are analyzed to some degree. This view is at odds with the overarching purpose of the CAA's visibility provisions. Congress declared as a national goal in CAA section 169A(a)(1) the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' CAA section 169A(b)(2) required the Administrator to promulgate regulations to assure ''reasonable progress toward meeting the national goal.'' Thus, the entire purpose of the reasonable progress mandate is to achieve the national goal of natural visibility conditions at each Class I area.

CAA section 169A(g)(1) goes on to state that, in determining ''reasonable progress,'' states must consider four factors: ''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' This consideration is commonly referred to as the ''four-factor analysis.'' [64] The crux of the commenter's argument seems to be that, because this list of factors does not include visibility, states can ignore visibility altogether or, if they choose, consider it in any fashion they want.

While we agree that visibility is not one of the four mandatory factors explicitly listed for consideration in CAA section 169A(g)(1) or 40 CFR 51.308(d)(1)(i)(A), the term ''reasonable progress'' itself means reasonable progress towards the national goal of natural visibility conditions. The Supreme Court has stated that, ''[i]n determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme' and 'fit, if possible, all parts into an harmonious whole.' '' [65]

To ensure a coherent regulatory scheme, we believe that states (or EPA when promulgating a FIP) can consider

[62] *WildEarth Guardians* v. *EPA,* 770 F.3d 919 (10th Cir. 2014).

[63] *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002).

[64] Correspondingly, under § 51.308(d)(1) of the Regional Haze Rule, promulgated in response to this mandate, states must ''establish goals (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility conditions'' for each Class I area within a state. Reasonable progress goals are interim goals that represent measurable, incremental visibility improvement over time toward the goal of natural visibility conditions. Section 51.308(d)(1)(i)(A) requires states to consider the four statutory factors when establishing their reasonable progress goals.

[65] *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000) (quoting *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989), *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569 (1995), and *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959)).

visibility when determining reasonable progress in at least two ways. First, states can consider the visibility impacts of sources when determining what sources to analyze under the four-factor framework. CAA section 169A(b)(2) does not provide any direction regarding which sources or source categories a state should analyze when determining reasonable progress. Similarly, CAA section 169A(g)(1) refers to ''any existing source subject to such requirements,'' but unlike the BART provisions, does not identify which existing sources or source categories should be subject to reasonable progress requirements. Given this statutory ambiguity, we believe that allowing states to consider visibility impacts when determining the scope of the reasonable progress analysis is a reasonable interpretation of the statute ''as a harmonious whole.'' Accordingly, states can develop screening metrics that target those sources with the greatest visibility impacts for further analysis. Our 2007 guidance advocated this approach, and nearly all states, including Texas, used metrics like Q/d to consider the potential visibility impacts of their sources and screen out those sources with low visibility impacts.[66] We followed this same approach in our FIP by using both Q/d and a second metric based on a source's modeled percent contribution to total visibility impairment at impacted Class I areas. If states or we could not consider visibility impacts as a way of identifying which sources should be considered for additional controls, then states would have no rational way to differentiate between hundreds of sources that vary in distance from Class I areas, emit different visibility impairing pollutants in varying amounts, and are subject to diverse meteorological conditions that affect the transport of visibility-impairing pollutants. The result would be a cumbersome analysis encompassing hundreds of sources (or in the case of Texas, well over a thousand), many of which may have little if any impact on visibility in Class I areas. Congress could not have intended such an incongruous result.

Second, once a universe of sources has been identified for analysis, we believe that states can consider the visibility improvement that will result from potential control options when weighing the four statutory factors. Allowing consideration of visibility improvement is appropriate for several reasons. Most importantly, it aligns with Congress' national goal, which is to remedy existing impairment of visibility in Class I areas. While section 169A(g)(1) of the CAA contains a list of factors states *must* consider when determining reasonable progress, we do not believe that list is exclusive. As the Eighth Circuit Court acknowledged in *North Dakota* v. *EPA,* states can take visibility improvement into account when evaluating reasonable progress controls so long as they do so in a reasonable way.[67] We have iterated this position in previous regional haze actions. For example, in our final rule on the Montana regional haze SIP, we stated, ''We agree that visibility improvement is not one of the four factors required by CAA section 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A), however, it (along with other relevant factors) can be considered when determining controls that should be required for reasonable progress.'' [68] Similarly, in our final rule on the Arizona regional haze SIP, we concluded that, ''while visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress.'' [69]

Further, allowing states to consider visibility improvement alongside the four statutory factors ensures that only those cost-effective controls that will achieve reasonable visibility benefits are required during each phase towards the national goal. If states were not permitted to consider visibility improvement when conducting their control determinations, then states arguably would have to require all cost-effective controls during the first planning period (assuming no limiting energy or non-air quality environmental impacts) regardless of whether some of those controls would be far more beneficial than others.[70] Oddly, some of the commenters appear to be suggesting that, if we had not considered visibility benefits in our analysis, we would not have controlled certain sources. On the contrary, we decided not to require certain cost-effective controls in this planning period because they would not achieve as much benefit as other controls. If these commenters are correct and the consideration of visibility benefits is impermissible in a four-factor analysis, then we would have required all cost-effective controls, including those at the Parish and Welsh facilities.

We also note that Congress did not provide any direction as to how states should consider ''the costs of compliance'' when determining reasonable progress. One permissible way a state could ''consider'' costs is to compare them to prospective benefits. In other words, we believe the first statutory factor is capacious enough to allow for a comparison of cost-effectiveness to visibility improvement. Finally, we note that our 2007 guidance explicitly permits states to consider other relevant factors when conducting a four-factor analysis,[71] and many states, including Texas, did so. In conclusion, we believe that states are permitted, but not required, to consider visibility improvement alongside the four statutory factors when making their reasonable progress determinations, with the important caveat that they must do so in a reasonable fashion.

Some commenters alluded that visibility improvement is irrelevant to a four-factor analysis because Congress did not include it as one of the four factors, but did include it as a factor to be considered in determining BART. We do not find this reasoning to be persuasive. The sources that Congress subjected to the BART requirement (*i.e.,* sources grandfathered from the PSD requirement) were not necessarily sources that would have an impact on visibility impairment. As such, Congress included specific language in CAA sections 169A(b)(2)(A) and 169A(g)(2) to ensure that only those grandfathered sources that cause or contribute to visibility impairment and that would

[66] For example, in VISTAS states, to select the specific point sources that would be considered for each Class I area, VISTAS first identified the geographic area that was most likely to influence visibility in each Class I area and then identified the major SO_2 point sources in that geographic area. The distance-weighted point source SO_2 emissions (Q/d) were combined with the gridded extinction-weighted back-trajectory residence times. The distance-weighted (Q/d) gridded point source SO_2 emissions were then multiplied by the total extinction-weighted back-trajectory residence times on a cell-by-cell basis and then normalized. VISTAS Area of Influence Analyses, 2007, is available in the docket for this action.

[67] *North Dakota* v. *EPA,* 730 F.3d 750, 766 (8th Cir. 2013).

[68] 77 FR 57864, 57899, 57901; *see also* Montana Proposed Rule, 77 FR 23988, 24062.

[69] 79 FR 9318 n.137 (finalized based on this same reasoning at 79 FR 52420); TX TSD at 7 n.6; FIP TSD at 12; 79 FR 74874.

[70] We also note that practical implementation concerns could arise if a state as large and source-numerous as Texas required all cost-effective controls at once.

[71] ''In determining reasonable progress, CAA Section 169A(g)(1) requires States to take into consideration a number of factors. However, you have flexibility in how to take into consideration these statutory factors and any other factors that you have determined to be relevant.'' 2007 Guidance at 2–3, 4–2, and 5–1.

result in visibility improvement if controlled would be required to install BART. On the other hand, the national goal of achieving natural visibility conditions is central to the notion of reasonable progress, so Congress had no need to include language regarding visibility improvement in CAA section 169A(g)(1).

We also disagree with the commenters that we cannot disapprove a state's SIP where the state has considered visibility improvement in an unreasonable fashion. As the Eighth Circuit explained in *North Dakota,* ''[a]lthough the state was free to employ its own visibility model and to consider visibility improvement in its reasonable progress determinations, it was not free to do so in a manner that was inconsistent with the CAA.'' [72] Like the State of North Dakota, Texas chose to evaluate visibility improvement alongside the four statutory reasonable progress factors, but did so in an unreasonable way. We discuss several ways that Texas' consideration of visibility improvement in its reasonable progress determinations was unreasonable elsewhere in this document, in our proposal, and in our Texas TSD.[73] One point worth mentioning here, however, is that Texas estimated the visibility improvement of potential controls by making comparisons to degraded background conditions instead of to natural background conditions, which is precisely the same mistake that North Dakota made.[74] The end result of this and other errors in Texas' analysis was that Texas unreasonably concluded that the total cost of additional controls was not worth the visibility benefits of those controls and that no additional controls were reasonable for this planning period.[75] We are appropriately disapproving this portion of Texas' SIP. The fact that Texas' decision to evaluate visibility improvement was ''discretionary'' does not mean that Texas was free to exercise that discretion in an unreasonable manner.

We note that the Tenth Circuit's decision in *WildEarth Guardians* v. *EPA* does not address the issues present in this case. There, the Tenth Circuit Court merely held that the CAA does not require a state to conduct a source-specific reasonable progress analysis. The Court did not hold that a state is free to conduct any type of analysis irrespective of whether or not the analysis is reasonable. Nor did the Court hold that the CAA prevents states or the EPA from conducting a source-specific analysis if that approach is determined to be appropriate.

Finally, we disagree with the commenter that we elevated visibility improvement to a place of primary importance, either in disapproving Texas' SIP or in promulgating our FIP. The flaws with Texas' consideration of visibility benefits were only one aspect of our disapproval. Moreover, we stated on multiple occasions in our proposal that we considered all four statutory factors in our analysis. Our analysis does not give greater weight to one factor over another; rather, we considered all four factors fully, revealing that the cost factor, which included visibility improvement consideration, was the most determinative in our decisions. The *American Corn Growers Ass'n* v. *EPA* case is inapposite. There, the D.C. Circuit Court faulted how EPA assessed the statutory fifth factor of visibility improvement in a BART determination (not a reasonable progress determination) by using a regional, multi-source, group approach to assessing the visibility improvement factor, while assessing the other four statutory BART factors on a source-specific basis. Here, not only is the analysis at issue not being performed under BART, but we did not give greater weight to our consideration of visibility improvement within the cost factor, or consider the cost factor in a different fashion from the other three reasonable progress factors.

Comment: Some commenters stated that regional haze is the contribution of numerous emission sources to visibility impairment and that, while the contribution from any single source may be ''insignificant,'' the aggregate impact from all sources is significant. These commenters argued that, by using the Q/d screening metric, the EPA already took potential visibility impacts (and benefits of control) into account. They argued that the EPA cannot use visibility again during the four-factor analysis as an ''off-ramp'' to not control a source. Furthermore, the EPA should not break a facility down into its constituent parts because doing so can diminish each individual impact to the point where it becomes relatively insignificant. Such a ''divide and exempt'' approach is contrary to Congress' goal that Class I areas eventually return to natural visibility conditions. One commenter stated that the EPA should have conducted four-factor analyses for all 38 facilities identified in the Q/d analysis.

Response: We agree that regional haze is, by definition, visibility impairment caused by numerous emission sources. We also agree that, while some sources may have very small visibility impacts, aggregate impacts can be significant. However, while there are undoubtedly thousands of sources within Texas that individually have small contributions to regional haze, there are also many sources that, even in isolation, have relatively large visibility impacts. In this first planning period, we identified the most significant sources that impact visibility, determined whether cost-effective controls were available for these sources, and balanced the costs of those controls against their visibility benefits. As we discussed in more detail above, if we had adopted the commenters' suggestion and controlled all large sources where cost-effective controls were available, we likely would have controlled many additional sources. Given the iterative nature of the regional haze program, we think that it was a reasonable approach to require only those cost-effective controls with the largest benefits this planning period. We expect that Texas will control additional sources, which by then will be the largest contributors to impairment, during future planning periods.

As we explain further in supporting documents, we also disagree with the commenter's suggestion that we should have screened only by using the Q/d metric. A Q/d analysis compares a source's emissions and distance to nearby Class I areas to provide an initial estimate of the potential visibility impacts of those sources. After conducting our Q/d analysis, we then used photochemical modeling to estimate the visibility impacts of this set of sources in a much more refined manner that accounts for chemistry, meteorological conditions, and stack parameters in addition to emissions and location. The results of our modeling indicated that a subset of 38 facilities were the primary contributors to visibility impairment at each Class I area. We then used the modeling results to narrow the group of sources further because it was reasonable to conduct a

[72] *North Dakota,* 730 F.3d at 766.

[73] *See* Section B.2 of the Texas TSD and Section V.C.3 of our proposal (79 FR 74818).

[74] In contrast, Texas conducted a proper visibility analysis using natural background conditions elsewhere in its SIP when the state assessed the visibility impacts of its BART sources. *See* Texas Regional Haze SIP, Appendix 9–5 at 2–11 (''The source's HI [haze index] is compared to natural conditions to assess the significance of the source's visibility impact. EPA guidance lists natural conditions (bnatural) by Class I area in terms of Mm^{-1} (EPA, 2003b) and assumes clean conditions with no anthropogenic or weather interference. The visibility significance metric for evaluating BART sources is the change in deciview (del-dv) from the source's and natural conditions haze indices.'').

[75] Texas concluded, ''At a total estimated cost exceeding $300 million and no perceptible visibility benefit, Texas has determined that it is not reasonable to implement additional controls at this time.'' Texas regional haze SIP at 10–7.

full four-factor analysis only for the subset of sources with the largest facility-and unit-level visibility impacts, as described in detail in our supporting documents.

E. Consultation Between Oklahoma and Texas

Comment: The regulations require that Texas' long-term strategy reflect the emission reductions requested and agreed to by the CENRAP states. EPA points to no flaws in the CENRAP regional planning process in which Texas and Oklahoma participated together. The EPA asserts that the TCEQ should have provided information necessary to identify reasonable reductions, which the Regional Haze Rule does not require. Oklahoma did not request additional controls on Texas sources or disagree with Texas' determination that no additional controls were warranted during the first planning period.

Nonetheless, the EPA arbitrarily disapproved the Texas consultation process with Oklahoma without reference to its rules, guidance, and prior SIP approvals. The proposal never details what information Oklahoma lacked in establishing its reasonable progress goals, and EPA must provide a more adequate explanation of how additional information would have changed Oklahoma's ultimate determination that additional controls on Texas sources would not move the Wichita Mountains perceptibly closer to its regional haze goals.

Response: We disagree that participation alone in a Regional Planning Organization (RPO) process (here CENRAP) will always be enough to meet the requirements for consultation under the Regional Haze Rule. The rule does not negate the requirement that a state have a complete and technically adequate analysis so that consultations are well informed. The RPOs, such as CENRAP, provided technical analyses, including emission inventory development and air quality modeling to project future visibility conditions and additional information on sources of visibility impairment to facilitate consultations and support the development of the states' regional haze SIPs.

Although Texas participated in CENRAP, it retained the duty to do whatever additional analysis was necessary to fully address the requirements of the Regional Haze Rule for addressing its long-term strategy and setting its reasonable progress goals. While the long-term strategy requirements allow a state to rely on the RPO technical analysis, that is true only to the extent it provides the necessary information. A state must address any gaps in that analysis. For Texas, inadequate information existed not only for the reasonable progress analysis for its own Class I areas, but also for the long-term strategy development for addressing significant impacts at the Wichita Mountains. CENRAP was not required, nor did it provide state-specific analyses and information on the cost-effectiveness and visibility benefits of potential control strategies under consideration by each state to address the specific sources or groups of sources within that state that have the largest visibility impacts. Rather, CENRAP provided more general information on overall projected visibility conditions, potential controls and associated costs for some sources and the potential benefit of regional emission reductions to inform the development of potential control strategies that may require additional analysis.[76] For example, while the CENRAP analysis identified that impacts from EGUs in Texas were significant, it did not provide a refined analysis to fully assess the cost-effectiveness and visibility benefits of controlling those sources, including not providing information on the cost-effectiveness of scrubber upgrades for those sources with existing, underperforming scrubbers. As Texas states in its regional haze SIP, ''While Texas participates in CENRAP and benefits from the technical work coordinated by the RPO, Texas has sole responsibility and authority for the development and content of its Regional Haze SIP.'' [77]

Recognizing that the information made available by CENRAP indicated the significant impact of Texas emissions and potential for cost-effective controls, Texas used the CENRAP analysis as a starting point, and performed supplemental analysis for both its reasonable progress and long-term strategy demonstrations. However, that additional technical analysis performed by Texas was flawed and therefore did not provide the type of information necessary to fully evaluate the reasonableness of controls at Texas sources with the largest potential to impact visibility at its own Class I areas and the Wichita Mountains. Allowing this lack of adequate information to continue was a critical misstep for ODEQ in setting its reasonable progress goals, and a critical misstep for Texas when determining its fair share of emissions reductions under the long-term strategy requirement. The plain language of the CAA requires that states consider the four factors used in determining reasonable progress in developing the technical basis for the reasonable progress goals both in their own Class I areas and downwind Class I areas. Such documentation is necessary so that interstate consultations can proceed on an informed basis, and so that downwind states can properly assess whether any additional upwind emissions reductions are necessary to achieve reasonable progress at their Class I areas. Therefore, Texas had an obligation to provide appropriate information to Oklahoma so it could establish a proper progress goal for the Wichita Mountains. Further, Texas had an obligation to conduct an appropriate technical analysis, and demonstrate through that analysis (required under paragraph (d)(3)(ii)), that it provided its fair share of emissions reductions to Oklahoma. In summary, Texas was required through the consultation process to provide Oklahoma the information it needed to establish its reasonable progress goals for the Wichita Mountains, and it failed to do so.

Comment: Oklahoma possessed more than adequate information about impacts and potential controls but correctly decided it was not reasonable to request any further reductions from Texas sources during the first planning period. Oklahoma was in agreement with Texas on the goal and measures for the Wichita Mountains. EPA may disagree with that choice in hindsight and may wish Oklahoma's and Texas' agreement was different, but that is an unlawful basis for disapproving Oklahoma's reasonable progress consultation with Texas and disapproving Oklahoma's reasonable progress goals.

Response: While we agree that Oklahoma possessed more than adequate information from the CENRAP analyses about impacts from Texas sources at a certain level of aggregation, and some knowledge concerning potential controls for some of these sources, we do not agree that it was reasonable for Oklahoma to stop at this point. Despite the information it did have, Oklahoma never explicitly asked Texas for reductions even though there was clear evidence from the CENRAP analyses that Texas sources, particularly EGUs in northeast Texas, were

[76] CENRAP conducted a control sensitivity analysis to evaluate the impact of point source emission reductions across all CENRAP states given a maximum dollar per control level of $5,000/ton; however, the results ''were intended to be a starting point for control discussions that would require much greater refinement.'' Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, September 12, 2007 at 2–37).

[77] 2009 Texas Regional Haze SIP at 3–1.

significantly impacting the Wichita Mountains and that cost-effective controls were likely available on some of these sources.

The Regional Haze Rule required that Oklahoma use the consultation process under 40 CFR 51.308(d)(1)(iv) in the development of reasonable progress goals in tandem with Texas. Nevertheless, throughout the consultations, Oklahoma failed to explicitly request that Texas further investigate whether reasonable controls were available or that Texas reduce emissions from these significantly impacting sources to ensure that all reasonable measures to improve visibility were included in Texas' long-term strategy and incorporated into Oklahoma's reasonable progress goals for the Wichita Mountains. This failure resulted in the development of improper reasonable progress goals for the Wichita Mountains.

Comment: Even if EPA's disapproval of Oklahoma's reasonable progress goals were authorized and supported, that disapproval does not allow EPA to disapprove Texas' long-term strategy. Regardless of EPA's view of Oklahoma's reasonable progress goals for the Wichita Mountains, it is undisputed that Texas' SIP includes the measures necessary to secure Texas' agreed-to apportionment of emission reductions to meet the reasonable progress goals for the Wichita Mountains established by Oklahoma, and thus EPA must approve Texas' SIP.

Response: We disagree that disapproval of Oklahoma's reasonable progress goals for the Wichita Mountains does not allow us to disapprove Texas' long-term strategy. We are disapproving the Texas long-term strategy because the analysis underlying it is technically flawed. Because of these flaws, Texas' SIP submittal does not include all the measures necessary to secure its apportionment of the emission reductions needed to meet the progress goal that should account for all reasonable control measures for the Wichita Mountains, or its own Class I areas. We are disapproving the Oklahoma reasonable progress goals for the Wichita Mountains not because of the technically flawed Texas long-term strategy, but because Oklahoma's consultations with Texas were flawed, which prevented it from adequately developing its reasonable progress goals for the Wichita Mountains. Also, because Oklahoma's consultations with Texas were flawed, Oklahoma did not adequately consider the emission reduction measures necessary to achieve the uniform rate of progress for the Wichita Mountains and did not adequately demonstrate that the reasonable progress goals it established were reasonable based on the four statutory factors. See our previous responses concerning the comments on Texas allegedly meeting the ''agreed-to apportionment.''

Comment: EPA never raised any of the concerns it asserts and it never second-guessed the process or the data that the states were developing—as it does now, years after that process has been completed and on the eve of the next planning period. In truth, Texas and Oklahoma did exactly what EPA encouraged them to do.

Response: Our task under the CAA is to review a SIP once it is formally submitted by the state and determine if it meets the CAA and our rules. There is no requirement in the CAA that we must review, evaluate, and comment on a state's proposed SIP revision before it is formally submitted to us. Nevertheless, we note that we sent comment letters to Texas and Oklahoma during their public comment periods, raising many of the issues presented herein. We stated that Texas should specifically demonstrate that it included all measures necessary to obtain its share of the emission reductions necessary for achieving reasonable progress in the Wichita Mountains and document its technical basis. Furthermore, we stated that the Texas reasonable progress/long-term strategy technical analysis raised concerns about whether it appropriately evaluated whether there were additional reasonable controls available to help reduce its impact on the Wichita Mountains. For Oklahoma, we stated it did not appear that ODEQ actually requested reductions from Texas and we urged Oklahoma to ensure Texas was aware of its sources' impact and encourage reductions as necessary. In both letters, we stated that additional concerns would surface during the review of the final SIP submittals.

Comment: EPA's consultation disapprovals of Oklahoma and Texas are the first time EPA has disapproved a state regional haze consultation. This new approach of second-guessing regional agreements—years after they are reached and implemented—would undermine and chill the regional planning process, and discourage states from participating.

Response: We disagree that this is a new approach on the consultation requirements and we also disagree that our position undermines or chills the regional planning process. While our regulations allow states to work together in RPOs, like CENRAP, this is not a stopping point for states to fall back on as a rationale not to meet the CAA and Regional Haze Rule. We have not disapproved other states' reasonable progress/long-term strategy consultation processes because the particular facts of the situation for Texas and Oklahoma did not arise. We believe our clarification that upwind states have an obligation to reasonably assess potential control measures to address impacts in Class I areas in downwind states will encourage states to work together to address regional haze.

F. Source Category and Individual Source Modeling

Comment: EPA proposed to disapprove Texas' regional haze SIP because EPA determined that Texas was required to conduct a source-specific analysis of certain facilities to meet the reasonable progress requirements. EPA guidance and judicial precedent have stated that a source-specific analysis or source-by-source demonstration is not required to determine reasonable progress.

Response: We disagree with these comments as our proposal to disapprove the SIP was decidedly not based on the supposed use of a source category-based analysis by Texas. Therefore, these comments have not accurately described the proposed basis of disapproval. We understand many of these comments arose because our proposal included a statement that ''individual sources were not considered by the TCEQ.'' This statement was not offered to propose a basis for disapproval, but we understand it is susceptible to being taken out of context (particularly in consideration of the comments received). It is perhaps more plain to state that individual sources were not *effectively* considered by the TCEQ. As our proposal and the Texas SIP itself make clear, Texas did, in fact, partially evaluate controls for certain individual sources. In evaluating these controls, Texas employed a large, superficially refined control set consisting of a mix of large and small sources from a number of different source categories located within varying distances of Class I areas. It did assess individual source data for some factors such that we do not necessarily agree with commenters who brand it a ''source category analysis.''

Whatever its label, we proposed to disapprove Texas' reasonable progress analysis because it was flawed in several specific ways. A primary flaw was that the control set was over-inclusive. It included controls on sources that served to increase the total cost with little visibility benefit. As was

noted in our proposal,[78] Texas adopted this approach despite evidence in the record of identified source-specific, cost-effective controls that would have resulted in large emission reductions on certain EGUs, and despite source apportionment modeling that identified large impacts from EGU sources in northeast Texas. Our proposal explained that this approach obscured benefits that might be obtained from individual sources and only considered aggregated costs. As we also explained, the submitted analysis failed to study or consider scrubber upgrade candidates. It was accordingly under-inclusive of large, highly cost-effective emissions reductions that would lead to significant improvements in visibility. These points are validated by the technical record for this FIP.

Therefore, whether the state's analysis is labelled a source category analysis, an analysis of multiple individual sources, or some hybrid, we conclude that it contained serious deficiencies that would materially affect the outcome of the state's SIP process. As a result, we conclude this component of the SIP requires disapproval.

Finally, it bears noting that the approach we have taken in our FIP to identifying appropriate controls does not dictate the approach that Texas or any other state must take to assess controls. Given Texas' size and the range of distances from point sources to Class I areas, the mix of controls at EGUs and other large point sources in the state, and the overall significance of the impacts from these point sources, we considered it appropriate to undertake a source specific analysis to avoid the potential for over-controlling sources.[79] In some circumstances, depending on the types of sources at issue, the impacts from these sources relative to other causes of visibility impairment, the types of controls under consideration, and other such factors, a source category approach can be appropriate. Ultimately, however, while there is flexibility in available analytical approaches, states cannot adopt an approach to reasonable progress, which by its nature overlooks cost-effective controls that would otherwise be viewed as being beneficial.

Comment: Because of guidance and precedent that ''source category'' analyses can be appropriate, individual sources or point sources cannot be subject to source-specific controls to meet reasonable progress. Individual sources can be subject to control for purposes of addressing BART or RAVI requirements but additional, source-specific controls may not lawfully be imposed.

Response: We disagree with the argument that, because a source category analysis may be appropriate in some circumstances, sources cannot be subject to source-specific controls to ensure reasonable progress toward improving visibility. It is unclear how a state would develop a SIP containing ''emission limits, schedules of compliance, and other measures may be necessary to make reasonable progress,'' as required by CAA section 169(A)(b)(2), without the option of source-specific controls going forward. There is nothing in the visibility provisions of the CAA or the Regional Haze Rule suggesting otherwise.

Comment: Information on FGD scrubber upgrades cannot be used to disapprove the SIP because that information was acquired through EPA's authority to obtain information under CAA section 114, but the state has no equivalent corresponding authority. EPA comment letters and communications in past years had not informed the state of the importance of analyzing scrubber upgrades.

Response: Neither of these observations would justify our approving a flawed component of a SIP revision—in this case an analysis within that SIP revision—that, among other things, had unreasonably overlooked the option of FGD upgrades. Our 2005 BART rule discussed the state evaluation of scrubber upgrades in several places.[80] The technical information in our proposal validates FGD upgrades as an option that should have been considered, and we consider this technical record to have been reinforced and further validated with additional information and comments provided in support of the proposal. Even as we acknowledge that the TCEQ does not have authority (or any present delegation of authority) to request information under CAA section 114, this is not any kind of determinative limitation on the state's technical and regulatory capacities and tools for producing and developing information on an air pollution control measure such as FGD upgrades. Texas has engaged in air quality control planning and air pollution prevention under the CAA for decades, and the Texas agency or agencies responsible for SIP adoption and implementation are required to possess the necessary legal authority under state law to adopt and implement all SIP measures.[81] Consequently, in this case, the TCEQ bore the responsibility of developing or requesting information needed to properly assess scrubber upgrades. Lastly, as we state above, any past EPA comment letters would be intended to be helpful to the improvement of any SIP revision that is under development, but they do not constitute agency action on that SIP revision or constitute any assurance of positive action on that revision upon submission and review. Instead and as always, EPA has to formally discharge its responsibilities to review any SIP submittal under the provisions of CAA section 110(k). Accordingly, the issue of TCEQ's knowledge, notice, or lack thereof on FGD scrubber upgrades cannot be resolved in any way that would shield the SIP revision from this basis for disapproval.

G. Constitutional Law

One commenter cited to the Commerce Clause, Fifth Amendment and Constitutional non-delegation principles in support of its contention that EPA should not be able to regulate sources under our regional haze program. We disagree with these comments. First, under the Commerce Clause, the commenter argues that we cannot regulate regional haze on the theory that regulated conduct—such as ''carbon emissions'' from coal-fired power plants—will have some effect on interstate commerce. We disagree with the comment because owners and operators of the Texas sources subject to this regional haze FIP are engaged in economic activities (the operation of coal-fired power plants) that cause haze-forming air pollution to travel into other states and substantially affect interstate commerce. Each of the Federal Class I areas receives substantial numbers of visitors, including those from out-of-state, each year. Our regulation of these sources of visibility impairing pollution pursuant to the CAA is squarely within the Federal government's Commerce Clause authority. Our regulation of emissions from coal-fired power plants, which cause and contribute to regional haze in multiple states, to fill a gap left by disapproval of a SIP seeks to fulfill

[78] 79 FR 74838 (''[W]e believe that individual benefits were masked by the inclusion of those controls with little visibility benefit that only served to increase the total cost figures.'')

[79] On this point, it also bears noting that Texas' EGUs operate within a state that is at least three times larger than 38 of the states and a full 60% larger than California, the next largest of the contiguous states.

[80] See for instance 70 FR 39171: ''You should evaluate scrubber upgrade options based on the 5 step BART analysis process.''

[81] CAA section 110(a)(2)(E); 42 U.S.C. 7410(a)(2)(E) (requiring assurances of ''. . . adequate, personnel, funding, and authority under State . . . law to carry out'' SIP requirements); Section 2.1(c) of appendix V to 40 CFR part 51.

the regional haze provisions of the CAA, which in turn are constitutional exercises of Congress's power under the Commerce Clause of the U.S. Constitution.

Second, the commenter contends that our Regional Haze Rule suffers from a non-delegation problem. We disagree. The CAA's visibility provisions provide extensive intelligible principles that guide our exercise of discretion. CAA section 169A, as well as other provisions, required us to promulgate regulations directing the states to revise their SIPs to include emission limits and other measures as necessary to make ''reasonable progress.'' [82] Congress defined reasonable progress to be the consideration of four statutory factors, including cost and energy impacts.[83] Congress also directed our regulations to require BART for a specific universe of older sources, and again provided a set of statutory factors states must consider when determining what control technology constitutes BART.[84] These two sets of statutory factors, among several other provisions and definitions in CAA section 169A that provide specific instructions to EPA and states, clearly constitute intelligible principles under the framework set forth in the case cited by the commenter. The Regional Haze Rule, which we promulgated pursuant to the statutory mandate in CAA section 169A, reflects these same intelligible principles and has been upheld by the D.C. Circuit Court.

Third, a commenter claims that the EPA has commandeered the states in violation of the Fifth Amendment of the Constitution. We disagree with this comment. The U.S. Supreme Court has held that, ''the Federal Government may not compel the states to implement Federal regulatory programs.'' [85] The CAA in no way compels a state to implement Federal regulatory programs. The CAA, instead, authorizes the EPA to promulgate and administer a FIP if a state fails to submit an adequate SIP.[86] The EPA will implement the FIP, with no actions required by any part of the government of Texas.

H. Stay of Effective Date, Consolidated Appropriations Act, and Executive Orders 13405 and 13211

Comment: Any final action should stay the effectiveness and effective date of the action or establish a delayed effective date to allow for ''judicial vetting'' of EPA's determinations.

Response: We have reviewed these requests and do not agree that taking these measures with our final rule would be appropriate. Our final rule initiates the effectiveness of the action to ensure the requirements of the CAA are carried into effect. This result is consistent with the CAA and with the regulatory rulemaking process more generally. We note that CAA section 307(d)(7)(B) allows, in limited fashion, for a stay of effectiveness of a rule during any proceeding for reconsideration, but this authority presupposes the rule's finalization, the rule's effectiveness, and the filing of an administrative petition for reconsideration. Making the rule effective also ensures the finality of the action ''for purposes of judicial review.'' *See* CAA section 307(b). Nothing in our response here limits or inhibits the filing of a petition for judicial review or the powers of a reviewing court.

Comment: EPA should update both its atmospheric modeling platforms as part of the upcoming Appendix W rewrite and the cost manual in order to support reasonable future assessments of visibility impacts and appropriate control strategies consistent with the Committee Report associated with the Consolidated Appropriations Act of 2014.

Response: As a general matter, wherever possible, we intend to follow the committee report instructions associated with the Consolidated Appropriations Act of 2014, even where not specifically incorporated by reference into the CAA itself. We are currently working to update our ''Guideline on Air Quality Models'' in appendix W to part 51 of title 40, Code of Federal Regulations, and we proposed updates on July 29, 2015. Also, as of the date of responding to this comment, we have proposed updates to chapters within our Control Cost Manual.

Comment: One commenter stated that if we change the final rule to not include SO_2 reductions at one of the affected facilities, we must conduct an analysis under Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks. Another commenter suggested that polluters need to reconsider a business model that burdens low income communities, especially those with minority populations, with the effects of air pollution, and urged that EPA is accountable to low income, underserved, and vulnerable communities in Texas that are constantly being ignored.

Response: As explained more fully in a later section of this document and in our RTC document, Executive Order 13045 does not apply. To the extent our final rule limits emissions of SO_2, this will also increase the level of environmental protection and beneficial effect on human health for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

Comment: EPA has improperly avoided analyzing and evaluating potential energy-related impacts of the proposed rule on reliability and prices of electricity in Texas and the ERCOT region, despite Executive Order 13211 requiring such evaluation. The EPA is using a loophole in Executive Order 12866, despite meeting the cost and effect criteria and the order's purpose, to avoid evaluating the potential energy impacts of the proposed action as required by Executive Order 13211. Moreover, the proposed rule is inconsistent in claiming the rule is both of national scope and effect and not of general applicability. Additionally, CAA section 169A(g) requires that the state and the Administrator consider the energy and non-air quality environmental impacts of compliance when determining BART. Finally, citing ERCOT's recent report, the proposed FIP affects a significant portion of Texas' base load power generation fleet and the potential for adverse effects from the EPA's proposed rule is actually increased, not lessened, because the costs and impacts of the rule are focused within a smaller region. Therefore, regardless of Executive Order 13211 applicability, EPA should evaluate and consider the impacts of the proposed FIP on the reliability and price of electricity in Texas.

Response: As explained more fully in a later section of this document and our RTC document, Executive Order 13211 does not apply as this action is not a rule of general applicability under Executive Order 12866. Our determination regarding this is not inconsistent with our determination that the rule is of national scope and effect, as these are different determinations that we fully evaluated under their respective standards, and are not directly comparable. Additionally, we did consider the commenter's concerns regarding grid reliability and price of electricity, as discussed more fully in the Grid Reliability section of this document, so we did not ''utilize a loophole'' in the applicability provisions of Executive Order 12866 to

[82] 42 U.S.C. 7491(b)(2).

[83] *Id.* at 7491(g)(1).

[84] *Id.* at 7491(b)(2)(A) & (g)(2).

[85] *Printz* v. *United States,* 521 U.S. 898, 925 (1997).

[86] 42 U.S.C. 7410(c)(1)(A).

avoid consideration of the concerns raised in this comment.

I. Controls in Addition to CAIR/CSAPR, and CSAPR Better Than BART

Comment: Texas is the only state included in CSAPR for which EPA is issuing a FIP for reasonable progress. EPA proposed to issue a FIP that would replace Texas' reliance on CAIR to satisfy the BART requirement for EGUs with reliance on CSAPR. But EPA's proposal otherwise disregarded CSAPR's more stringent SO_2 and NO_X emission budgets for Texas, as compared to CAIR, as well as the additional trading restrictions imposed by CSAPR. For all other states that have relied on either CAIR or CSAPR, EPA found such participation to satisfy the states' reasonable progress obligation for the first planning period for those sources. EPA should not require controls beyond BART for BART sources because it is reasonable to conclude that no additional emissions controls are necessary for BART sources in the first planning period.

Response: As discussed elsewhere in this document, although we proposed to rely on CSAPR to address the BART requirements for EGUs in Texas, we are not finalizing that proposed action. On July 28, 2015, the D.C. Circuit Court issued its decision in *EME Homer City*[87] upholding CSAPR but remanding without vacating a number of the Rule's state emissions budgets, including Texas' budgets. We are currently in the process of determining the appropriate response to the remand, and the extent to which the SO_2 and NO_X CSAPR budgets for Texas will change is currently unknown. The uncertainties regarding the CSAPR SO_2 budgets are particularly relevant given our rule's focus on this pollutant.[88] Even assuming, however, that *EME Homer City* had not invalidated the CSAPR NO_X and SO_2 budgets for Texas and that we were taking final action to address the BART requirements through reliance on CSAPR, we do not agree that we are prohibited from requiring controls beyond CSAPR for purposes of reasonable progress. We noted in 2005 that the determination that CAIR provided for greater reasonable progress than BART did not answer the question of whether more than CAIR would be required in a regional haze SIP.[89]

Furthermore, such a simplistic comparison ignores the meaningful differences between Texas and the other states cited by commenters in which no controls on NO_X and SO_2 from EGUs beyond CSAPR were required. As explained in our proposed rulemaking, allowing Texas to rely on CSAPR to meet its reasonable progress obligations is not appropriate, considering the large impact of Texas sources on visibility at Big Bend, the Guadalupe Mountains, and the Wichita Mountains and the availability of cost-effective controls even after considering CAIR/CSAPR's previously projected reductions.

Comment: EPA should disapprove Texas' determination to exclude all BART-eligible sources from being subject to BART and EPA should do source by source BART for NO_X. Further, if EPA does not finalize the proposed controls for reasonable progress, then EPA should do source by source BART for SO_2. EPA's proposal to rely on CSAPR as an alternative to BART is unlawful for three reasons. First, EPA's proposal exempts sources from BART requirements without complying with the statutory prerequisites for such an exemption. Second, even if EPA could relieve the sources of the obligation to install BART controls, the ''Better than BART'' rule upon which EPA relies is flawed. Third, the ''Better than BART rule'' is no longer valid given the substantial changes in CSAPR allocations and compliance deadlines.

Response: As discussed above, we are not finalizing our proposed action to rely on CSAPR to address BART due to the partial remand of CSAPR in *EME Homer City.* We will address the question of appropriate SO_2 and NO_X BART limits for EGUs in Texas in a future rulemaking. Comments concerning the appropriateness of CSAPR as an alternative for BART in Texas are not relevant to this action. Additionally, we are finalizing the proposed controls for reasonable progress. Therefore, the comment that we should do source-by-source BART for SO_2 if the reasonable progress controls are not finalized is moot.

J. Installation of Controls Beyond the First Planning Period

Several comments assert that our FIP authority is limited to ''filling the gaps'' in a state's SIP submission. These commenters further contend that our FIP authority is limited by the scope of the SIP submission. Because the required reasonable progress goals should be met at the conclusion of the first planning period, the commenters' argument continues, our FIP authority is likewise limited to those controls that can be implemented by 2018. We disagree. Our authority to use a FIP to address a ''gap'' or ''inadequacy'' in a SIP refers to a ''gap'' in the plan's coverage of requirements contained in the statute and regulations, and is not limited to the specific ''gap'' left by the disapproved portions of the scope of action covered in the state's SIP submission, as commenters suggest.[90]

In this action, we are determining whether Texas has addressed the regional haze requirements set forth in the CAA and our implementing regulations. Our FIP determines that under a proper assessment of reasonable progress factors, additional controls for some sources in Texas are warranted for the first planning period. Regulatory delays created by a complex Texas submission and EPA actions regarding the state's regional haze requirements, including the time needed for EPA to assess the complex 2009 submission and the thousands of comments received on our proposed action, cannot provide an exemption from the CAA requirement to address regional haze. Nor can regulatory delays make additional delays excusable when the requisite CAA analysis concludes the controls are warranted at the earliest opportunity to make reasonable progress. Additionally, there is nothing in the CAA or the regional haze rules that constrains our FIP authority to only those controls that can be installed in the first planning period. While reasonable progress goals reflect that degree of visibility improvement attainable during the first planning period (which extends to 2018), as was indicated in our proposal, the long-term strategy requirements of the program by their very nature look beyond these interim goals to the state's ''long term'' approach to addressing regional haze and may include control measures and accompanying visibility improvements that extend beyond the first planning period.[91] The commenter's concerns center upon controls that are not accounted for in the numerical reasonable progress goals, but rather as we acknowledge, are part of the long-

[87] *EME Homer City Generation* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

[88] ''In short, EPA's 2014 SO_2 emissions budgets for Texas, Alabama, Georgia, and South Carolina require each of those States to reduce emissions by more than the amount necessary to achieve attainment in *every* downwind State to which it is linked. The reductions on those four States are unnecessary to downwind attainment *anywhere.* Those emissions budgets are therefore invalid.'' *EME Homer City,* at 129 (*citing EME Homer,* 134 S. Ct. 1584, 1608–9 (2014)) (internal quotations omitted).

[89] 70 FR 39104, 39143.

[90] See CAA Sections 110(c) and 303(y).

[91] 79 FR 74874, citing Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, Section 5.2. By statute, the long-term strategy for making reasonable progress may extend ''ten to fifteen years.'' CAA Section 169A(b)(2)(B); 42 U.S.C. 7491(b)(2)(B).

term strategy and needed for reasonable progress.

Comments also asserted that our proposed FIP disregards the ''time necessary for compliance'' factor of the reasonable progress analysis. As we discuss in detail in the RTC document, we are required by regulation to ''*consider*'' time necessary for compliance when establishing reasonable progress goals, and we satisfied this requirement by proposing reasonable progress goals that account only for those controls that can be fully installed within the first planning period, as is consistent with our Reasonable Progress Guidance.[92] For the scrubber retrofits that may require up to five years to fully install, we exercised our authority to propose a long-term strategy including emission limits that require controls that may not be operational during the planning period and therefore are not included in the reasonable progress goals. We also note that we expect that design and construction of the scrubber retrofits will begin within the planning period, in order to meet the five-year compliance date. This approach is consistent with other FIPs issued by EPA and takes into account the time engagement required to promulgate a FIP within a planning period and the significance of the CAA's contemplated ten to fifteen year long-term strategy.

Other comments asserted that our requirement for controls outside of the planning period is inconsistent with previous FIPs. We disagree with this comment. First, we have proposed or promulgated FIPs requiring controls with compliance dates beyond the first planning period, including FIPs for Arkansas and Wyoming. The Oklahoma FIP includes requirements beyond the first planning period as the result of a stay during litigation. Further, we have applied the requirements of the regional haze program to ensure consistency in the requirements upon the sources subject to regulation. If we were to follow the commenters' arguments and fail to require application of necessary controls on Texas sources past the first planning period, those sources would be treated inconsistently with sources in other states that were required to apply the controls necessary to meet the CAA's requirement to address regional haze. We cannot agree to inconsistent application of necessary controls at Texas sources due to delays in promulgating a FIP or time-intensive installation schedules, but rather, we address these program requirements through the long-term strategy, which, as discussed above, allows for control strategies that can begin design and construction but cannot be completed within the planning period.

Several comments assert that our regulatory delays preclude EPA from imposing certain emission limitations that may not be achieved within the first planning period. Despite any delays in finalizing our action on the Texas SIP or in promulgating the FIP, we have a duty to act on the SIP and a duty to fulfill the regional haze requirements of the Act, including the authority to promulgate a FIP that imposes the controls required by the CAA where a SIP submission fails to do so. This duty and authority is not forfeited or constrained by delays, whatever their cause. We likewise disagree with commenters who consider it inappropriate for controls to be required after the planning period because corresponding visibility benefits may not be realized during the planning period. The fact that benefits of such controls may not be realized within the first planning period does not affect our determination that the controls are necessary nor deprive us of our authority to impose the requirements.

A commenter asserted that all of the controls required under the proposed FIP can be installed within the first planning period. We agree that in some cases scrubber retrofits can and have been installed in less than five years; however, we do not have the information necessary to make that determination for each specific facility included under the proposed FIP. Thus, we proposed an installation timeframe consistent with past successful BART-related scrubber retrofits that, while conservative, ensures the necessary time to install the controls.

K. Cost

We received numerous comments related to the cost analyses we performed to support the seven scrubber retrofits and the seven scrubber upgrades we proposed. These comments were received from both industry and environmental groups, and covered all aspects of our cost analyses.

Some of the comments we received from industry concerning our proposed scrubber retrofits were objections to our use of the IPM cost algorithms that were developed by Sargent and Lundy (S&L) under contract to us. As we discuss in our Cost TSD, we programmed the DSI, SDA, and wet FGD cost. algorithms, as employed in version 5.13 of our IPM model, into spreadsheets.[93] Industry stated these cost algorithms were not accurate enough to warrant their use in individual unit-by-unit cost analyses and that our use of them violated our Control Cost Manual. Others stated the IPM cost algorithms do not consider site-specific costs, or in the case of wet FGD, do not adequately consider wastewater treatment.

In summary, we disagree with these commenters and conclude that the IPM cost algorithms provide reliable, study-level, unit-specific costs for regulatory cost analysis such as required for BACT, BART, and reasonable progress.[94] We received other comments relating to our scrubber retrofit cost analyses, but none of them caused us to revise our scrubber retrofit cost-effectiveness basis. We also received a number of comments that our proposed emission limits were too stringent. We disagree with these comments and present several lines of evidence, including real-world data demonstrating that our proposed emission limits are not only achievable, but are in fact conservative in many cases.

As we discuss in our proposal,[95] our scrubber upgrade analyses were based on information we received in response to our requests under CAA section 114(c). This information was claimed as CBI under 40 CFR 2.203(b). As a consequence, we are obligated to protect the confidentiality of that information while it is subject to such claims, which precludes us from publicly posting this in our docket at regulations.gov. CBI information, while a part of our rulemaking docket, is protected from public disclosure under our CBI requirements. Although we received some public domain comments on our proposed scrubber upgrades, most were claimed as CBI. We analyzed that information, and as we discuss below in our comment response summary, we have modified certain aspects of our analyses. Like our proposed scrubber upgrade cost analyses, our revised scrubber upgrade cost analyses are similarly treated as CBI but are available

[92] See our Reasonable Progress Guidance, page 5–2: ''It may be appropriate for you to use this factor to adjust the RPG to reflect the degree of improvement in visibility achievable within the period of the first SIP if the time needed for full implementation of a control measure (or measures) will extend beyond 2018.''

[93] See discussion beginning on page 3 of our Cost TSD for more information concerning our use of the IPM cost algorithms.

[94] We believe that the IPM cost algorithms provide study level accuracy. See pdf page 17 of our Control Cost Manual: ''[a]''study'' level estimate [has] a nominal accuracy of ± 30% percent. According to Perry's Chemical Engineer's Handbook, a study estimate is '. . . used to estimate the economic feasibility of a project before expending significant funds for piloting, marketing, land surveys, and acquisition . . . [However] it can be prepared at relatively low cost with minimum data.' ''

[95] See discussion beginning on 79 FR 74876, and section 4.5 of our FIP TSD.

for review by the respective facilities. This prevents us from being able to publicly disclose the details of our analyses. Our revised scrubber upgrade analyses changed our proposed cost-effectiveness basis from where all scrubber upgrades were less than $600/ton, to where all scrubber upgrades ranged from between $368/ton to $910/ton. This is well within a range that we believe is cost-effective, given the visibility benefits that will result from the installation of those controls.

Below we present a summary of our responses to the more significant comments we received that relate to our proposed cost analyses.

Comment: We received information from Luminant and NRG claimed as CBI concerning our proposed scrubber upgrades. These companies hired S&L who alleged that we made various errors in our cost analyses and that our proposed SO_2 emission rates were too low. In related comments, Luminant stated that it hired S&L to review our scrubber upgrade cost analyses and, in so doing, it found multiple flaws. S&L states that many of our assumptions are not valid, especially those regarding the accuracy and scope of the CBI estimates we relied upon, our calculation of SO_2 baseline emissions, achievable efficiency, and our calculations of the operating costs. We also received comments from the TCEQ that we should have provided more detail about how we developed the costs for these scrubber upgrades. Earthjustice [96] submitted information concerning previous scrubber upgrades that supports the reasonableness of our assumed control level of 95%.

Response: As explained above, because Luminant and NRG claimed the above information as CBI, we were required to separate out such CBI and respond to it in a separate CBI protected document (organized by claimants). Although this information is a part of our record to this action, we cannot post it to our electronically posted public docket at *www.regulations.gov.* We disagree with the TCEQ that we should have provided more information concerning the cost of the scrubber upgrades we analyzed. Our scrubber upgrade cost information was based on information supplied under CBI claims by the affected facilities in response to requests for information under CAA section 114(a). Accordingly, although this information is still in our docket, and is being used to support our decision making, it cannot be included in our publicly posted docket at *www.regulations.gov* and can only be disclosed by us to the extent permitted by CAA section 114(c) and our regulations governing treatment of CBI as set out at 40 CFR part 2, subpart B.

We generally disagree that our analysis was flawed. We specifically used information provided by Luminant's and NRG's own independent contractors (*e.g.* S&L) whom they hired to assist in providing information responsive to our CAA section 114 requests. We have reviewed the scrubber upgrade cost analyses performed by S&L that were provided with separate comments from NRG and Luminant and adopted S&L's methodology, which mainly concerned operational costs. However, we noted many errors and undocumented cost figures in S&L's analyses. We corrected these errors and rejected some of S&L's undocumented assertions and/or costs. Nevertheless, in order to produce a conservative scrubber upgrade cost analysis and set many of the issues that Luminant raises aside, we incorporated many of Luminant's cost items. The resulting costs for Luminant's scrubber upgrades increased slightly, resulting in a range of $368/ton to $910/ton for all of the scrubber upgrades, but remained well within a range that we believe is cost-effective, given the visibility benefits that will result from the installation of those controls.

Comment: San Miguel stated that it should not be included in our FIP, but if it was included, its SO_2 emission limit should be increased and its emission averaging period should be changed from a monthly basis to an annual basis.

Response: We have reanalyzed the monthly emission data for San Miguel, including calculating the 30 BOD average for it since it completed its scrubber upgrades. We reaffirm our proposed conclusion that based on the coal that San Miguel has historically burned over the last several years, and its demonstrated ability to remove 94% of the sulfur from that coal, that it should be able to meet our proposed emission limit of 0.60 lbs/MMBtu based on a 30 BOD average. We also believe additional spare capacity exists in San Miguel's scrubber system. However, similar to what we discussed in our proposal,[97] and in section I.B.3.b, of this action, we offer San Miguel the opportunity to install a Continuous Emissions Monitoring System (CEMS) at its scrubber inlet and demonstrate that it maintain at least 94% control based on a 30 BOD average. Our RTC document has more details on these options.

Comment: The TCEQ summarized its approach to analyzing controls for reasonable progress and stated that its approach was adequate. In particular, the TCEQ defended its use of a $2,700/ton threshold for control, which it stated was used in CAIR, and its decision that the cost of the controls was not worth the improvement in visibility.

Response: As we note in our proposal,[98] we disagree with the TCEQ that its approach to reasonable progress was adequate. We note that to the extent that TCEQ's cost threshold was reasonable, our estimate of the costs of the controls required by our FIP fall below the $2,700/ton threshold used by Texas, with one exception. For the one source with estimated costs exceeding $2,700/ton, the costs of controls is less than the $2,700 threshold selected by Texas, after adjusting for the escalation of costs over time.[99] The TCEQ's potential control set consisted of a mix of large and small sources, located at various distances from Class I areas, with a large geographical distribution. Some controls would likely result in significant visibility benefits, but some would result in little to almost no visibility benefits. Because it only estimated the visibility benefit of all the controls together and weighed those benefits against the total cost of controlling the mix of sources under consideration, the TCEQ was not able to assess the benefit of controlling individual sources or the subset of sources with significant, and potentially cost-effective, visibility benefits. Larger individual benefits were obscured by the inclusion of those controls with little visibility benefit that only served to increase the total cost figures. As a result, despite its own conclusions that controls below $2,700/ton were available for a number of sources,[100] and CENRAP's modeling results that Texas point sources impact the visibility at the Wichita Mountains several times more than the impacts from Oklahoma's own point sources, Texas ultimately decided to not control these sources.

[96] When we refer to Earthjustice, we also mean the National Parks Conservation Association and the Sierra Club as these groups collectively submitted comments. These groups also contracted with independent technical experts including Ms. Victoria Stamper, Dr. H. Andrew Gray, and Dr. George D. Thurston.

[97] See discussion beginning on 79 FR 74885.

[98] 79 FR 74838.

[99] Conservatively escalating the $2,700/ton value from when it was first developed for the CAIR rule, which was finalized on March 10, 2005, to the time of our analysis, which was conducted in 2014, results in a value of $3,322/ton (*i.e.,* the Chemical Engineering Plant Cost Index for 2005 = 468.2, and that for 2014 = 576.1; $2,700 × 576.1/468.2 = $3,322).

[100] See Appendix 10–1 of the Texas Regional Haze SIP. For example, the costs of scrubbers for Big Brown (Acct No F10020W) Units 1 and 2 were determined to be $1,573 and $1,540, respectively.

Furthermore, Texas' analysis did not include consideration of scrubber upgrades on key sources with large visibility impacts and potentially very cost-effective controls. Texas' flawed analysis prevented it from properly considering whether reasonable controls were available on the subset of sources or group of sources with the largest visibility impacts. Although our Regional Haze Rule and our Reasonable Progress Guidance provide states with latitude in approaching reasonable progress, states must still meet the requirements of the CAA and Federal requirements. We conclude that Texas' approach was flawed and this fundamental critical flaw in Texas' analyses cannot be approved.

Comment: Earthjustice agreed with our conclusion that Texas' approach to reasonable progress obscured potentially cost-effective controls. Earthjustice also generally supported our reasonable progress/long-term strategy analysis, concluded that in comparison with other actions our costs were conservative (high) but reasonable, but stated that additional units should have been proposed for control. Earthjustice criticized our emission baseline methodology of eliminating the high and low values from the 2009–2013 emission data and averaging the resulting three years of data. It reanalyzed our scrubber retrofit cost-effectiveness calculations for Big Brown, Monticello, Coleto Creek, Welsh Units, W. A. Parish, and Tolk Units 1 and 2, using a straight 5-year average of the 2009–2013 emissions, and concluded our costs were too high. Earthjustice generally stated our assumed DSI SO_2 removal efficiency was too high. Earthjustice believed we should have considered coal blending with low sulfur coal and lignite drying. Earthjustice also provided an analysis for Novel Integrated Desulfurization (NID). Earthjustice concluded that our calculated cost-effectiveness values were too high, and that NID was also a viable alternative to SDA and wet FGD and offered some advantages.

Response: We confirm that one of our intentions in performing our cost analyses was to conservatively estimate many of the individual cost parameters (tending toward a higher cost estimate) and demonstrate that even doing this, our proposed scrubber upgrade and scrubber retrofit cost analyses were cost-effective. We believe we have met that goal. We disagree with Earthjustice that we should have proposed additional units for control and respond to this comment in the Modeling section of this document and the RTC document. We continue to believe our five-year emission baseline methodology, with the elimination of the highest and lowest emission years, is appropriate. The BART Guidelines, which we drew upon for some of our reasonable progress/long-term strategy analyses, state that the emission baseline, ''should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions based upon actual emissions from a baseline period.''[101] We eliminated the high low values from the 2009–2013 emission to better address issues such as variations in coal sulfur content, capacity usage, operations, etc., and make the baseline more representative of typical, recent plant operations. The difference between our baseline calculations and a straight 2009–2013 average is small and would not change our conclusion that the scrubber upgrades we proposed are very cost-effective. We also believe our DSI analysis strategy was appropriate. We analyzed DSI at both a 50% control level that is likely achievable for all the units, and the highest level of control the units were potentially capable of achieving, with design factors and costs adjusted accordingly, thus bracketing the problem.

We do not believe there is enough information concerning NID installations at this time to warrant an intensive analysis of that technology. Given the vendor advertised control efficiency of NID, the selection of NID technology rather than wet FGD would not change our proposed SO_2 limits. With the exception of Tolk, the non-air quality environmental impacts of a NID and wet FGD are similar and do not warrant eliminating either technology. We proposed that the units in question meet certain SO_2 emission limits, but we did not mandate a specific control technology in doing so. Consequently, any unit, including the ones discussed herein, may elect to use a NID to achieve our required SO_2 emission limits.

With respect to the comment that we should have considered blending the coal used at the units with low sulfur coal, we note that most of the units in question either burn lower sulfur Powder River Basin (PRB) coal or they blend it with lignite. We do not believe we have the necessary technical information (*e.g.,* fuel sulfur content, availability, cost, contractual information, etc.) to properly consider fuel blending or fuel switching. Nevertheless, the emission reductions achieved by switching to cleaner coal are much less than the emission reductions anticipated due to the implementation of the required controls. We agree that in some circumstances coal drying can be a viable technology for improving boiler efficiency and, in the process, reduce emissions because less coal is burned to achieve the same heat input to the boiler. However, we are not required to consider every potential technology under the reasonable progress and long-term strategy provisions of the Regional Haze Rule, which applies to the analysis in question. We considered both SDA and wet FGD, and the next most promising SO_2 removal control, DSI. Were we to have considered coal drying, it would have ranked below DSI in its ability to remove SO_2.

Comment: Luminant provided general objections to our cost analyses and stated our analysis relies entirely on a cost-per-ton metric but ignores what it considers the more meaningful cost-per-deciview metric.

Response: Luminant's general cost comments are addressed with specificity in the cost section of our RTC document. We reject Luminant's contention that we should have used the $/dv metric, a contention we also rejected and addressed in our Oklahoma FIP.[102] We note that to use the $/dv metric as the main determining factor would most likely require the development of thresholds of acceptable costs per deciview of improvement for both single and multiple Class I analyses. In *Oklahoma* v. *EPA,* the Tenth Circuit Court recognized our authority to use a different metric when promulgating a FIP.[103]

Comment: S&L cited to capital costs at Monticello 3 and Sandow 4, including spray headers and mist eliminators, that we mistakenly removed from our scrubber upgrade cost analyses.

Response: S&L is correct that we did in fact remove these capital costs from our scrubber upgrade cost analyses because we noted these costs were included in a 2013 Use Determination Application to the TCEQ, which identified that new replacement tower spray nozzles and mist eliminators had been installed. We wrongly assumed

[101] 70 FR 39167.

[102] Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011, pdf 116.

[103] ''When promulgating its own implementation plan, [EPA] did not need to use the same metric as Oklahoma. The guidelines merely permit the BART-determining authority to use dollar per deciview as an optional method of evaluating cost effectiveness.'' *Oklahoma* v. *EPA,* 723 F.3d 1201, 1221 (10th Cir. 2013).

that after having identified that its scrubber system could be upgraded cost-effectively, and having performed some of those modifications, Luminant had installed new upgraded spray headers and nozzles rather than replacing its worn out spray header and nozzles with the less efficient original design. However, based on the comment received on this, we added these costs back into our updated scrubber upgrade cost analyses and the result was a very minor increase in the cost-effectiveness value (higher $/ton). This did not affect our conclusion that upgrading the scrubbers for these units is very cost-effective.

Comment: S&L states that in escalating costs, we should have assumed its 2006 reports were in 2005 dollars and we should have escalated our costs out to 2015. S&L also objected to our use of a 10% increase to our escalation to account for escalation outside of the customary five-year window, our deletion of Allowance for Funds During Construction (AFUDC), and our deletion of owner's costs. S&L, GLCC, and CCP allege our use of a 30-year life for our scrubber retrofit and scrubber upgrades analyses is inconsistent with our Control Cost Manual. Earthjustice supported our 30-year assumed life.

Response: We agree with S&L that we should have assumed its 2006 reports were in 2005 dollars, and we have made the appropriate correction to our escalation calculations. We disagree that we should have carried our escalation costs forward to 2015, because we used the most recent emission data that was available, for both the cost analyses and modeling, which was 2013 data. As we explain in more detail in the Cost section of the RTC document, based on consideration of the CEPCI cost indices over the 2005–2013 period, we conclude that our approach of adding an additional 10% to our escalated cost is reasonable and likely conservative. As we have noted in a number of previous actions, AFUDC and owner's costs are not allowable under the Control Cost Manual overnight approach.[104] We refer S&L to our response to the scrubber life issue in our Oklahoma FIP in which we supported a 30-year life.[105] Because none of the facilities involved have entered into (or offered to enter into) enforceable commitments to shut down the applicable units earlier, we have continued to use a 30-year equipment life for scrubber upgrades, as we believe that is proper.

Comment: Xcel notes that in performing our dry scrubber cost analysis for Tolk, we failed to consider that there is a general water scarcity in the area with no surface water availability, and that to obtain the additional amount of water necessary to support the operation of dry scrubbers, Xcel would have to attempt to purchase water rights from existing farmers along with a gathering system or look at other costly alternatives. Based on the historical cost of water rights in the area, this is an additional capital cost of approximately $40 million that was not included in EPA's cost estimates. Earthjustice encouraged us to investigate Xcel's water rights, and estimated the cost to purchase additional water rights based on assumptions we used to assess this issue for the Gerald Gentleman facility in Nebraska.

Response: We have conducted an extensive investigation of the issue raised in Xcel's comments, including additional communication with Xcel and the High Plains Water District, in order to clarify some of Xcel's assertions.[106] We conclude that Xcel's asserted water requirements for dry scrubbing are much higher than other similar dry scrubbing installations, and the basis for the disparity is unsupported. As confirmed by our communications with the High Plains Water District and Xcel, we also conclude that Xcel has multiple lines of access to adequate supplies of water sufficient to supply the proposed dry scrubbers (SDA) without the need to buy additional water rights. First, we calculate that water already available at Tolk is almost enough to satisfy the additional water demand of our proposed dry scrubbers. Second, we note that Xcel receives blowdown water from nearby Plant X[107] and that Xcel offered testimony to the Public Utility Commission of Texas that two units in Plant X will retire in 2019 and 2020, which will free up additional water that could be used to satisfy the additional water demand of our proposed dry scrubbers. Third, we believe that Xcel has access to additional unexploited water rights that are more than adequate to supply our proposed dry scrubbers. Lastly, we acknowledge that Tolk's ultimate sources of water, the Ogallala Aquifer, continues to be depleted. However, considering the water needed by our proposed dry scrubbers is by Xcel's own account only approximately 9 to 12% of the total plant's needs, the aquifer's depletion will be a limiting factor on the operation of the plant itself, not on the operation of the scrubbers.

Comment: Xcel alleged that in our cost analysis we failed to consider that our proposed dry scrubbers would (1) end Tolk's sales of its fly ash or require the installation of additional baghouse capacity, and (2) require additional landfill capacity. Xcel also alleged that we did not adequately consider DSI and non-air environmental impacts, and that our assumption of a 30-year operating life is wrong.

Response: We disagree with these comments. Our cost analysis did include an additional baghouse that could be installed upstream of the dry scrubber which can preserve Tolk's existing fly ash sales. Also, our cost analysis included landfill costs, which based on Xcel's own information, are adequate to cover the additional disposal costs. We also believe our DSI cost methodology, in which we bounded the range of expected DSI performance, was adequate and demonstrated that DSI was not cost-effective when compared to the dry scrubber we costed for Tolk. Lastly, as we discuss in our responses to other comments, we believe our assumption of a 30-year life is proper, and we note that in testimony to the Public Utility Commission of Texas (PUCT), Tolk assumed similar equipment lives.

Comment: S&L states we overestimated SO_2 reductions (and thus our cost-effectiveness calculation was too low) for scrubber upgrades due to our SO_2 baseline methodology in which we eliminated the high and low annual average values from 2009–2013 and averaged the remaining three yearly values. Earthjustice stated we overestimated our cost-effectiveness calculations for our scrubber retrofits in part due to our SO_2 baseline methodology. Earthjustice stated it would have been more appropriate to use a five-year annual average emissions baseline, five-year annual average SO_2 rate in lb/MMBtu, and five-year average gross heat rate and MW-hrs generated, based on data from 2009 to 2013.

Response: We disagree with the commenters. As we note in our proposal, we used the BART Guidelines for some aspects of our analysis and believe our methodology is in agreement

[104] See for instance our ''Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma RH and Visibility Transport Federal Implementation Plan,'' Docket No. EPA–R06–OAR–2010–0190, 12/13/2011.

[105] Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma RH and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011. See discussion beginning on page 36.

[106] Please see our docket for inclusion of this communication, which are in the form of emails transmitting letters and other information.

[107] ''Plant X'' is the actual name of a nearby EGU also owned by Xcel.

with the relevant language in that regard.[108] We calculated our baseline SO_2 emissions by first acquiring the 2009 to 2013 emissions as reported to us by the facilities in question. This is reflective of the actual emissions from the underperforming scrubber systems installed at the units in question. We then calculated the uncontrolled SO_2 emissions by acquiring U.S. Energy Information Agency coal usage data. We used these two figures to calculate the level of control for each year. In so doing, we eliminated the highest and lowest annual emission values from 2009–2013 to better address the issues S&L raises in its other comments (variations in coal sulfur content, capacity usage, operations, etc.) and to make the baseline more representative of typical, recent plant operations. The difference between our baseline calculations and a straight 2009–2013 average is small and does not change our proposed conclusion that the scrubber upgrades we proposed are very cost-effective.

Comment: S&L stated that our assumption that wet FGD retrofits can achieve 98% reduction or a controlled SO_2 emission rate of 0.04 lb/MMBtu is unrealistic and cannot be sustained on a continuous, long-term basis. Earthjustice stated that our assumed scrubber retrofit emission rates were not stringent enough.

Response: We disagree with S&L. First, we note that vendors routinely guarantee SO_2 emission limits at least as stringent as, or more stringent than, what we have proposed. We have also conducted extensive analysis of a number of SO_2 scrubber retrofits in which we have plotted their 30 BOD SO_2 emission limits.[109] Of the units we analyzed, 13 retrofit units have guaranteed control efficiencies of 95% to 99%, with eight of them guaranteed at 98% to 99%. With one exception, these eight units are achieving 98% to 99% SO_2 control, when calculated using a very conservative method we have adopted. We also demonstrate that units similar to the ones in question are able to continuously sustain SO_2 limits lower than what we have proposed for at least one year, and in some cases much longer. For instance, three of the units have achieved a maximum 30-day BOD equal to or less than our proposed SO_2 emission limit for scrubber retrofits of 0.04 lb/MMBtu:

- Scherer Unit 2: 0.01 lb/MMBtu based on 485 data points [110]
- Iatan Unit 1: 0.02 lb/MMBtu based on 2,004 data points
- Boswell Energy Center: 0.03 lb/MMBtu based on 1,881 data points

Our technical conclusions are also consistent with past judicial findings regarding achievable removal efficiencies and control rates, including conclusions in the already five years past case of United States v. Cinergy Corp., 618 F. Supp. 2d 942, 947 and 961–962 (S.D. Ind. 2009).[111] Thus, we disagree with S&L that our proposed scrubber retrofit SO_2 emission limits are not realistic or maintainable on a long-term basis. We agree with Earthjustice that it may be possible that many of the scrubber retrofit units can achieve greater control efficiencies than we proposed. Greater control efficiencies would result in a more favorable cost-effectiveness (lower $/ton) and more visibility improvement. This is another area in which we strove to be conservative in our analyses in order to demonstrate that even with many conservative cost assumptions the scrubber retrofits we proposed are cost-effective.

Comment: S&L stated that our use of the IPM cost algorithms was not in keeping with our Control Cost Manual and because of the limited number of site-specific inputs, the IPM cost algorithms provide order-of-magnitude control system cost estimates, but do not provide case-by-case project-specific cost estimates meeting the requirements of the BART Guidelines, nor do the IPM equations incorporate the cost estimating methodology described in the Control Cost Manual.

Response: We disagree with S&L. As we stated in our Cost TSD, we relied on the methods and principles contained within the Control Cost Manual, namely the use of the overnight costing method. In fact, the Control Cost Manual does not include any method for estimating the costs of any of the SO_2 control methods evaluated in this action. We note our strategy of relying on a publicly available control cost tool is similar to the strategy the states themselves employed in the development of their own SIPs. For instance, as explained in the Texas SIP, the TCEQ used the control strategy analysis completed by the CENRAP, which depended on the EPA AirControlNET tool [112] to develop cost per ton estimates. We have used IPM cost models to estimate BART costs in other similar rulemakings including our Arizona regional haze FIPs,[113] the Wyoming regional haze FIP,[114] and to supplement our analysis in the Oklahoma FIP.[115] S&L used real world cost data to construct its cost algorithms and confirm their validity. These cost models have been updated and maintained since their introduction in 2010 and have been continuously used by us since that time. These control costs are based on databases of actual control project costs and account for project specifics such as unit size, coal type, gross heat rate, and retrofit factor, and they require unit specific inputs such as reagent cost, waste disposal cost, auxiliary power cost, labor cost, gross load, and emission information. We believe that the IPM cost models provide reliable study-level, unit-specific costs for regulatory cost analysis such as required for BACT, BART, and reasonable progress. Lastly, we are confident in the basic methodology behind the S&L cost algorithms such that in our recent proposal for updating the SCR chapter of the Control Cost Manual,[116] we presented an example costing methodology that is based on the IPM S&L SCR algorithms, which were developed using a similar methodology to the wet FGD, SDA, and DSI cost algorithms discussed herein.

Comment: S&L stated that the IPM cost algorithms do not adequately consider site specific information and it cites to a number of possibilities including demolition and relocation of equipment, modifications that may be required to the existing ash handling systems, replacement of the existing induced draft fans or booster fan modifications, modifications/upgrades to the existing auxiliary power system, and labor productivity. S&L criticized our use of a retrofit factor of 1.0 for all units, and stated that the inlet temperature of Big Brown and Monticello units was 360–370 F, which

[108] 70 FR 39167. ''The baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source.'' See also 79 FR 74874.

[109] See our RTC document for much more detail on our analysis, and the file, ''Selected scrubber retrofit efficiencies.xlsx,'' which is in our docket and contains the plots discussed. The performance of each scrubber in our data set is summarized in the file, ''Selected scrubber retrofit efficiencies.xlsx.''

[110] Where ''data point'' represents a valid daily SO_2 monitored value.

[111] While the underlying expert report submitted by the Department of Justice in that case is protected from release under Court order, the testimony of the government expert witness that substantially accords with it, as well as our conclusions in responding to this comment, has been added to our docket.

[112] Our AirControlNET tool is out of date and no longer supported.

[113] 77 FR 42852 (July 20, 2012).

[114] Memorandum from Jim Staudt to Doug Grano, EPA, ''Review of Estimated Compliance Costs for Wyoming Electricity Generating Units (EGUs)—revision of previous memo'', February 7, 2013, EPA–R08–OAR–2012–0026–0086.

[115] 76 FR 81728 (December 28, 2011).

[116] 80 FR 33515.

is above the 300 F assumed value in the IPM algorithms, and would result in a flue gas volume increase of 10%, requiring additional costs.

Response: We note that the IPM cost algorithms, which are derived from real world costs, already have retrofit issues built into them. Our assumption of a retrofit factor of 1.0, which represents an average retrofit difficulty, likely overestimates the costs of some facilities (*e.g.,* Tolk) that have no retrofit issues. We solicited comments on all aspects of our scrubber retrofit cost analyses, but received little of the site-specific information to which S&L cites. Also, S&L provides no documentation for those it does cite. Regardless, these types of issues result in small increases in costs that are well within the required +/−30% accuracy [117] and do not affect cost-effectiveness conclusions due to the conservative nature of our estimates, as demonstrated elsewhere in these responses.

S&L does not provide any documentation to support its contention that the IPM wet FGD cost algorithms are based on a generic scrubber inlet temperature of 300 F. We have researched all available references on this issue and cannot find anything to support this conclusion. Rather, we conclude that the IPM cost algorithms estimate costs from regression equations based on actual completed projects. There are a number of factors other than temperature that affect the volume of gas flow that passes through a scrubber system. These include the amount of in-leakage in the system (which often increases due to inefficient or worn seals in the air preheater) and the type and characteristics of the coal that is being burned. This is made clear by examination of two of the scrubber retrofit reports for Big Brown (one of the units S&L cites), which were issued by S&L in 2004 and 2007, we received in response to our CAA Section 114 requests.[118] The 2004 report indicated that the design flue gas flow rate at the scrubber inlet was approximately 19.7% less than that in the 2007 report. However, both reports indicated that the reference temperature at the inlet was 370 °F—the same temperature S&L references in its comment—and both were at the same pressure. It is clear there are many variables that impact flow beyond temperature. We therefore conclude that S&L has not documented its temperature assertion, available information does not support it, and its temperature inference is too simple to properly characterize the situation. In any case, even assuming a 10% increase in gas flow rate, would not result in a significant enough increase in cost to impact our decision regarding these facilities.

Comment: S&L states the IPM cost module includes costs only for minor physical and chemical wastewater treatment. However, wastewater treatment standards proposed by EPA, and anticipated to be published as a final rule in 2015, will likely require significantly more advanced treatment of FGD wastewaters. S&L states this could add $30–$40 million to the cost of a retrofit wet FGD control system and we should have included these costs in our estimates.

Response: Because our wastewater treatment rules have not been finalized, and therefore we do not know with certainty whether any additional costs may be incurred, it is not appropriate for us to include those costs in our cost-effectiveness calculations. Even if those costs prove to be substantial, other options are available, including zero liquid discharge systems and the selection of a SO_2 control technology that achieves the emission limit without generating a wastewater stream, such as NID scrubbers, which we believe are capable of achieving our emission limits, and have been selected in some recent installations.[119] In addition, we believe that at least one of the studies that produced actual costs that were used to construct the IPM cost algorithms included wastewater treatment costs. Lastly, we did not receive any documentation from any facility to substantiate any wastewater treatment costs, including the figures that S&L cites.

Comment: Luminant and others allege we did not properly balance costs and visibility benefit and stated we should have used the dollar per deciview ($/dv) metric.

Response: We disagree that the $/dv metric is more meaningful than our use of the $/ton metric in conjunction with our consideration of the visibility benefit from the installation of controls. As we noted in our Oklahoma FIP,[120] use of the $/dv metric would most likely require the development of thresholds of acceptable costs per deciview of improvement for BART determinations for both single and multiple Class I analyses, and we have not developed such thresholds. This decision by EPA not to use this metric in a FIP was reviewed and upheld in *Oklahoma* v. *EPA* by the Tenth Circuit Court.[121] We see no reason to deviate from our view of the dollar per deciview metric in the reasonable progress context that applies here. We also note that the use of the dollar per deciview metric is further complicated in the present case due to our use of CAMx modeling. As we discuss in our proposal and elsewhere in the Modeling section of this document and in Modeling Sections of our RTC document, there is no way to directly compare the CAMx modeling we used in our proposed Texas/Oklahoma FIPs with previous CALPUFF modeling results because of differences in the models, model inputs, and metrics used.[122]

L. Cost Versus Visibility Benefit

Comment: Our proposed controls would not result in perceptible visibility improvements and thus should not be finalized. Commenters also stated that the required controls result in miniscule or insignificant visibility improvements.

Response: We disagree that the Regional Haze Rule requires that controls on a source or group of sources result in perceptible visibility improvement.[123] As we noted in our TSDs, we derived much of our approach to the analysis of control costs and visibility impacts from the BART Guidelines.[124] In a situation where the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant, as explained by the Regional Haze Rule: [125]

> Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area.

We accordingly disagree that selection of control measures should be contingent upon perceptible visibility improvement. As we stated in our previous rulemaking addressing the BART determinations in Oklahoma: [126]

[117] Control Cost Manual, p. 2–3.

[118] LUMINANT_000277496.pdf and LUMINANT_REGHAZ_1–000001183 to –000001257.pdf.

[119] We recently proposed approval of NID as BART for the Flint Creek Unit 1 in Arkansas (80 FR 18944). Other recent installations include the Homer City Units 1 and 2, Boswell Unit 4, Brayton Point Unit 3, and Indian River Unit 4.

[120] Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011, pdf 116.

[121] *Oklahoma* v. *EPA,* 723 F.3d 1201, 1221 (10th Cir. 2013).

[122] See our FIP TSD, page A–35 and modeling section of the RTC document.

[123] It is generally recognized that a change in visibility of 1.0 deciview is humanly perceptible.

[124] See the discussion in our FIP TSD, beginning on page 6.

[125] 70 FR 39129.

[126] 76 FR 81739.

Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to automatically rule out additional controls where the improvement in visibility may be less than 1.0 deciview or even 0.5 deciviews. A perceptible visibility improvement is not a requirement of the BART determination because visibility improvements that are not perceptible may still be determined to be significant.

Thus, in our visibility improvement analysis, we have not considered perceptibility as a threshold criterion for considering improvements in visibility to be meaningful. Rather, we have considered visibility improvement in a holistic manner, taking into account all reasonably anticipated improvements in visibility and the fact that, in the aggregate, improvements from controls on multiple sources will contribute to progress towards the goal of natural visibility conditions. Visibility impacts below the thresholds of perceptibility cannot be ignored because regional haze is produced by a multitude of sources and activities which are located across a broad geographic area. In this action, as discussed below, we found that the required cost-effective controls reduce visibility impairment from those sources with the largest visibility impacts and result in meaningful visibility benefits towards the goal of natural visibility conditions.

As we have noted and discussed in a separate response to comment, the results of the CAMx modeling we have utilized in our proposal cannot be directly compared to the results of CALPUFF modeling, which has been utilized in the vast majority of other BART and reasonable progress/long-term strategy actions, because of differences in the models, model inputs, and metrics used.[127] Many of these differences result in CAMx modeled visibility impacts and benefits that are much lower than the CALPUFF modeled visibility impacts and benefits relied on in other actions. We disagree with commenters that the visibility benefits from the controls in our FIP are miniscule when the differences in modeling analyses are considered. We observe that several comments that are critical of the extent of the visibility benefits have cited only to benefits from the scrubber upgrades, omitting the total anticipated visibility benefit from all required controls. As we discuss in the FIP TSD and in separate responses to comments, we believe it is necessary to consider visibility benefits based on ''clean'' natural background conditions to assess the full potential for visibility benefits from controls. For example, we estimated that the required controls provide for over 3 dv improvement on 20% worst days at the Wichita Mountains when estimated using a ''clean'' background and result in improving projected visibility conditions by 0.45 dv over the visibility conditions projected by CENRAP and Texas for 2018 and an estimated 0.62 dv improvement in the visibility conditions in 2018 when considering recent actual emissions (values are for 20% worst days). The required controls result in a greater than 5% improvement in overall visibility conditions at the Wichita Mountains on the 20% worst days. We also estimate that the required controls significantly reduce the projected delay in meeting natural visibility, helping to achieve that goal 25 to 30-years earlier at Big Bend and the Guadalupe Mountain by our projections.

The CENRAP modeling showed that Texas sources have significant visibility impacts at the Wichita Mountains and the Texas Class I areas. Our analysis identified those point sources with the greatest contributions to visibility impairment at these Class I areas, and the required controls reduce visibility impairment from those sources with the largest impacts where controls were determined to be available and reasonable for this first planning period. For example, the Monticello and Big Brown facilities are projected to contribute approximately 1.3 Mm^{-1} and 1.2 Mm^{-1}, respectively, to visibility impairment on the 20% worst days at the Wichita Mountains in 2018 based on the CENRAP 2018 projected emissions for these facilities.[128] This is 1.7% and 1.5% of the total visibility impairment at the Wichita Mountains.[129] In our FIP TSD we noted that Texas used an impact extinction level threshold of 0.5 Mm^{-1} (a level less than half of the estimated impact from the Monticello or Big Brown facilities) from all sources in a state as a threshold for inviting another state to consult. Oklahoma selected a threshold of 1.0 Mm^{-1} to determine which states should consult in analyzing visibility impairment at the Wichita Mountains.[130] We also noted that the largest projected contribution from all point sources within a state at the Wichita Mountains after Texas (14%) is Oklahoma at 3.9%. In other words, elimination of all point sources in Oklahoma would result in less visibility benefit (3.9%) than the required controls (greater than 5%). As these facts demonstrate, the identified facilities have significant impacts on visibility conditions. Our technical record makes it equally plain that the required controls reduce impacts from these sources and result in meaningful visibility benefits towards the goal of natural visibility conditions.

Comment: Texas' choice of 0.5 deciview as a benchmark for total visibility improvement (from all sources) to use in its four-factor analysis was reasonable and consistent with EPA guidelines. Under the BART Guidelines, a source ''contributes to any visibility impairment,'' and thus becomes subject to BART, if it has an impact greater than 0.5 deciview at any Class I area. It is thus logical that a level of visibility improvement at a single Class I area that is less than the threshold at which a source becomes subject to BART in the first place would be deemed insignificant for all sources. Indeed, in other regional haze actions, EPA has ''defer[red]'' to states' consideration of the 0.5 deciview threshold. And given Congress's special emphasis on BART sources, Texas' reference to the BART 0.5 deciview threshold to evaluate reasonable progress for the first planning period was conservative, and Texas could reasonably determine that total visibility benefits below the BART threshold for an individual source should be deferred until a later planning period for reasonable progress.

Response: We disagree that Texas' choice of a 0.5 dv visibility threshold, including the manner in which it was applied, was proper in its analysis. First, the quote from our BART Guidelines was based on CALPUFF modeling and not CAMx modeling. Texas extrapolated results from CAMx modeling to estimate the visibility improvement due to all the identified controls in their analysis and then compared it to a threshold developed for CALPUFF modeling. As we state in the FIP TSD and discuss in detail in our response to comments, ''[a] common metric used in BART visibility modeling using CALPUFF is the BART screening level of 0.5 del-dv used by most states for screening out facilities from further BART consideration. However, there are a number of factors that make the two analyses different and not comparable, invalidating the use of the BART screening metric, or other such comparisons with modeled visibility impacts for reasonable progress with

[127] FIP TSD at A–35.

[128] Light extinction, in units of inverse megameters (Mm^{-1}), is the amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, bext, as follows: HI = 10 ln(bext/10).

[129] We note that the impacts from Big Brown and other facilities are even larger when considering recent actual emissions rather than the CENRAP 2018 projected emissions.

[130] See Texas Regional Haze SIP Appendix 4–1: Summary of Consultation Calls and Section X.A. of the Oklahoma Regional Haze SIP.

CAMx or CMAQ.'' [131] In the FIP TSD and in separate responses to comments we discuss the differences in the models, model inputs, and metrics used. Many of these differences contribute to CAMx modeled visibility impacts and benefits for reasonable progress being much lower than the CALPUFF modeled visibility impacts and benefits for BART relied on in other actions. As detailed in the FIP TSD, these differences include the emission rates modeled, the metrics used and whether the deciview impacts are calculated based on ''clean'' natural background conditions or a ''dirty'' background based on degraded visibility conditions projected for 2018. The CALPUFF emissions modeled for BART are representative of maximum emission rates and are therefore usually significantly larger (often in the range of double) than average emission rates used in CAMx modeling for a reasonable progress analysis. One of the main metric differences is that the CALPUFF analysis for BART utilizes a clean background and compares the 8th highest daily maximum impact from the specific source modeled to compare against a 0.5 dv threshold to indicate significant impacts while the visibility benefit that was estimated by Texas to assess the benefit of additional controls for reasonable progress was based on a ''dirty'' or degraded background and average benefits over the 20% worst days observed by the monitor at the Class I area which may or may not be inclusive of the highest impact days from the specific source modeled with CALPUFF for BART. As we discuss in detail in the FIP TSD, because the deciview metric is a logarithmic function of extinction, visibility impacts and improvement calculated based on ''dirty'' conditions are substantially lower than those calculated based on natural ''clean'' conditions.[132] These differences were not considered in Texas' visibility analysis and selection of threshold. We note that Texas did calculate visibility impacts compared to natural visibility conditions and focused on the maximum impact from the modeled sources in their BART visibility analysis, which also relied on CAMx photochemical modeling, to determine the significance of visibility impacts from BART sources for BART screening purposes. However, in assessing the benefit of additional controls for reasonable progress, Texas only considered visibility benefits averaged over the 20% worst days based on a ''dirty'' or degraded background.

The difference between comparing visibility improvement on a ''clean'' and ''dirty'' background is analogous to comparing the change in sound volume that would occur if one person stopped singing loudly in an empty room (clean background) to the change that would occur if one person stops singing loudly in a room crowded with a 100 people singing loudly (dirty background). In both cases, to return the room to natural background sound level, the individual singers must be addressed, but there will be little or no perceptible difference in volume when one singer in the crowded room stops singing. To carry the analogy further, our analysis was designed to identify the Texas sources with the greatest visibility impact (the loudest singers) and address them in this first planning period.

Second, the 0.5 dv threshold in the context of BART is used to assess the maximum total visibility *impact* from all BART units at a facility. If the impact from all the BART sources at a facility is above the threshold, then each BART unit must be evaluated for controls, and therefore the visibility *improvement* anticipated from controls would be less than 0.5 dv on a facility basis, and much less than 0.5 dv on a unit specific basis for BART sources with multiple BART units. For these reasons, the BART threshold of 0.5 dv has no relation to the analysis Texas performed and is inappropriate. We also note that we discuss in the preamble to the final Regional Haze Rule and Guidelines for BART Determinations that a threshold less than 0.5 dv may be appropriate.[133]

Even setting aside Texas' approach of aggregating sources with varying impacts on visibility, the use of a 0.5 dv threshold as applied by Texas for determining the significance of visibility benefits of all controls combined would have ensured that little visibility improvement would occur during this planning period. Texas and Oklahoma acknowledged in their SIP submittals that sources in Texas have a large impact on visibility at the Wichita Mountains; indeed, the visibility impacts at this Class I area from Texas point sources are several times greater than the impacts from Oklahoma's own point sources. Based on CENRAP 2018 modeling, all point sources in Texas combined have a visibility impact in terms of light extinction of 10.58 Mm^{-1} at the Wichita Mountains, which based on ''dirty'' 2018 CENRAP projected background conditions equals a 1.34 dv impact for the 20% worst days. Therefore, adopting the 0.5 dv threshold, using Texas' approach to assessing reasonable progress measures, would require the identification of a control set large enough (and with a correspondingly large total cost) to address over one-third of the total impacts from all Texas point sources, before the visibility benefit would be considered significant. To put this into context, achieving the national goal at the Texas Class I areas will require just over ten deciviews of improvement (approximately a reduction in light extinction of 35 Mm^{-1}), a task that EPA has estimated could reasonably take until 2064. Given that the Regional Haze Rule recognizes that improving visibility is an iterative process that will take many years, declining to establish any additional measures to ensure reasonable progress until Texas could identify a combined set of cost-effective and affordable controls that could achieve 0.5 dv or more improvement is unreasonable, especially when there are cost-effective and affordable controls that result in meaningful visibility improvements towards the goal of natural conditions. We also note that delaying even incremental action during this first planning period pushes out the likely date of achieving natural conditions well past 2064.

Comment: Earthjustice stated that based on its analysis,[134] our proposed FIP would result in billions of dollars in public health benefits. According to Earthjustice, the same pollutants that cause visibility impairment also cause significant public health impacts. Nitrogen oxides are precursors to ground level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function. Similarly, sulfur dioxide increases asthma symptoms, leads to increased hospital visits, and can form particulates that aggravate respiratory

[131] FIP TSD at A–35 and modeling section of the RTC document.

[132] FIP TSD at A–38. ''For example, see Figure A.3–5 which shows the del-dv change due to a 10 (1/Mm) change at both the 2018 projected extinction level [''dirty background''] and the 2064 natural visibility conditions [''clean background''] extinction level for the Wichita Mountains. In the 'dirty background' case the 10 (1/Mm) yields a 1.26 del-dv, whereas in the 'clean background' case the same 10 (1/Mm) yields a 3.86 del-dv improvement. In this example, the 'clean background' situation yields a del-dv improvement 3 times greater than the 'dirty background' for the same level of extinction improvement.

[133] ''. . ., if there were 100 sources each changing visibility by 0.1 deciviews, the total impact would be a 10-deciview change in visibility. In this hypothetical example, all 100 sources would be contributing, in equal amounts, to substantial visibility impairment . . . .'' 70 FR 39121.

[134] Written Report of George D. Thurston Regarding the Public Health Benefits of EPA's Proposed Rulemaking Regarding Texas And Oklahoma Regional Haze, April 18, 2015. Visibility And Health Modeling Technical Support Document to Comments Of Conservation Organizations, prepared by Dr. H. Andrew Gray, April 20, 2015.

and heart diseases and cause premature death. We received many additional comments from groups, private citizens, and a member of Congress that expressed similar public health, welfare, and economic benefits, including ecosystem and tourism benefits.

Response: We appreciate the commenters' concerns regarding the potential health benefits of air pollution controls to improve air quality In Class I areas. We generally agree that the same emissions that cause visibility impairment can also cause health related problems, such as respiratory ones. We agree that although our action addresses visibility impairment, our FIP requires emissions reductions that will result in co-benefits for public health, welfare, and economic benefits. However, for purposes of this action, we are not authorized to specifically consider these types of benefits under the regional haze program.

M. Natural Conditions

Comment: We received comments from the TCEQ and a number of facilities and trade organizations that we should have approved Texas' natural conditions calculations for Big Bend and the Guadalupe Mountains. These commenters state that Texas rightly discarded our default values in favor of its refined estimates in accordance with our guidance. In doing so, these commenters state Texas rightly assumed all the visibility impairment due to coarse mass and fine soil was due to natural causes. Earthjustice stated that Texas did not properly support its calculations. Earthjustice stated that because Carlsbad Caverns in New Mexico (approximately 40 miles from the Guadalupe Mountains) uses the same monitor and we previously approved New Mexico's use of our default natural conditions estimate, allowing Texas to use a different value is inconsistent.

Response: We agree with the commenters that the Regional Haze Rule and our guidance [135] do allow states to develop an alternate approach to estimate natural visibility conditions. However, in adopting an alternate approach, that approach must be fully supported and documented. The TCEQ's analysis and our own observations do support a conclusion that much of the contribution of coarse mass and fine soil to the visibility impairment at the Guadalupe Mountains and Big Bend is due to natural sources. They do not demonstrate that 100% of this contribution is due to natural sources. Like us, the FLMs did not agree with the assumption that 100% of the coarse mass and soil was natural, and pointed to human activity in the region. The FLMs ''suggested that the commission could judiciously use 80 percent as the natural source of coarse and fine dust and 20 percent of coarse and fine dust due to human activity.'' [136] Although the TCEQ presented the FLM's suggestion in its SIP, it ultimately adopted its own estimate, based on its unproven 100% coarse mass and soil assumption. Another option that we noted in our proposal that was open to the states, and the one we used in proposing the natural conditions for the Texas Class I areas in our FIP, was the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[137] This refined version of the IMPROVE equation provided more accurate estimates of some of the factors that affect the calculation of light extinction. The TCEQ started with this refined version of the IMPROVE equation, but further altered some of its parameters concerning the contributions of coarse mass and fine soil, without adequate documentation. We found that the TCEQ's documentation was flawed, but we are under no obligation to follow in the TCEQ's footsteps and make whole its methodology, when we had already provided guidance with default natural visibility conditions, which were further refined by the 2005 IMPROVE Steering Committee. We agree with Earthjustice that it is reasonable to expect that both Carlsbad Caverns and the Guadalupe Mountains should have the same or nearly the same natural conditions. We urge Texas and New Mexico to work together to resolve this issue in the next planning period. Even as we are disapproving Texas' natural conditions estimates, we conclude that our determinations for emissions limitations for EGUs in the FIP for the first planning period would be justified on the basis of natural conditions estimates at either levels in the SIP or the levels in the FIP, given the level of visibility impairment at each Class I area above the different estimates for natural conditions and the availability of cost-effective controls at those sources with the largest visibility impacts that result in meaningful progress towards the natural visibility goal. Furthermore, as we noted in our proposal, based on both our recalculated natural conditions and the Texas natural condition estimates that we are disapproving, Texas' Class I areas are not projected to meet the uniform rate of progress in 2018 according to the CENRAP modeling and are not projected to meet the goal of natural visibility conditions by 2064.[138]

Comment: Luminant's contractor AECOM noted that in developing its SIP, Texas found that some of the haziest days at its two Class I areas are the result of uncontrollable natural conditions such as windblown dust and wildfire emissions. AECOM developed a daily threshold percentage of total aerosol extinction [139] caused by CM, OMC, and soil species for each Texas Class I area. This threshold was developed by constructing histograms of the 20% worst days for a ''noticeable step-up in frequency'' of higher contributions of CM, OMC, and soil. AECOM then added this additional extinction to our default natural conditions extinctions, resulting in alternate natural conditions estimates that it suggests we adopt. AECOM states that with these new natural conditions, the uniform rates of progress will be met for Big Bend and the Guadalupe Mountains.

Response: Although AECOM restricts its assumption to specific days, it nevertheless assumes that all coarse mass, organic mass carbon and soil visibility impacts at Big Bend and the Guadalupe Mountains are 100% due to natural causes. AECOM provides no documentation to support this conclusion. Although we agree that much of those species contributions are due to natural sources, we do not believe that all of these contributions are due to natural sources. Fires, windblown CM and soil do have both anthropogenic and natural origins. As an initial matter, we believe that AECOM erred in assembling its histograms. We reconstructed these histograms and note they differ significantly from those AECOM presented. In fact, we believe the ''noticeable step-up in frequency of higher contributions of CM, OMC, and soil (*i.e.,* from right to left)'' that AECOM points to is more muted for

[135] Guidance for estimating natural visibility conditions under the Regional Haze Rule, EPA, September 2003, p 1–11.

[136] Appendix 2–2 of the Texas Regional Haze SIP.

[137] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the Federal Land Managers) and regional planning organizations. See our proposal for additional information on the IMPROVE program and the new IMPROVE equation.

[138] 79 FR 74832

[139] Note that although natural conditions are ultimately expressed in deciviews (dv), the IMPROVE equation first calculates aerosol extinctions by contributions to extinction by all relevant species, of which coarse mass and fine soil are two. Total extinction is then converted to deciviews.

both Class I Areas when the histograms are assembled correctly, to the point it is essentially absent for the Guadalupe Mountains. We noted other problems that cause us to conclude that AECOM's methodology should not be used. Moreover, under the Regional Haze Rule, even if it were concluded that the uniform rate of progress will be met for Big Bend and the Guadalupe Mountains, this does not change the requirement that the reasonable progress goals be selected based on proper consideration of the four factors. As discussed in the proposal and the RTC document, the uniform rate of progress is not a ''safe harbor'' under the Regional Haze Rule.

N. Consistency With Our Other Regional Haze Actions

We received a number of comments alleging specific instances of inconsistency with our previous SIPs and FIPs, as well as with our regional consistency rules at 40 CFR 56.5(a)(1) and (2). We have extracted all of these alleged instances of inconsistency, and we address them in detail in a separate consistency section within our RTC document. We recognize that we have a duty to ensure our regional haze actions are carried out in accordance with the CAA, Federal regulations, and our policies, and are as consistent as reasonably possible with other regional haze actions as required under our regional consistency rules (40 CFR 56.5(a)(2)), recognizing the fact-specific nature of individual regional haze plans and determinations. As we discuss below, we believe that in this action, which is one of the last remaining regional haze SIP reviews of the first planning period, we have been as consistent with our previous actions as is reasonably possible. We disagree that our action is inconsistent with the reasonable progress requirements or our prior SIP actions. While our regional consistency regulations and policies require us to carry out our actions pursuant to the CAA in a consistent manner across EPA regions as reasonably as possible, they do not require uniformity between those actions in all circumstances and instead, ''allow for some variation'' in actions taken in different regions.[140] As explained in detail in the separate consistency section of our RTC document, we believe that we have acted consistently with the CAA and our regional haze regulations in taking these specific actions for Texas, and in accordance with 40 CFR 56.5, our final action is ''as consistent as reasonably possible'' [141] with other actions given the specific facts presented in Texas and Oklahoma. We thus disagree with these comments. We note that staff from Region 6 have worked closely with EPA headquarters throughout the proposed and final actions regarding the Texas and Oklahoma regional haze requirements, including in the analysis and conclusions contained in the SIP and FIP determinations included in this final rule. As explained fully in our RTC document, we note that commenters' citation to the *National Environmental Development Association's Clean Air Project* v. *EPA* (*NEDA CAP*) case is distinguishable from our action here.[142]

Developing solutions to the complex problem of regional haze requires effective consultation among states. During the first planning period, the states worked together through RPOs to help develop their regional haze SIPs. To assist in this effort, we provided tens of millions of dollars to the RPOs following the issuance of the 1999 Regional Haze Rule to fund the development of the technical tools and analyses necessary to address regional haze and to facilitate consultation among the states. The states set up five RPOs to address visibility impairment from a regional perspective. The technical analyses done by the RPOs for the first round of regional haze SIPs greatly increased the understanding of the problem of visibility impairment at the Federal Class I areas, including that of the specific contribution of different species of pollutants.

Given the regional differences in the degree of visibility impairment, the pollutants of concern, and the impacts of fire and international emissions, we did not prescribe a one size fits all approach to reasonable progress. The RPOs accordingly adopted somewhat different approaches to recommending potential measures to ensure reasonable progress. However, the RPOs and the states all agreed that large stationary sources of SO_2 are the typically the primary cause or one of the primary causes of anthropogenic visibility impairment at this time. In addition, in some regions of the country, the RPOs and the states also recognized NO_X as a similarly important cause of visibility impairment.

In our review of the regional haze SIPs, we have attempted to take into account the differences among states in assessing the reasonableness of each state's SIP submittal. By its nature, each regional haze decision is a very fact specific determination requiring the consideration of multiple factors. After examining all instances of perceived inconsistency with other actions, we believe that when all of the factors are considered in their full context, the situation for Texas and Oklahoma differs sufficiently from these other actions cited as being inconsistent with this action to warrant the approach that we have taken. Furthermore, we found that in many instances some commenters reproduced incomplete quotes from our previous actions, or otherwise took those quotes out of their proper context, leading to an inaccurate characterization of the facts in some cases.[143] Often a sentence immediately preceding or following the reproduced quote in fact provided that context. In other cases, commenters called out a particular difference between some aspect of our technical analysis in comparison to what was used in a previous SIP or FIP, without providing the reasoning for those differences. In many other cases, the commenters simply misunderstood or otherwise misinterpreted the facts.[144]

Many commenters compared our CAMx modeled visibility impairments or improvements with those in other actions modeled using CALPUFF and concluded that our proposed visibility improvements were not enough to merit controls when compared to those other actions. These commenters universally failed to account for the differences between these two modeling platforms, the model inputs, and the metrics used.[145] Many of these differences result in CAMx modeled visibility impacts and benefits that are much lower than the CALPUFF modeled visibility impacts and benefits relied on in other actions. As we have noted and discussed in separate responses to comments and the FIP TSD, the results

[140] 80 FR 50258.

[141] 40 CFR 56.5(a)(2).

[142] *National Environmental Development Association's Clean Air Project* v. *EPA* (NEDA CAP), No. 13–1035 (D.C. Cir., May 30, 2014).

[143] See for example: (1) Our response to Luminant's comment concerning the ''contribution of coal combustion sources'' in the Alaska SIP, (2) Our response to CCP's comment concerning the consideration of visibility in the North Dakota SIP, or (3) Our response to CCP's comment concerning Texas' use of a $2,700/ton cost threshold.

[144] See for example: (1) The TCEQ's comment letter at page 14 concerning the Arkansas-Missouri consultations, (2) the AECT's comment letter at page 9 that we did not allow Texas to consider emissions from natural sources, such as wildfires and dust storms, in establishing natural visibility conditions, (3) The CCP's comment letter at page 8 concerning Texas' use of a $2,700/ton cost threshold.

[145] See our FIP TSD, beginning on page A–35, in which we explain why key differences in CALPUFF and CAMx preclude the comparison of their respective results and why CAMx results for RP are generally much less than CALPUFF results for BART for the same facility/emissions due to the model inputs and metrics used.

of the CAMx modeling we have utilized in our analysis cannot be directly compared to the results of CALPUFF modeling, which has been utilized in the vast majority of BART and other reasonable progress/long-term strategy actions.

Some commenters criticized us for disapproving the reasonable progress and long-term strategy consultations between Oklahoma and Texas, when other state-to-state consultations similarly failed to result in additional controls. Often these comparisons were made without regard to the specific facts, such as the magnitude of the visibility impacts that Texas sources have on the Wichita Mountains in Oklahoma in relation to the relative impact of the sources in those other actions, or the overlooked cost-effective controls that were available to Texas sources to address those impacts. Other commenters' comparisons simply focused on the result without regard to the substance: They noted instances where two other states consulted and neither required additional controls, and concluded that Texas was being treated unfairly.

Commenters also argued that our proposed disapproval of Texas' reasonable progress analysis was based on Texas' decision not to undertake a source-by-source analysis of emission controls. The commenters pointed to a number of other regional haze SIPs approved by EPA where states had relied on analyses of the reasonableness of controls for various source categories. The commenters claimed that these examples demonstrate that we accepted analyses of source categories in other states and that we should not, therefore, disapprove Texas' reasonable progress analysis on the grounds that it failed to look at controls on a source-by-source basis. These commenters ignore the fact that Texas' reasonable progress analysis was, in part, based on a source-by-source analysis. However, Texas set that analysis aside in favor of comparing the combined costs of all controls— not those for specific source categories— against its calculation of the total visibility benefit. More importantly, however, as we have explained elsewhere in this action, our objection to Texas' approach to evaluating potential reasonable progress controls was not grounded in whether it used a category or source-by-source analysis. Rather, our disapproval of Texas' reasonable progress analysis is based on the fact that its flawed methodology ignored cost-effective controls that, as we demonstrated in our proposal, would result in significant visibility benefits.

Commenters also raise questions concerning our approval of regional haze SIPs where states relied on implementation of CAIR or CSAPR to satisfy BART. The commenters argue we repeatedly found that participation in these trading programs also satisfied reasonable progress obligations for these states. One commenter claimed it would be illogical to find that CAIR or CSAPR was an appropriate substitute for BART but to then require controls for reasonable progress. We noted in 2005 that the determination that CAIR provided for greater reasonable progress than BART did not answer the question of whether more than CAIR would be required in a regional haze SIP.[146] As we have explained, we are not finalizing our proposal to rely on CSAPR to satisfy the BART requirements for EGUs in Texas, and at this point it is not certain what Texas' CSAPR budgets will be in the future. However, the remand of the CSAPR budgets for Texas aside, we do not agree that we have been inconsistent in our treatment of Texas. These commenters ignore the meaningful differences between Texas and the states cited. These include the significant impacts that point sources in Texas have on the visibility at the Wichita Mountains in Oklahoma, even after the projected reductions from CAIR/CSAPR, the availability of cost-effective controls that would address the largest visibility-impacting sources, the flaws in Texas' technical evaluation of the reasonable progress and long-term strategy provisions, and the flawed consultations between Texas and Oklahoma. We also note that Texas itself did not rely on its participation in CAIR to satisfy the reasonable progress requirements without further consideration of controls on its EGUs. Rather, Texas considered controls on a combination of EGUs and non-EGUs, but ultimately rejected them based on a flawed analysis of the reasonableness of such controls.

O. Modeling

Comment: We received comments that we should have prepared a modeling protocol and made it available for public/stakeholder review and comment. The commenters state that a modeling protocol is required by EPA modeling guidance.

Response: EPA is not required to develop a modeling protocol and take public comment on it. Our guidance and 40 CFR part 51 Appendix W do not require us to develop a modeling protocol for our technical work conducted to support review or rulemaking. We developed a workplan and consulted with national experts at EPA HQ as needed to develop the proposal that included modeling files, documentation of how the modeling was conducted and results. We included all this information in the materials for the proposal and took comment on all aspects of our analyses and techniques.

Comment: We received comments that our selection of the CAMx model rather than CALPUFF is inappropriate and unjustified. The commenters stated that we did not justify the use of CAMx to model visibility impacts from individual sources and at large distances, and our use of CAMx here is outside of the model's capabilities. Furthermore, these commenters assert that our concerns regarding using CALPUFF are not clear, and they have concerns that overprediction of impacts are also present in CAMx and therefore do not justify the use of CAMx. These commenters also state that we failed to consider and discuss bias and uncertainty in the modeling results and instead relied on the model predictions as definitive results.

Response: We did include a number of reasons in our proposal and Modeling TSD for our selection of the photochemical grid model CAMx over CALPUFF. One of the primary reasons is we evaluated the Texas SIP for reasonable progress and not BART, and the differences in the purposes of these analyses supports the use of different models when the resources are available to utilize a photochemical model. Reasonable progress requires the evaluation of changes in emissions from one or more facilities on visibility impairment at downwind Class I areas, in order to properly account for chemical transformations of those emissions, the model used must also include the other pollutants in the airshed, for which CALPUFF is not as well suited. Reasonable progress analyses typically look at the changes in visibility on the 20% worst days, and this evaluation was done by most states, including Texas and Oklahoma, by utilizing a photochemical grid model (PGM) such as CAMx or CMAQ and not CALPUFF. Therefore, our use of CAMx for evaluation of additional potential controls is consistent with the state's SIP submission.

We also discussed our selection of CAMx vs. CALPUFF and included in the Modeling TSD a number of references to performance analysis comparisons between the two models. There are also many comparisons available in journal articles and online that support using a photochemical grid model (most of these comparison

[146] 70 FR 39104, 39143.

studies are found in the Modeling TSD and the rest are in the docket). Some of the references we provided in the proposal raised concern that the use of CALPUFF could result in model over-prediction and other model performance issues at the distances at which we were evaluating most of the sources in our proposal. CALPUFF model results are used directly, whereas photochemical grid model results such as those achieved through use of CAMx are evaluated with Relative Response Factors (RRFs) to help remove potential bias concerns. While no model is free from bias issues, previous evaluations of the CENRAP databases we used for our analyses have been evaluated and the CENRAP CAMx model performance was considered adequate because the modeled outputs compared well to past measured conditions. As discussed in the following response, the only changes to the CENRAP basecase CAMx modeling we made were to update both the CAMx model version used and the chemical mechanism in order to use the best science and while ensuring model performance was still acceptable.[147]

In sum, there are many reasons for the selection of CAMx over CALPUFF for the purposes of this rule making. CAMx is better suited for evaluating the reasonable progress metric of improvement on the 20% worst days. It is also better suited for evaluating multiple sources in a complex airshed. In addition many references point to CALPUFF's potential overprediction at the distances at issue here. Any bias issues in CAMx are ameliorated by tethering the model to real monitoring data, through the use of relative response factors generated by modeling of base and future cases to predict future monitored values.

Comments: We received comments that we failed to perform a full model performance evaluation and instead compared model results to the CENRAP modeling results despite deviations from CENRAP's modeling protocol. These commenters also assert that we failed to update the modeled emission inventories or consider more recent emissions data, such as the 2011 NEI and EPA's recent projected 2018 emission inventory showing large reductions from the Mercury Air Toxics Standards Rule (MATS). They state that recent monitor data are representative and indicate that our modeling is not representative of anticipated future conditions and was not considered during model performance evaluation.

Response: We did not do a detailed model performance of the 2002 basecase because that had already been done by CENRAP. The only changes we made in the 2002 basecase was to use a newer version of the CAMx model and an updated chemical mechanism to utilize improvements in the science for our analysis and decisions. As we discussed in our proposal materials, these changes were not large and did not warrant a full model performance evaluation. We did compare model results with previous results and determined that model results were very similar and deemed acceptable. It is not uncommon in the modeling community to do some small updates such as we did and not perform a full updated model performance analysis.

With regard to comments that we should have performed a more complete update of the inventory, a full emission inventory update for all emission categories such as biogenic, mobile, non-road, area, and point sources for 2002 and 2018 was well beyond the scope of our review of the SIP submittal. Such an update was not necessary to evaluate whether the modeling and analyses submitted with the original SIP could have led to a conclusion that additional reasonable progress controls are appropriate. Once our evaluation concluded that it could be appropriate for some sources to be better controlled for reasonable progress, we did do minor updates to evaluate the most recent emission levels of EGUs in Texas for the ones being further evaluated for potential controls in our 2018 emissions. Because of the additional focus on these particular sources it was appropriate to use more up to date emissions. We also used the most recent CAMx model version and updated chemical mechanism that included improvements to the source apportionment of single point sources and plume in grid algorithms to use the most recent science for our evaluations.

We evaluated the existing CENRAP 2002 and 2018 emission inventories and whether to update parts of these emission inventories in 2018. After our initial modeling analyses, we did update emissions for the EGUs evaluated for potential controls to use recent actuals in the 2018 modeling, which were thought to better represent emissions from EGUs in Texas based on comments from Texas and EGU owners.[148] We also updated the 2018 emissions for two other sources based on permitting and additional controls. We considered updating the EGU inventory with the emissions inventory from the modeling performed for the MATS rulemaking. At the time of proposal, the best information available was that no other major controls were planned to be installed on EGUs in Texas for SO_2 emissions in response to MATS, therefore using the recent actuals that we used for 2018 emission rates (prior to any potential reasonable progress controls) was the most reasonable emission inventory to use in our further modeling.

Lastly, we disagree with the commenter that the SIP modeling and our further evaluation of 2018 expected levels are not representative. In fact, the recent ambient monitoring data at the IMPROVE sites in the three Class I areas (2011–2013) are influenced by meteorology that has lower than normal transport of pollution from sources in Texas when compared to the base period on which projections are based (2000–2004) and to the 30-year meteorology analysis of transport to the three Class I areas (1984–2013). Thus, examining the 2011–2013 time period overstates the progress that can be expected over long term. In response to comments and information provided we conducted further analysis to appropriately evaluate whether the base period was suited for projections to 2018 and also an analysis of how the meteorology accompanying the more recent monitoring data for 2011–2013 compared to normal meteorology conditions. We further note that 2014 also was not quite a normal year [149] and likely similarly biased low for visibility impacts at the Class I areas, but even so monitoring data in 2014 did increase compared to the 2011–13 data. Overall, we conclude that our evaluation of 2002 and 2018 levels and the controls needed for reasonable progress are based on representative periods and that recent monitoring trends are not as representative and not expected to continue if meteorology is more in line with 30-year climatological and transport norms.

Comment: We received comments that CAMx is not the approved model in 40 CFR part 51, appendix W for

[147] Additional information is also included in the Environ Memorandums for the 2002 and 2018 modeling, (*TX166–010–08 Memo_TXHAZE_2002CAMx_ENV_29July2013, TX166–010–09 Memo_TXHAZE_2018CAMx 16Sept13*), the FIP TSD, and in the modeling section of our RTC document.

[148] Texas comments on Draft IPM modeling conducted by EPA for potential national rule making platform provided on June 26, 2014. In this docket's materials as ''TCEQ comment letter to EPA on draft modeling platform dated June 24, 2014 2018 EMP signed.pdf''

[149] Some preliminary analyses of meteorology and pollution levels in 2014 indicated a higher frequency of cold fronts during the summer of 2014 that led to cleaner air from the arctic mixing with the air in the region and resulted in lower pollution build-up and transport of pollution to Class I areas in Oklahoma and Texas.

modeling long-range transport for visibility.

Response: Neither the regional haze regulations nor appendix W requires the use of a specific preferred model for photochemical grid modeling for visibility (regional haze), but we have approved the use of regional scale photochemical grid models such as REMSAD and CMAQ.[150] CAMx is another regional scale photochemical grid model that was utilized by the RPOs and states and approved by EPA. CENRAP conducted its final CAMx source apportionment modeling for the regional haze analysis to be utilized in consultations of its nine state members in development of their SIPs. We approved most of these SIPs that included modeling analyses using CAMx and CAMx is clearly acceptable for evaluating long range transport for visibility. Texas also used CAMx in its reasonable progress analysis. Furthermore, Texas used CAMx to screen small groups of sources and individual sources as part of its BART screening and we approved that approach in 2006/7,[151] based on modeling enhancements that Texas contracted to be developed to assist in assessing single point source visibility impacts on visibility at Class I areas. The visibility impact analysis we performed with CAMx is commensurate with the work originally done by Texas in 2006/7 for its BART screening. Overall, Appendix W gives us discretionary authority in the selection of what models to use for visibility assessments with modeling systems, and models such as CALPUFF, CMAQ, REMSAD, and CAMx that have all been used for that purpose. In this specific situation we determined that CAMx had the best scientific modeling approaches and tolls and was best suited for the complex analysis that we needed to perform.

Comment: We received comments that our CAMx modeling significantly overstates visibility impacts and improvements on which we based our proposal. Commenters describe the ETEX and CAPTEX tracer studies and conclude that the results of these studies prove that CAMx overestimates visibility impacts by a factor of 3. These commenters also claim that these results also show an overestimate in CALPUFF results by a factor of 6 (ETEX) or a factor of 3 to 4 (CAPTEX). When this factor of 3 over-prediction is taken into consideration, commenters state, using the over-prediction amount to scale down modeled visibility improvement from controls results in small improvements and controls should not be required.

Response: We disagree with the commenters' conclusion about the ETEX and CAPTEX tracer studies and the relevance of these tracer study analyses. The analysis provided allegedly indicating that CAMx overestimates visibility impacts by a factor of 3 is an incorrect interpretation and has flaws in the evaluation and conclusions. Details on our technical evaluation and conclusions on why the commenters' analysis is flawed is in the RTC document. We do not condone the calibration of model results to try to adjust for potential biases.[152] Furthermore, the bias amount indicated by the commenter is flawed and is based on limited sampling of model performance evaluations that exist. As stated in a response above, our CAMx modeling analysis utilized a technique called RRF that limits the potential impacts of modeling performance issues since the modeling results are used in a relative sense and absolute modeling values are not directly used. Due to this and other reasons, we do not think that the CAMx modeling overstates the impacts. In fact, several pieces of information indicate the impacts may be underestimated (see modeling section of the RTC document for full discussion and references). Some information indicates that using Plume-In Grid may result in underestimation of a source's impacts. As discussed previously, in particular in the Cost versus Visibility Benefit and Modeling sections, we also disagree that the impacts are small, and we do think the impacts are large enough and the benefits of lowering emissions to meet the FIP emission limits are great enough to require these reductions. As discussed in a separate response to comment in this section, the CALPUFF modeling submitted by the commenter had flaws and is not appropriate even before they did their inappropriate scaling of results.

Comment: Commenters provided back trajectory data (72 hours, 500m) using HYSPLIT [153] and monitored data for 2002 and 2011–2013 for the 20% worst days for Big Bend, the Guadalupe Mountains, and the Wichita Mountains. They conclude that these data show that only a small number of back trajectories [154] come from regions with sources being analyzed and considered for controls. For Big Bend, the back-trajectories submitted by the commenters show the majority of back-trajectories coming from Mexico. For the Guadalupe Mountains, back-trajectories also primarily came from Mexico and visibility impairment is mostly due to natural sources. Back-trajectories for the Wichita Mountains rarely come from sources that we are proposing to control.

Response: The commenters' back trajectory analysis for the base period and 2011–2013 is flawed and did not follow the NOAA draft guidance they cited and appropriate HYSPLIT modeling techniques.[155] In addition, our evaluation, discussed in the modeling section of the RTC document, shows that the 2011–13 time period is not representative of climatological norms regarding the transport wind flows to the three Class I areas. We also find that the base time period 2000–2004 was more representative of climatological norms.

We reached these conclusions by performing our own HYSPLIT modeling of a 30-year period (1984–2013) and concluded that in years with wind flow patterns consistent with the climatological norms over that period a significant number of days have back trajectories that did include areas where the sources proposed for additional controls are located. Furthermore our analysis of the 2011–13 period which was less representative of normal pollution transport patterns also showed a number of back trajectories went through or near the areas with the sources being considered for controls. Therefore these back trajectories do indicate the sources being considered

[150] 40 CFR part 51, appendix W, Section 6.2.1 (e&f).

[151] EPA, TCEQ, and FLM representatives verbally approved the approach in 2006 and in email exchange with TCEQ representatives in February 2007 (see email from Erik Snyder (EPA) to Greg Nudd of TCEQ Feb. 13, 2007 and response email from Greg Nudd to Erik Snyder Feb. 15, 2007).

[152] App. W, Section 7.2.9(a) ''. . . Therefore, model calibration is unacceptable.''

[153] HYSPLIT is a model developed by NOAA to utilize national meteorological modeling files to assess potential air transport.

[154] The HYSPLIT model is designed to utilize archived meteorological fields to generate back trajectories. The model user will pick a certain receptor (in this case one of the Class I Areas) and a specific time (in this case an hour on the day when monitoring indicated there was high visibility impairment) and then the model will assess the meteorological fields and use the wind speed and direction for previous hours to indicate a centerline trajectory of where the air that was monitored was in the hours before the day and time selected. In essence the product is usually a jagged curved line with hourly wind vectors that traces back a centerline for a number of hours (example 72 hours). The back trajectory is a centerline of the wind and the model user has to keep in mind that dispersion and mixing occur so there are areas on either side that can contribute as well and the further back in time the back trajectory is processed the wider the areas on either side of the centerline that could have contributed becomes.

[155] NOAA is National Oceanic and Atmospheric Administration. NOAA is the developer of HYSPLIT and has previously provided draft guidance on the use of the HYSPLIT model.

for control would be expected to reduce visibility impacts at the three Class I areas.

Our analysis of 30-years of back trajectories to assess whether the 2011–13 and 2000–2004 periods were within the climatological norm also indicated that the base period (2000–2004) was more similar to the climatological norm than the 2011–2013 period, so we conclude that using the base period is more representative for projecting 2018 levels.

In sum, the number of trajectories that go near the sources in Texas is large enough to not rule them out from consideration for potential control. In general, we have treated back trajectories as a tool to potentially screen an area out if no trajectories go through an area but if some trajectories go through an area then the area may be evaluated further or, as in this case, the full analysis may rely on more sophisticated tools such as CAMx.

The commenter indicated that a number of back trajectories went through Mexico but failed to mention that many of these also went through Texas. Therefore, sources in Mexico and Texas could contribute emissions to the visibility impairment at the Class I Areas. We have concluded that the back trajectory data provided by the commenter do not support their assertions that transport from the regions with those sources we are controlling is rare. The data they have provided are inconsistent with the guidance and general practices and are for years that are not representative of normal climatological patterns with respect to transport wind flow to the Class I areas. Furthermore, the back trajectories submitted by the commenter do in fact show transport from regions of Texas for some days. Our additional analysis identified the normal wind patterns over a 30-year period and determined that based on normal conditions, transport does occur from the regions in Texas with those sources we are controlling.

HYSPLIT is a meteorological transport model but does not assess the dispersion of and impacts from pollutants from differing sources and does not have chemistry to correctly assess the potential impacts of secondary particulate matter. We used the CAMx model, which does account for pollutants and utilizes atmospheric chemistry mechanisms to calculate changes in visibility impacts from the proposed emission reductions at specific sources. As discussed in a response to comment above in this section, photochemical grid models such as CAMx are best suited for this analysis and determination of the benefit of potential emission reductions.

Comment: Commenters submitted CALPUFF modeling for Coleto Creek Unit 1 for 2004–2006. Results indicate that visibility impacts from the facility are below the 0.5 dv subject to BART threshold. The commenter states that tracer studies suggest CALPUFF overestimates visibility impacts by a factor of 4.5 (on average) and adjusts the CALPUFF model results down by this factor. The commenter concludes that Coleto Creek's calibrated impacts are very small and any visibility benefit from controls would be even smaller.

Response: We have reviewed the CALPUFF modeling provided for Coleto Creek Unit 1 and do not concur with the conclusions that Coleto Creek's impacts are small. We have a number of concerns with the CALPUFF modeling provided: (1) It utilizes the wrong years for modeling; (2) the modeling does not comply with the original BART CALPUFF modeling protocol that Texas and EPA approved; and (3) it uses some inappropriate assumptions, including the calibrating of modeling results based on limited analyses using other databases and locations that are not directly comparable to assessing impacts from Coleto Creek's units. The 0.5 dv threshold was utilized as a BART threshold, but our action is for reasonable progress and the 0.5 dv threshold was not set as an applicable threshold in the Regional Haze Rules for reasonable progress (see response in the Cost versus Visibility Benefit section of this document). We used a photochemical grid model which is more scientifically robust than the CALPUFF modeling system and is more appropriate for longer transport distances, such as the distances between Coleto Creek and the Class I areas in Texas and Oklahoma. We performed a multi-tiered analysis in order to identify the Texas facilities with the largest impacts on visibility at Class I areas (in Texas and Oklahoma) and Coleto Creek's facility did rank as one of the largest impacting sources of the more than 1,600 sources considered in Texas. As discussed in another response in this section, we do not condone calibrating CALPUFF model output values. We discuss the commenters' use of the tracer studies in the RTC document but their analysis and conclusions are flawed and not representative of the larger collection of information available that also is discussed in more detail in the RTC document. In conclusion, based on our analysis with CAMx, we think both the visibility impacts of the sources and the benefits from the proposed emission reductions are large enough to be beneficial for reasonable progress.

Comment: Focusing on visibility impacts on the 20% worst days ignores larger impacts from these sources and other sources on other days. This approach is also inconsistent with CALPUFF modeling for BART of the maximum impact from a source for comparison with a 0.5 dv threshold. Consideration of impacts on other days will identify sources for control analysis that will result in visibility improvement on other days and make progress towards the goal of natural visibility conditions.

Response: Under the reasonable progress and long-term strategy requirements of the Regional Haze Rule, the state or EPA in promulgating a FIP must establish reasonable progress goals that provide for improvement on the most impaired days, demonstrate that the established goals are reasonable and develop coordinated emission management strategies to achieve those goals. The most impaired days are defined as the average visibility impairment for the 20% of monitored days in a calendar year with the highest amount of visibility impairment.[156] Because the rule focuses on improving visibility on the most impacted days, we believe it is reasonable and appropriate to focus our analysis on sources that significantly impact visibility on those 20% worst days. While we generally agree with the commenter that this may ignore visibility impacts from sources that impact visibility on days other than the most impaired days, visibility impairment on the current 20% worst days will be reduced as a result of controls implemented to address visibility impairment for this first planning period, and we believe that in the future the most impaired days may shift and be impacted by different sources. Analysis and development of future regional haze SIPs for future planning periods can aim to address those sources that impact any new set of most impaired days. Furthermore, targeted reductions at those sources that significantly impact the most impaired days will also result in improved visibility on days outside of the most impaired days.

CALPUFF modeling is used to provide estimates of the maximum visibility impacts from a source based on maximum emissions and simplified chemistry, irrespective of the relationship to the 20% worst days. It is

[156] This is the definition in the Regional Haze Rule, but it contains an obvious typographical error. It should be interpreted to mean that *visibility* on the most impaired days is defined as stated.

possible that CALPUFF modeling of some of the subset of the 38 sources identified based on Q/d that were not analyzed for additional controls could show significant impacts on the maximum or 98th percentile day, but our CAMx photochemical modeling (which includes all emissions sources and has a realistic representation of formation, transport, and removal processes of particulate matter that causes visibility degradation) provides additional information that allows for the identification of the sources with the greatest impacts on the 20% worst days.

Comment: EPA should have required additional controls on sources beyond what we proposed in our FIP to assure even greater reasonable progress. Certain controls are reasonable and consistent with the proposed controls when impacts at Class I areas other than the Texas Class I areas and the Wichita Mountains are considered. Some specific facilities, such as Oklaunion and H.W. Pirkey, fall above the 0.3% impact threshold for impacts at the Class I areas of interest and should have been evaluated for controls. EPA evaluated controls for Parish and Welsh but did not require controls despite significant visibility benefit and reasonable costs.

Response: We focused our control analysis on the Texas Class I areas and the Wichita Mountains. As discussed in more detail elsewhere in this action, we are disapproving portions of the Texas and Oklahoma regional haze SIPs, including the Texas long-term strategy consultation, the Oklahoma reasonable progress consultation, the Oklahoma established reasonable progress goal for Wichita Mountains and the Texas reasonable progress/long-term strategy analysis and consideration of reasonable controls at Texas sources necessary to establish the Texas and Oklahoma reasonable progress goals. In developing a FIP to address the deficiencies in the Oklahoma and Texas SIPs, we had to analyze the visibility impacts and the availability of reasonable progress controls at Texas sources that impact visibility at the two Texas Class I areas and the Wichita Mountains and establish reasonable progress goals including consideration of an appropriate reasonable progress control analysis for these areas. We expect New Mexico, Arkansas, Louisiana, and Missouri to consider remaining impacts from Texas sources on their Class I areas including the information on visibility impacts from specific sources provided by our analysis, as well as incorporate corrections and updates to emission reductions in consultations and development of their regional haze SIPs for the next planning period.

We disagree with commenters and we note, as further detailed in our RTC document, that when recent actual emissions and unit-level visibility impacts are considered, the units at the facilities identified by the commenters, such as Oklaunion and Pirkey, fall below the percent of visibility impairment threshold we established to identify units for additional control analysis. This threshold was established to identify a reasonable set of units that had the greatest visibility impacts for additional control analysis for this planning period. We note that any increases in actual emissions at these facilities in the future should be considered during development of the regional haze SIP for future planning periods. In future planning periods, as the facilities with the greatest impacts are controlled, the percent of total visibility impairment due to these lower impact facilities will increase and they in turn should be considered for additional control.

Considering the visibility benefits and costs, we disagree that we should have required controls on units at Parish and Welsh. In evaluating the cost of controls, we also weighed how effective the reductions were in achieving visibility benefits. We considered the anticipated visibility benefit in deciviews (for both a ''dirty background'' and a ''clean background'') as well as the reduction in extinction and the percentage of visibility impairment addressed by the controls. Based on our evaluation of these visibility metrics within the cost factor of the four-factor reasonable progress analysis, we determined that additional controls on Parish and Welsh were not required for reasonable progress for the first planning period. In the FIP TSD and the proposed FIP, we note lesser visibility improvement benefits at the three Class I areas for the W. A. Parish and Welsh units compared to the benefits at other facilities that mainly impact the Wichita Mountains. We also note that when considering the costs of controls and the relative visibility benefit, the Parish scrubber retrofits would be slightly more expensive with respect to $/ton but would be much less effective in improving visibility at the Wichita Mountains, when compared to the required controls at the Monticello or Coleto Creek units. For the Welsh scrubber retrofits, the costs ($/ton) would be approximately 50% greater than the cost of scrubber retrofits at Monticello or Coleto Creek and would result in approximately 50% less visibility improvement at the Wichita Mountains. We also considered comments on cumulative visibility benefits of these controls and determined that the cumulative visibility benefits of each new scrubber at the Parish and Welsh units would be less than those at each of the units where we proposed scrubber retrofits and less than that at each of the units with proposed scrubber upgrades with the exception of Limestone, at a cost significantly higher than the estimated cost of scrubber upgrades. Similarly, the total cumulative visibility benefit of controlling the three units at Welsh and the four units at Parish would be less than half the benefit from all the required scrubber retrofits or all the required scrubber upgrades, and at a greater average $/ton cost.[157] While controlling the Welsh and Parish units would result in some additional cumulative visibility improvement, based on our evaluation and weighing of the cost and consideration of the visibility benefits of these controls at the Wichita Mountains, we determined their individual projected visibility improvements do not merit the installation of scrubbers at this time. We encourage the State of Texas to re-evaluate this determination as part of its next regional haze SIP submittal and we note that as the required controls are implemented the significance of impacts and potential benefits from the Parish and Welsh units will increase in terms of percentage of extinction. As discussed in the modeling section of the RTC document, we disagree with comments that this determination is inconsistent with the determination to require controls at Tolk Station or with the determination of required controls in other states for the purpose of reasonable progress.

We agree with the commenter that on a $/ton basis, scrubber upgrades on Parish unit 8 are very cost-effective. However, the visibility benefit and reduction in emissions from this control would be very low when compared to all the other evaluated scrubber upgrades. The estimated visibility benefit from upgrading the scrubber would be an order of magnitude less than all the other evaluated scrubber upgrades and not large enough to require as reasonable progress for this planning period.

Comment: EPA should have analyzed oil and gas sources and NO_X controls for certain point sources in Texas.

Response: With regards to comments on additional controls for NO_X, as

[157] See *TX-116-007-_33_Vis_modeling_summary.xlsx* in the docket to this action for visibility benefits of controls.

discussed in the proposed FIP, we agree with Texas that the predominant anthropogenic emissions impacting visibility are nitrate and sulfate emissions, primarily from point sources.[158] As described in more detail in the FIP TSD, in our initial analysis we focused on point sources and we identified facilities with the greatest potential to impact visibility based on a Q/d analysis considering both SO_2 and NO_X emissions. We then used photochemical modeling to estimate the visibility impacts due to the emissions from these facilities, considering SO_2, NO_X, and all other emitted pollutants. Based on the results of that visibility modeling, we identified a subset of facilities for additional control analysis and determined that the visibility impacts due to these facilities was almost entirely due to their sulfate emissions. Therefore, we determined that to address the visibility impacts on the 20% worst days from these sources, it was only necessary to evaluate sulfate controls for this planning period. Our analysis identified those sources that had the greatest visibility impacts, which we then further analyzed for controls. This analysis did not identify any individual point sources (with the exception of the PPG Glass Works facility) with significant visibility impacts due to NO_X emissions among the group of sources with the greatest visibility impacts. We address our evaluation of NO_X controls for the PPG Glass Works in our RTC document.

Oil and gas emissions are the largest component of area source emissions but are only part of the total NO_X area source emissions. Oil and gas sources that fall within the point source category were considered in our initial Q/d analysis and photochemical modeling used to identify sources for additional control analysis. Similarly with regard to comments on controlling oil and gas sources, visibility impacts from NO_X emissions from area sources are relatively small compared to impacts from point sources of SO_2 and NO_X at the Class I areas impacted by Texas emissions. Focusing on point source emissions of NO_X and SO_2 captured those sources with the greatest impacts on visibility and was a reasonable approach for this planning period.

Comment: Visibility impairment from the ''Other 29'' sources not analyzed for controls are still significant and additional controls should be required. Furthermore, some of the ''1,600 +'' sources not further analyzed collectively contribute to total visibility impairment.[159]

Response: Our Reasonable Progress Guidance discusses the steps to follow in identifying reasonable controls and establishing reasonable progress goals. The key pollutants contributing to visibility impairment at each Class I area should be determined. ''Once the key pollutants contributing to visibility impairment at each Class I area have been identified, the sources or source categories responsible for emitting these pollutants or pollutant precursors can also be determined. There are several tools and techniques being employed by the RPOs to do so, including analysis of emission inventories, source apportionment, trajectory analysis, and atmospheric modeling'' (page 3–1). As discussed in more detail in our proposal and in a separate response to comment in the modeling section of the RTC document, we determined that it was reasonable to focus our analysis on point sources of SO_2 and NO_X.[160] This was based on review of emissions and source apportionment results indicating that these sources were most responsible for anthropogenic contributions to visibility impairment. We then used a Q/d analysis to identify those sources with the greatest potential to impact visibility based on emissions and distance. Additional analysis using photochemical grid modeling was then completed to estimate the visibility impact from those sources. Based on consideration of facility level and estimated contributions to visibility from units at the modeled facilities, we identified those sources that had the greatest visibility impacts to analyze for additional controls. We agree with the commenter that collectively the ''Other 29'' sources and ''1,600+'' sources contribute a sizeable percentage of the total visibility impairment. However, on an individual basis, these point sources have lower contributions and smaller potential for visibility improvements relative to the nine facilities evaluated for additional controls. For example, the proposed controls on only 7 facilities address 5.8% of the total visibility impairment at the Wichita Mountains, while controls on all of the ''Other 29'' sources would address 4.4% of the total visibility impairment. Consistent with our guidance, we identified those key pollutants and sources with the greatest impact on visibility impairment for this first planning period. We also note that the ''Other 29'' includes impacts from San Miguel and the PPG Glass Works facility that were considered for additional controls, and the JT Deely units that are scheduled to shutdown in 2018.

The Regional Haze Rule requires the identification of reasonable progress controls and the development of coordinated emission control strategies in order to make reasonable progress towards the goal of natural visibility conditions. Faced with a very large and unwieldy universe of sources, we followed our guidance and chose an approach that focused on the portion of the universe of Texas sources that contributed the greatest impact to visibility impairment, by establishing a threshold of 0.3% contribution to total visibility impairment on a unit basis for this planning period, thereby identifying a reasonable set of units at nine facilities to analyze for additional controls.[161] Our four-factor analysis concluded that controls on units at seven of the nine facilities analyzed for additional controls were required. As these controls are implemented, the percentage impact from those facilities not controlled will become larger (on a percentage basis) and will be analyzed in future planning periods. In other words, some of the ''Other 29'' will be identified as the greatest impacting sources and should in turn be analyzed for additional reasonable progress controls in a future planning period. This methodology can be used as a consistent procedure to identify facilities for additional control analysis in this and future planning periods and would ensure continuing progress towards the goal of natural visibility conditions. The USDA Forest Service commented that ''the methodology and metrics that EPA used are the most comprehensive seen to date for any SIP/FIP in the country that we have reviewed, and should serve as a model for future efforts to consider the contribution and/or potential benefits of individual sources to visibility.''

Comment: We received comments on the methodology used to identify sources for analysis. Commenters stated that our analysis, beginning with a Q/d analysis and the use of a 0.3% of total impairment threshold for identifying

[158] 79 FR 74838.

[159] ''Other 29'' refers to the facilities identified as having the greatest potential to impact visibility based on the Q/d analysis but were then eliminated from further analysis based on photochemical modeling results. ''1,600 +'' refers to all point sources in Texas from the TCEQ's 2009 point source inventory.

[160] 79 FR 74838.

[161] As discussed elsewhere, San Miguel has already upgraded its scrubber and therefore it was not included in our modeling analysis of additional controls and not included among the nine facilities discussed here. In our FIP, we are finalizing our determination that San Miguel maintains an emission rate consistent with recent monitoring data.

sources for additional analysis was arbitrary, capricious, or improper. In addition, commenters contend that the Q/d analysis selects the wrong sources because it does not consider stack parameters or meteorology. Other commenters suggested that all 38 facilities identified as having the greatest potential to impact visibility by the Q/d analysis should have undergone a four-factor analysis. We also received comments that a lower threshold should have been used, that the threshold was applied inconsistently, and that the 0.3% threshold screened out sources that have a significant visibility impact and should have been evaluated for controls.

Response: We disagree with the commenters' assertion that our analysis, beginning with a Q/d analysis, was arbitrary, capricious, or improper. As explained below and elsewhere in this document, our complete analysis identified those sources with the greatest visibility impacts at the Wichita Mountains and the Texas Class I areas based on consideration of a source's emissions, location, and modeled visibility impairment. Once identified, we performed additional control analysis on these sources to determine through the four-factor analysis if controls were available and cost-effective.

As we discuss at length in the FIP TSD and in our RTC document, we, states (including Texas) and RPOs (including CENRAP) have used a Q/d analysis to identify those facilities that have the most potential to impact visibility at a Class I area based on their emissions and distance to the Class I area. These identified facilities could then be considered for further evaluation to estimate visibility impacts, and then undergo the reasonable progress analysis for determination of reasonable progress controls. The BART guidelines [162] discuss identifying sources with the potential to impact visibility based on a Q/d approach consistent with the method followed in this action. Furthermore, this approach has also been recommended by the FLMs' Air Quality Related Values Work Group (FLAG) [163] as an initial screening test to determine if an analysis is required to evaluate the potential impact of a new or modified source on air quality related values (AQRV) at a Class I area. In the Texas regional haze SIP, the TCEQ relied on a Q/d approach as one of the initial steps to identify sources for additional analysis.[164] We used a similar Q/d approach to identify 38 sources, from the more than 1,600 point sources in Texas that had the most potential to impact visibility due to their location and size. In other words, we started by looking at every point source in Texas [165] and narrowed the field to a much smaller subset of sources with the most potential to impact visibility based on their emissions and location. This approach is a widely used method as an initial step to evaluate a facility's potential to impact air quality and identify those sources with large enough emissions close enough to a receptor to need additional analysis. Using this methodology, we considered every point source in Texas and narrowed the list to a much smaller list of facilities with the greatest potential visibility impacts based on just emissions and distance.

Following the Q/d analysis, we took the additional step of using photochemical modeling, utilizing CAMx with Plume-In-Grid (PiG) and Particulate Source Apportionment Tagging (PSAT). As the commenter states, the Q/d analysis does not take into account stack parameters, meteorological conditions, or chemistry. Given the large geographic distribution of sources and distances to the Class I areas, we recognized that it was highly likely that only a subset of these 38 facilities would have the greatest visibility impacts on downwind Class I areas once meteorology and transport conditions, atmospheric dispersion, chemistry, and stack parameters were taken into consideration, as CAMx with PiG and PSAT can do. We determined it was appropriate to use photochemical modeling to assess the visibility impact from those sources identified by our Q/d analysis. In the same way that Q/d is used as an estimate of the potential visibility impact due to emissions and distance, the photochemical modeling aims to estimate the visibility impacts albeit in a much more refined manner that accounts for chemistry and meteorological conditions. We also note that some RPOs and states used a combination of back trajectory analysis, source apportionment modeling results, and Q/d as a more refined approach to identify sources for additional control analysis for reasonable progress.[166] Our modeling results indicated that a subset of the 38 facilities were the primary contributors to visibility impairment at each Class I area. The results of this modeling were used to verify our initial identification of sources and further eliminate sources from a full four-factor analysis based on facility-level impacts and consideration of estimated unit level impacts, as described in detail in the FIP TSD.

There are a number of different approaches used by states in identification of sources for reasonable progress evaluation but these approaches usually centered around the general premise of evaluating the biggest sources and the biggest impacts on visibility. As we explain in the FIP TSD, we considered the visibility modeling results in a number of ways to determine a reasonable approach to identify those sources with the largest impacts for additional analysis for controls for this planning period. We examined the model results for extinction and percent extinction of the modeled facilities as well as estimated impacts based on more recent actual emissions. We considered both facility level and unit level impacts. We concluded that any unit with an estimated impact greater than 0.3% would be further evaluated. We believe that using a percent impacts approach is appropriate because of its linkage to the reasonable progress concept. For example, a source that has a smaller absolute impact on a relatively cleaner area but a higher percentage impact might be considered for control so that the cleaner area can potentially make progress. We used the 0.3% threshold only as a way to identify a reasonable

[162] See 40 CFR part 51, appendix Y, section III (How to Identify Sources ''Subject to BART'')

[163] Federal Land Managers' Air Quality Related Values Work Group (FLAG), Phase I Report—Revised (2010) Natural Resource Report NPS/NRPC/NRR—2010/232, October 2010. Available at *http://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_2010.pdf.*

[164] TX RH SIP Appendix 10–1. ''The group of sources was further reduced to eliminate sources that are so distant from any of the ten Class I areas that any reduction in emissions would be unlikely to have a perceptible impact on visibility. The list was restricted to those sources with a ratio of estimated projected 2018 base annual emissions (tons) to distance (kilometers) greater than five to any Class I area.''

[165] The Texas point sources are defined as industrial, commercial, or institutional sites that meet the reporting requirements of 30 Texas Administrative Code (TAC) § 101.10. Permitted point sources in Texas are required to submit annual emissions inventories. The data are drawn from TCEQ's computer-based State of Texas Air Retrieval System (STARS). Annual emission data from 2009 were utilized to calculate the Q/D value for all point sources with reported emissions in Texas. 2009 emissions data available in the docket as ''2009statesum.xlsx''

[166] To select the specific point sources that would be considered for each Class I area, VISTAS first identified the geographic area that was most likely to influence visibility in each Class I area and then identified the major SO_2 point sources in that geographic area. The distance-weighted point source SO_2 emissions (Q/d) were combined with the gridded extinction-weighted back-trajectory residence times. The distance weighted (Q/d) gridded point source SO_2 emissions are multiplied by the total extinction-weighted back-trajectory residence times (Q/d * Bext-weighted RT) on a grid cell by grid cell basis and then normalized. See VISTAS Area of Influence Analyses, 2007 available in the docket for this action.

set of sources to evaluate further. At this point, the resulting reasonably broad set of sources served as a starting place from which to further analyze individual source impacts in the second round of modeling, and balance them against any cost-effective controls that could be identified.

In summary, our analysis properly identified the sources in Texas with the greatest individual visibility impacts for additional control analysis. Commenters are incorrect in their assertion that the visibility impacts from the identified sources are miniscule, or that we started our analysis with the wrong sources. Starting from the entire universe of Texas point sources, we systematically eliminated those facilities that had less potential to impact visibility based on careful consideration of emissions, location, and finally modeled visibility impacts. After identifying those facilities with the greatest visibility impacts, we performed the four-factor analysis to evaluate whether reasonable progress controls were available and cost-effective.

Comment: We received comments that EPA established the deciview as the required metric for establishing and tracking progress towards the reasonable progress goal. EPA's use of extinction or percent extinction and establishment of thresholds is arbitrary, capricious, illegal and without precedent.

Response: We disagree with the commenters that our use of metrics other than deciviews for certain purposes is contrary to regulations. The commenters fail to distinguish between the metrics used to describe overall visibility conditions at a Class I area and the metrics that can be used to describe the visibility impairment due to an individual source, group of sources, a state's sources, or some other portion of the visibility impairment at a Class I area. In describing the overall visibility conditions at a Class I area, we established the deciview as the principle metric. This applies to the calculation of current, baseline, and natural visibility conditions at a Class I area, as well as the reasonable progress goals established as the visibility condition goal for the Class I area at the end of the current planning period. We agree with the commenters that the use of the deciview metric is required in a number of places within the rule that discuss overall visibility conditions and assessing progress towards meeting the desired visibility conditions. Specifically, the state must (1) establish reasonable progress goals expressed in deciviews (40 CFR 51. 308(d)(1)); (2) determine the uniform rate of progress in deciviews (40 CFR 51.308(d)(1)(i)(B)); and (3) determine the baseline and natural visibility conditions expressed in deciviews and the number of deciviews by which baseline conditions exceed the natural conditions (40 CFR 51.308(d)(2)). Consistent with these requirements, we calculated the baseline and natural visibility conditions, the uniform rate of progress, and the number of deciviews by which baseline conditions exceed the natural conditions in deciviews for Big Bend and the Guadalupe Mountains, as well as established reasonable progress goals for the Wichita Mountains and the Texas Class I areas in deciviews.

The deciview metric provides a scale that relates to visibility perception and therefore is useful in assessing the overall visibility conditions that are being or will be perceived at the Class I area. The commenters cite to several actions and the Regional Haze Rule where the benefits of using the deciview metric are discussed, however this is only discussed in the context of overall visibility conditions, such as determining current or natural visibility conditions. This is very different from the fraction of visibility impairment attributable to a source or group of sources. We note that in the final Regional Haze Rule, we do in fact mention the use of light extinction as another metric that states may choose to use.

There is no requirement to use the deciview metric in describing the visibility impairment due to a source or group of sources as part of the analysis required for identifying reasonable controls under reasonable progress. In describing how to identify sources or source categories responsible for visibility impairment, our guidance [167] provides states with considerable flexibility to utilize various tools and techniques that would necessarily involve the use of various metrics other than deciviews. Many states and RPOs, including Texas and CENRAP, relied on a Q/d analysis, described and discussed in depth in separate responses to comments and in our proposed FIP, to identify sources for additional control analysis. The Q/d analysis relies on an annual emissions divided by distance metric, not deciviews. The VISTAS RPO relied on a metric derived from Q/d and residence-time, not deciviews.[168] Some states relied on a simple analysis of emissions to determine which sources should be analyzed.

When assessing the various contributions to visibility impairment due to either source categories or pollutant species from other states and international sources, Texas routinely relied on light extinction and percent of total visibility impairment metrics. For example, Chapter 11 of the Texas regional haze SIP describes the contributions due to sulfate, nitrate, and other pollutants on the 20% worst and 20% best days at the Guadalupe Mountains and Big Bend in terms of light extinction (inverse megameters, Mm^{-1}). Similarly, the extinction metric is used by Texas (see section 11.2.3 of the Texas regional haze SIP) to assess the level of impact on other Class I areas from Texas sources. Texas also used the extinction metric to determine which states significantly impact the Texas Class I areas, applying an impact extinction level threshold of 0.5 Mm^{-1} from all sources in a state as a threshold for inviting a state to consult.[169] Source apportionment modeling performed by the RPOs was utilized by every state to assess the various contributions to visibility impairment at their Class I areas in terms of light extinction and percent contribution to total light extinction. The CENRAP PM source apportionment tool (CENRAP PSAT tool) utilized by all CENRAP states, including Texas and Oklahoma, to review the results of the source apportionment modeling provides results in two ways: Light extinction (inverse megameters) and percentage of total extinction. In our action, we also utilized the methodology and metrics used by the RPOs to evaluate the source apportionment results, the only difference being that our source apportionment modeling provided information on visibility impacts from individual sources instead of source categories, or regions/states. In the FIP TSD, we provide information on visibility impacts from the individual sources in terms of extinction, percentage of total extinction, and in deciviews.

We evaluated the information in terms of light extinction and percentage of total impact to identify a reasonable subset of sources with the largest visibility impacts to analyze for additional controls. Because the overall visibility conditions at different Class I areas can vary greatly, particularly Class I areas in the Eastern U.S. compared to Class I areas in the Western U.S., we determined that it is not enough to consider just the magnitude of extinction from a facility; we must also

[167] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, U.S. EPA, OAQPS, June 1, 2007, page 3–1

[168] VISTAS Area of Influence Analyses, 2007, available in the docket for this action.

[169] See Texas Regional Haze SIP Appendix 4–1: Summary of Consultation Calls

consider the percentage of total impairment metric at each Class I area. As we state in the FIP TSD, ''We believe that using a percent impacts approach is appropriate because of its linkage to the RP concept. For example, a source that has a smaller absolute impact [in terms of extinction] on a relatively cleaner area but a higher percentage impact might be considered for control so that the cleaner area can potentially make progress.'' Using the percentage of total visibility impairment metric allows us to somewhat normalize the extinction differences between Class I areas so that we can utilize the same approach at each Class I area and identify a reasonable set of sources to analyze that if controlled would result in meaningful visibility benefits towards meeting the goal of natural visibility at every Class I area. For every Class I area to have the opportunity to reach the natural visibility goals, it is necessary to identify the sources or source categories that significantly impact visibility, identify available controls and analyze whether those controls are reasonable. Had we established a strict threshold based on extinction, we would have had to establish a different threshold for each Class I area. Using a percentage approach, such as the 0.3% of total visibility impairment on a unit basis we used in this action, results in identification of a subset of sources that includes those sources with the greatest visibility impacts at each Class I area. As stated by the USDA Forest Service in its supportive comments, the use of this methodology and metrics, including the use of a small percentage threshold on the 20% worst days is linked to the concept of reasonable progress. We believe it could serve as the model for future efforts to consider the contribution and potential benefits of individual sources to visibility. After identifying which sources to analyze for additional controls based on the percentage impact on a unit basis, we determined which controls were reasonable based on consideration of the four factors, including comparison of cost to the anticipated visibility benefit (deciview improvement, extinction, percentage of total extinction, and the percentage of the total impact from Texas point sources addressed by the control).

Comment: We received comments on the method we used to adjust CAMx results. Commenters stated that we developed a linear relationship between emissions and extinction and then adjusted CAMx modeled extinction linearly with emissions to match proposed controlled emission levels. The commenters stated that the relationship between emissions and light extinction is not linear and that interactions between nitrate and sulfate create a complicated relationship. The commenters cited to the CAMx user guide which they claim supports that the relationship is non-linear. In contrast, Earthjustice said that our approach was reasonable.

Response: We disagree with the comments that the methodology used to estimate visibility benefits from control level emissions was unjustified or unreasonable, and agree with Earthjustice that our approach was reasonable. The linear relationship we developed to extrapolate extinction due to controlled emission rates was a reasonable approach in our technical analysis.

We agree with the commenters that, in general, the relationship between downwind concentrations and emissions can be complicated and non-linear due to complex chemistry, including the fact that reductions in sulfur emissions can result in an increase in ammonium nitrate. Each modeled emission scenario took this complex chemistry into account in estimating the visibility impacts for that scenario. We estimated control efficiencies for a high and low control case scenario that would span the range and give a reasonable approximation of emission reductions of potential controls and maximize the number of data points available to estimate the visibility benefit due to a reduction in emissions.[170] Using the unit level High and Low modeled visibility impacts and the 2018 facility level modeling described in the FIP TSD, we examined the relationship between the various levels of emissions from a modeled site and the modeled visibility impact at each Class I area. For each facility and Class I area, the available modeled data were linear with high correlation and the modeled emission levels were relatively close to the estimated control levels examined. Therefore we used the linear fit to extrapolate the anticipated visibility impact/benefit from a given level of emission/control.[171] We agree that small perturbations relative to the model inputs can be approximated as linear. However, as discussed in more detail in our response to this comment in the RTC document, we disagree with the commenters that we extended the linear treatment to large variations, and we note errors in the commenters' assessment of the differences between modeled and required control levels. The variations between the modeled High control levels and the control levels required in the FIP are relatively small. This is a small perturbation from the modeled levels, a small difference in estimated extinction benefit from the modeled and required control level, and does not impact our overall decisions on the significance of visibility benefits from the required controls. We agree with Earthjustice that the small level of uncertainty in the visibility benefit from these controls introduced by the linear extrapolation does not impact the overall conclusions. In every case, the required control level emissions are the same or less than the high control level modeled, and the visibility benefits from controls at the required control level will be the same or more than those modeled at the high control level. Therefore, the high level modeled visibility benefits can be seen as a lower bound and even these support our decision.

Comment: We also received comments on the calculation of a deciview impact or improvement based on natural ''clean'' background conditions and the estimated visibility impacts/improvement based on recent actual emissions rather than projected 2018 emissions. The commenters contend that the use of natural background overstates the estimated visibility benefit from the proposed controls and that these adjustments based on recent actual emissions and natural background artificially increase projected visibility improvement from the proposed controls. The commenter states that the use of ''natural conditions'' is contrary to the regulations, inconsistent with agency precedent, and arbitrary and capricious and that the analysis does not address the relevant legal issue and is not rationally connected to the final decision (*i.e.* what is a reasonable progress goal for 2018).

Response: We disagree with the commenter that the use of ''natural conditions'' is contrary to the regulations, inconsistent with agency precedent, and arbitrary and capricious. We disagree with the commenter that the analysis does not address the relevant legal issue and is not rationally connected to the final decision (*i.e.,* as defined by the commenter as what is a reasonable progress goal for 2018). The Regional Haze Rule requires that we identify reasonable controls based on consideration of the four statutory factors and establish a reasonable progress goal that reflects the

[170] See FIP TSD at A–54 for a more detailed description

[171] See the file, ''Vis modeling summary.xlsx'' in the docket for this action for our calculations and estimates of visibility benefits from the examined levels of controls.

anticipated amount of visibility improvement from implementation of those controls in additional to all other ''on the books'' controls. Specifically, § 51.308(d)(1)(i)(A) requires consideration of the four factors and a demonstration of how these factors were taken into consideration in selecting the visibility goal. We analyzed the time necessary for compliance, energy and non-air environmental impacts, the remaining useful life, and the costs of compliance including consideration of the anticipated visibility benefits of specific controls on individual units. As discussed in depth below, in considering the anticipated visibility benefits from individual controls, it was appropriate to consider estimated benefits on a ''clean'' or ''natural'' background.

In the FIP TSD, we discuss the need to estimate visibility benefits using both a ''clean'' and ''dirty'' background: [172]

> The deciview improvement based on the 2018 background conditions provides an estimate of the amount of benefit that can be anticipated in 2018 and the impact a control/emission reduction may have on the established RPG [reasonable progress goal] for 2018. However, this estimate based on degraded or ''dirty'' background conditions underestimates the visibility improvement that would be realized for the control options under consideration. Because of the non-linear nature of the deciview metric, as a Class I area becomes more polluted the visibility impairment from an individual source in terms of deciviews becomes geometrically less. Results based solely on a degraded background will rarely if ever demonstrate an appreciable effect on incremental visibility improvement in a given area. Rather than providing for incremental improvements towards the goal of natural visibility, degraded background results will serve to instead maintain those current degraded conditions. Therefore, the visibility benefit estimated based on natural or ''clean'' conditions is needed to assess the full benefit from potential controls.

In considering the visibility benefits of potential controls, we considered deciview improvements as well as the reduction in extinction and percent extinction. By definition, the ''clean'' background analysis using natural conditions eliminates the impact from all other anthropogenic sources, domestic and international. This approach is aimed at assessing the full potential visibility benefit of controls. It is not reasonable to only assess the visibility benefit of controls, the value of installing a control in the immediate future that will permanently reduce visibility impacts from a source, in such a manner that is dependent on the current level of emissions or impact from other sources or other countries. For example, in considering only the estimated visibility benefit from controlling Big Brown using a ''dirty'' background, an increase in visibility impacts from Mexico emissions or emissions from another Texas point source would result in a decrease in the visibility benefit in deciviews from installing controls on Big Brown, making controls appear less beneficial. By using a metric that is independent of all other emission sources (''clean''), we avoid this paradox that the dirtier the existing air, the less likely it would be that any control is required. This was also explained in the preamble to the final Regional Haze Rule and Guidelines for BART Determinations.[173] The use of ''clean'' background is necessary to assess the full potential benefit from controls and does not overstate the visibility benefit.

Our use of ''clean'' background is also consistent with the methodology used by Texas for BART visibility analysis, which also relied on CAMx photochemical modeling with source apportionment. The TCEQ utilized this approach in assessing the visibility impacts from individual sources and groups of sources to determine their significance for BART screening. As detailed in the screening analysis protocol developed by TCEQ and reviewed by us, ''The source's HI [haze index] is *compared to natural conditions* to assess the significance of the source's visibility impact. EPA guidance lists natural conditions ($b_{natural}$) by Class I area in terms of Mm^{-1} (EPA, 2003b) and assumes clean conditions with no anthropogenic or weather interference. The visibility significance metric for evaluating BART sources is the change in deciview (delv) from the source's and natural conditions haze indices.'' [174]

We disagree with the commenter that our use of the ''natural background'' metric is contrary to regulations. As we discuss in a separate response to comment concerning the legality of the extinction and percent extinction metrics, the commenter fails to distinguish between the required metric used to describe overall visibility conditions at a Class I area at a given point in time and the range of metrics that can be used to describe the visibility impairment due to an individual source, group of sources, a state's sources, or some other portion of the visibility impairment at a Class I area. As explained above, it is necessary to consider the visibility benefit of controls on a ''clean'' background basis to assess the full benefit from potential controls.

The use of natural background is also supported by our previous action on North Dakota's regional haze SIP and the associated Eighth Circuit Court decision. The full text of our determination in North Dakota is: [175]

> In addition to evaluating the four statutory factors, North Dakota also considered the visibility impacts associated with the control options for each RP source. However, in modeling visibility impacts, North Dakota used a hybrid cumulative modeling approach that is inappropriate for determining the visibility impact for individual sources. As with the modeling North Dakota conducted for its NO_X BART analysis for MRYS [Milton R. Young Station] Units 1 and 2 and LOS [Leland Olds Station] Unit 2, the approach fails to compare single- source impacts to natural background. While there is no requirement that States, when performing RP analyses, follow the modeling procedures set out in the BART guidelines, or that they consider visibility impacts at all, we find that North Dakota's visibility modeling significantly understates the visibility improvement that would be realized for the control options under consideration. Accordingly, we are disregarding the modeling analysis that North Dakota has used to support its RP determinations for individual sources.

The Eighth Circuit Court's decision affirmed our position that the use of degraded, or dirty background, was not consistent with the CAA. The relevant section of the 8th Circuit Court's decision on this point reads: [176]

> Although the State was free to employ its own visibility model and to consider visibility improvement in its RP

[172] See our FIP TSD, page A–39.

[173] Using existing conditions as the baseline for single source visibility impact determinations would create the following paradox: The dirtier the existing air, the less likely it would be that any control is required. This is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less. Therefore the more polluted the Class I area would become, the less control would seem to be needed from an individual source. We agree that this kind of calculation would essentially raise the ''cause or contribute'' applicability threshold to a level that would never allow enough emission control to significantly improve visibility. Such a reading would render the visibility provisions meaningless, as EPA and the States would be prevented from assuring ''reasonable progress'' and fulfilling the statutorily-defined goals of the visibility program. Conversely, measuring improvement against clean conditions would ensure reasonable progress toward those clean conditions. 70 FR 39124.

[174] Texas Regional Haze SIP, Appendix 9–5, ''Screening Analysis of Potential BART-Eligible Sources in Texas'' at 2–11, emphasis added.

[175] 76 FR 58627.

[176] *North Dakota* v. *EPA,* 730 F.3d 750, 766 (8th Cir. 2013).

determinations, it was not free to do so in a manner that was inconsistent with the CAA. Because the goal of section 169A is to attain natural visibility conditions in mandatory Class I Federal areas, see 42 U.S.C. 7491(a)(1), and EPA has demonstrated that the visibility model used by the State would serve instead to maintain current degraded conditions, we cannot say that EPA acted in a manner that was arbitrary, capricious, or an abuse of discretion by disapproving the State's RP determination based upon its cumulative source visibility modeling.

The use of natural background conditions to assess visibility benefits of individual controls, as we have done here in this action, is consistent with the goals of the CAA. As to the comment that we adjusted the modeled results by updating the baseline uncontrolled emissions for each unit based on SO_2 emissions data for 2009–2013, this was a necessary step to assess the visibility benefit of controls relative to the visibility impairment due to future anticipated emission levels at these units without the required controls. Comparison of 2018 CENRAP projected emissions to recent actual emissions showed that a number of facilities have actual emissions that are much higher than CENRAP 2018 modeled emissions.[177] For instance, Big Brown, Sandow, and Martin Lake actual emissions were all significantly higher than 2018 CENRAP modeled rates, with Martin Lake having over 90% more SO_2 emissions than projected by CENRAP for 2018. Both Pirkey and Oklaunion had much smaller actual SO_2 emissions than projected. As we discuss in the FIP TSD, we believe that recent actual emissions are more representative of anticipated future emissions at the sources evaluated than the CAIR projections developed in 2006 and adopted by CENRAP. The CENRAP modeling was based on an IPM (Integrated Planning Model) that estimated EGU future emissions in 2018 including reductions for CAIR across the eastern half of the United States. This analysis was conducted in 2006 and projected that Texas would be a purchaser of SO_2 credits, and that not much high level control would be placed on Texas EGU sources. Given the length of time between 2006 when the IPM analysis was conducted, and 2013 when we were conducting this analysis, we had some concern that these projections could be off for the EGUs in Texas. Information available also indicates that SO_2 credits are much cheaper than originally projected, therefore more credits may have been used in lieu of emission reductions. We also weighed the technique that Texas has used in estimating emissions from EGUs for future years (including 2018) in ozone attainment demonstration SIPs in DFW and HGB. For these photochemical modeling analyses with CAMx, Texas has relied upon the recent CEM data that is also included in CAMD's databases in conjunction with information on recently permitted EGUs for estimating the emissions to model for EGUs in Texas in 2018 as these overall EGU emission levels are already near levels projected under CAIR Phase II control such that further emission reductions are doubtful in the absence of some new requirements.

The actual SO_2 allowances for Texas under CSAPR are not much different than the CAIR Cap for Texas, so large additional reductions over current emission levels were not expected. However, because we had earlier projected with IPM that controls for MATS may generate the installation of additional scrubbers in Texas that could potentially result in further SO_2 reductions, we again investigated this possibility. Texas recently submitted comments to us on a more recent IPM projection that was at the time intended by EPA to be part of a new modeling platform for national rule making.[178] In these comments and comments from several EGU owners in Texas, the assertion was that no significant amount of additional SO_2 controls are expected due to compliance with MATS. The comments also pointed out that, as some of our cursory research had also indicated, no large SO_2 control projects were planned at most of the sources we were evaluating. Therefore, based on Texas' recent comments and other information, we concluded considerable uncertainty exists as to whether any further reductions of SO_2 will occur beyond current emission levels as a result of compliance with MATS or CSAPR. Overall this information supports looking at recent actual emissions to represent future emission levels in 2018.

In summary, this adjustment from CENRAP 2018 to the baseline calculated from recent actual emissions was not an ''artificial adjustment'' and was necessary to account for the large difference between specific unit-level emissions in the 2018 CENRAP emissions and a baseline more representative of anticipated future emission levels in 2018. We estimated and presented the estimated visibility benefit of controls based on both the CENRAP 2018 projected emission levels and emission levels consistent with recent actual emissions data. The results considering the 2018 CENRAP emissions baseline were also needed to provide a comparison with the Texas regional haze SIP and an estimate of the change from the 2018 CENRAP modeled reasonable progress goal to a new reasonable progress goal including the controls required in the FIP. The visibility benefit of individual controls calculated based on the CENRAP 2018 emissions baseline represents the additional level of visibility benefit from controlling individual units, consistent with the assumptions/emission projections in the Texas regional haze SIP.

Comment: EPA's methodology to estimate revised reasonable progress goals for Big Bend, the Guadalupe Mountains, and the Wichita Mountains is without precedent and is not supported by the record. The commenters also state that the revised reasonable progress goals are incorrect because they do not account for reductions in Oklahoma emissions.

Response: We disagree with the comment and believe we took a reasonable approach to estimate the change in overall visibility impairment anticipated due to the required controls and provided all calculations for review. We also disagree with the commenter's description of how the states estimated the reasonable progress goals. While our guidance suggests that reasonable progress goals should be established by modeling all existing and reasonable controls, in practice all RPOs including CENRAP completed the modeling early in the process. The 2018 CENRAP modeling was completed before any states had completed their BART and reasonable progress determinations. In many cases, the 2018 projection included an assumption of BART level controls and ''on the book'' controls. Once final BART determinations and reasonable progress determinations were completed, the RPO did not go back and remodel to reassess the reasonable progress goals. In our proposed action in Arkansas,[179] as well as our actions in Arizona [180] and Hawaii,[181] the modeled reasonable progress goals were adjusted based on a methodology of scaling of visibility extinction components in proportion to emission changes. We noted that although we recognize that this method is not refined, it allows us to translate

[177] See Table A.4–2 of the FIP TSD for a comparison of recent actual emissions to CENRAP 2018 projected emission levels.

[178] TCEQ comment letter to EPA on draft modeling platform dated June 24, 2014. '2018 EMP signed.pdf'.

[179] 80 FR 18944, 18997.

[180] 79 FR 52420, 52468.

[181] 77 FR 31692, 31708.

the emission reductions achieved through the FIP into quantitative reasonable progress goals, based on modeling previously performed by the RPOs. However, in this case, our analysis using CAMx modeling and source apportionment, provided a somewhat more refined means to estimate the visibility benefit from specific individual controls on the 20% worst days in 2018. While there is limited precedent for adjusting the RPO calculated reasonable progress goals to account for emission reductions achieved in a FIP or revised SIP, we took a reasonable approach based on the information available. We adjusted each reasonable progress goal established by Texas or Oklahoma for 2018 by the amount of visibility benefit anticipated from all scrubber upgrades estimated by our modeling analysis based on CAMx source apportionment modeling.[182] In estimating the deciview visibility benefit in 2018 compared to the CENRAP modeled 2018 reasonable progress goals, we considered reductions from 2018 CENRAP emissions levels and 2018 ''dirty'' background conditions. We believe that this is a reliable estimate of the amount of visibility benefit anticipated from controls (*e.g.,* 0.14 dv for the Wichita Mountains) beyond the projected 2018 CENRAP reasonable progress goals. We then simply adjusted the reasonable progress goals established by the state by the amount of visibility benefit anticipated from the additional controls.

As discussed above, we adjusted the CENRAP modeled reasonable progress goals to translate the emission reductions required in this FIP for Texas sources into quantitative reasonable progress goals. We note that the CENRAP modeling included an assumption for anticipated BART reductions for Oklahoma sources. We considered the comment concerning consideration of the reductions required by the BART FIP in Oklahoma in setting the 2018 reasonable progress goals and we believe these assumptions are a reasonable approximation of the anticipated BART reductions in Oklahoma at this time, considering the uncertainty of the timing of the reductions for some of the sources and the uncertainty in the final control scenario chosen by the operator to meet the requirements. The required enforceable emission limits in the Oklahoma and Texas FIPs remedy the deficiencies in the SIPs and our finalized reasonable progress goals properly consider the visibility benefits anticipated by those required emission reductions.

Unlike the emission limits that apply to specific reasonable progress sources, the reasonable progress goals are not directly enforceable. Rather, the reasonable progress goals are an analytical tool used by EPA and the states to estimate future visibility conditions and track progress towards the goal of natural visibility conditions.

Comment: EPA's proposal provides no basis for disapproving Texas' and Oklahoma's reasonable progress goals for the 20% best days and fails to provides analysis of the part of the reasonable progress goals addressing the ''best'' days.

Response: We disagree with the comment. Our basis for disapproving the relevant reasonable progress goals for the 20% best days arises, as was noted in our proposal, from our determination that the analysis developed by Texas to evaluate reasonable progress controls was flawed and additional controls are necessary for the first planning period. Finalizing requirements for additional controls, as we now accomplish with our final rule, makes ''visibility on these days better than Texas projects,'' as we noted in our proposal.[183] [184] The submitted reasonable progress goals for the 20% best days did not consider reductions from the reasonable controls, so they cannot be approved. We understand the comment to request a quantitative assessment of the projected visibility conditions for the 20% best days. These calculations have been completed and add to our position that visibility will be better than Texas projects. These numbers, following the same methodology that we employed with the 20% worst days, are summarized in the table provided in the introduction section of the document.

P. Interstate Visibility Transport

We received comments opposing our proposed disapproval of the visibility protection portion of the interstate transport requirements in Texas infrastructure SIP submittals for the ozone, $PM_{2.5}$, NO_2, and SO_2 NAAQS (CAA 110(a)(2)(D)(i)(II)). Among the adverse comments were the following: The requirements for infrastructure SIPs in CAA section 110(a)(2)(D)(i)(II) only contain structural, rather than substantive, requirements. Disapproving Texas' infrastructure SIPs conflicts with the differing deadlines for NAAQS SIP submittals and regional haze SIP submittals. Texas submitted separate SIPs to address the visibility prong of interstate transport for the 1997 ozone, the 2006 $PM_{2.5}$, the 2008 ozone, the 2010 SO_2, and the 2010 NO_2 standards and EPA failed to evaluate these submittals in its proposed disapproval. CAA section 110(a)(2)(D)(i)(II) is pollutant specific, and, because EPA finds that Texas' SIP is inadequate to protect visibility only because it does not contain certain limitations on SO_2 emissions, EPA should not disapprove for the other NAAQS at issue. The CAA's visibility protection requirement is narrower than the requirement for reasonable progress and requires only provisions necessary to prevent interference with control measures included in another state's plan to achieve a visibility standard. The CAA limits EPA's authority to require one state to adopt binding emission limits for the benefit of another state, citing *EME Homer City.*

We disagree with the comments for several reasons. Section 110(a)(2) specifies the *substantive elements* that infrastructure SIP submissions need to address, as appropriate, for EPA approval.[185] EPA has disapproved portions of such SIPs for failure to comply with the interstate visibility transport requirements section 110(a)(2)(D)(i)(II) for various other states. *See* 78 FR 46142, July 30, 2013 (Arizona); 77 FR 14604, March 12, 2012 (Arkansas); 76 FR 52388, August 22, 2011 (New Mexico); 76 FR 81728, December 28, 2011 (Oklahoma). By contrast, in many other SIP actions across the country, we have allowed states to rely on their approved regional haze plan to meet the substantive requirements of the visibility component of section 110(a)(2)(D)(i)(II) because the regional haze plan achieved at least as much emissions reductions as projected by the RPO modeling. *See* 76

[182] As discussed elsewhere in this document, while the required scrubber retrofits will provide for additional visibility improvement at the Class I areas that we consider necessary for reasonable progress towards natural visibility conditions, we do not anticipate these controls to be implemented until after 2018.

[183] 79 FR 74843.

[184] ''No degradation,'' as distinctly needed for the 20% best days, is ensured because added controls do not significantly impact the 20% best days and would serve only to improve visibility on these days. Even so, what we provide as the 20% best day reasonable progress goals for 2018 (*i.e.,* the ''least impaired days'') for Big Bend, Guadalupe Mountains and Wichita Mountains numerically differ from the numbers that Texas had submitted by very small amounts. By the design of 40 CFR 51.308(d)(1), improvements for the most impaired days provide a more vital benchmark for progress that may be made.

[185] *See* September 13, 2013 EPA guidance memo ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'', *http://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.*

FR 34608, June 14, 2011 (California); 79 FR 60985, October 9, 2014 (New Mexico); 76 FR 36329, June 22, 2011 (Idaho); and 76 FR 38997, July 5, 2011 (Oregon). We gave limited disapproval to the Texas regional haze SIP based on its reliance on CAIR. CAIR provided limits on emissions of SO_2 and NO_X. SO_2 is a precursor for $PM_{2.5}$. NO_X is a precursor for ozone and for $PM_{2.5}$. NO_2 is a component of NO_X. With CAIR no longer in effect, Texas may not rely on its regional haze SIP to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states. We recognize that CAA section 110(a)(2)(D)(i)(II) is pollutant specific; nevertheless, ozone, $PM_{2.5}$, NO_2, and SO_2 or their precursors could interfere with visibility protection. Because Texas has not demonstrated that its SIP submittals ensure that Texas emissions would not interfere with measures required to be included in the SIP for any other state to protect visibility, we are disapproving these SIP submittals.

As discussed in this action, the D.C. Circuit Court in *EME Homer City* recently issued a decision upholding CSAPR but remanding without vacating a number of the Rule's state emissions budgets, including those for Texas. The CSAPR remand did not affect our reasons for proposing to disapprove portions of Texas' SIP submittals that address CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state for the 1997 $PM_{2.5,}$ 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. However, the remand did affect our proposal to rely on CSAPR to help address our FIP obligation for interstate transport of air pollution and visibility protection. Therefore, today's action does not finalize the portion of our proposed FIP that would have relied on CSAPR to satisfy Texas' visibility transport obligations with respect to the aforementioned NAAQS. We will address the visibility transport requirements for Texas in a future rulemaking once the issues surrounding the partial remand are resolved.

Q. Disapproval of the Oklahoma and Texas Reasonable Progress Goals

We received numerous comments on our proposed disapproval of the reasonable progress goals selected by Texas and Oklahoma for their respective Class I areas and the recalculated reasonable progress goals we proposed. Some comments were in support of our proposed disapproval of the state's reasonable progress goals and our proposed recalculated reasonable progress goals. However, a majority of the comments raised objections to our proposed action on the reasonable progress goals. These commenters raised numerous issues in support of their objections to our proposal, including that recent monitoring data from IMPROVE monitors indicates the Class I areas are already meeting the new reasonable progress goals we proposed without the need for the additional controls we proposed, that there have been significant SO_2 and NO_X emissions reductions in Texas since the baseline period, that our proposed disapproval of the state's reasonable progress goals had no technical or legal basis, and that we inappropriately recalculated the new reasonable progress goals we proposed.

Below we present a summary of our responses to the more significant comments we received that relate to our proposed action on the reasonable progress goals for Texas and Oklahoma Class I areas. See our RTC document for a more in-depth presentation of the comments we received and our responses to them.

Comment: Our proposed disapproval of Oklahoma's reasonable progress goals for the Wichita Mountains is proper and required by the CAA, as the record is clear that control measures satisfying the four reasonable progress factors are available for some of the largest sources of visibility impairment at the Wichita Mountains. Our proposed finding that Oklahoma and Texas did not adequately consult with each other regarding the impact of Texas sources on Oklahoma's Class I area is also proper because in order to engage in meaningful consultation, an upwind state such as Texas must provide impacted states with sufficient technical information detailing the visibility impacts of individual sources and the feasibility and cost-effectiveness of control measures on those sources. A downwind state such as Oklahoma should request the adequate information when it is not provided by the upwind state and must take a hard look at this information and request that upwind states require the control measures that satisfy the four factors laid out in the statute for making reasonable progress. We support the EPA's conclusions as to what constitutes a proper and meaningful consultation under the regional haze program and support the EPA's proposed disapproval of Oklahoma's reasonable progress goals and finding that the consultations between Oklahoma and Texas were inadequate.

Response: We appreciate the commenter's support of our interpretation of what constitutes an adequate consultation that satisfies the Regional Haze Rule requirements. We also appreciate the commenter's support of our proposed disapproval of Oklahoma's reasonable progress goals for the Wichita Mountains and our finding that the consultations between Oklahoma and Texas to address the impacts of Texas sources on the Wichita Mountains were not adequate and did not meet the regional haze requirements. We are finalizing as proposed our disapproval of several of the requirements with regard to Oklahoma's establishing of reasonable progress goals for the Wichita Mountains, including our finding that the consultations between Texas and Oklahoma to address Texas' impacts on the Wichita Mountains were not adequate and did not meet the Regional Haze Rule requirements.

Comment: EPA should withdraw its proposed FIP and instead fully approve the regional haze SIPs submitted by Texas and Oklahoma because the SIP submitted by Texas fully complies with the statute and all regulatory standards and therefore there is no legal or technical basis for EPA's proposed FIP. On every level, EPA's proposal exceeds the agency's authority under the CAA and EPA's regional haze regulations.

Response: We disagree with the commenter that there is no legal or technical basis for our proposed FIP, that the proposed FIP exceeds our authority under the CAA and the regional haze regulations, and that the SIP submitted by Texas fully complies with the statute and regulatory requirements. The CAA and § 51.308(d)(1) provide how to determine what constitutes reasonable progress for each planning period and specify the requirements related to establishment of the reasonable progress goals for each Class I area. In particular, both the CAA and the Regional Haze Rule require states to consider four factors when setting reasonable progress goals: The costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and the remaining useful life of potentially affected sources.[186] The Regional Haze Rule also requires that in establishing the reasonable progress goals, states must consider the uniform rate of progress and the emission reduction measures needed to achieve it for the period covered by the implementation plan. In addition, because the reasonable progress goals selected by Texas and Oklahoma provide for a rate of improvement slower than the

[186] CAA Section 169A(g)(1), 42 U.S.C. 7491(g)(1). 40 CFR 51.308(d)(1)(i)(A).

uniform rate of progress, the Regional Haze Rule requires the states to demonstrate why their reasonable progress goals are reasonable and why a rate of progress leading to natural visibility conditions by 2064 is not reasonable.[187] As discussed in more detail in our proposal and in the RTC document associated with this final action, Texas did not satisfy several of the requirements at § 51.308(d)(1) with regard to setting reasonable progress goals for its own Class I areas, most notably the requirement to reasonably consider the four statutory reasonable progress factors and the requirement to adequately consider the emission reduction measures needed to meet the uniform rate of progress. Texas also did not satisfy the consultation requirements at § 51.308(d)(3)(i) to address its impacts on the Wichita Mountains. Oklahoma also did not satisfy certain requirements under § 51.308(d)(1) with regard to setting reasonable progress goals for the Wichita Mountains, including the requirement to adequately consult with other states that may reasonably be anticipated to cause or contribute to visibility impairment at the Wichita Mountains and the requirement to adequately consider the emission reduction measures needed to meet the uniform rate of progress. Therefore, we disagree that the Texas and Oklahoma SIPs fully comply with the statutory and regulatory requirements and that our FIP exceeds our authority under the CAA. We are finalizing our proposed disapproval of Texas' and Oklahoma's reasonable progress goals and the controls we proposed under reasonable progress for sources in Texas.

Comment: EPA does not take issue with Oklahoma's four-factor analysis, but nevertheless proposes to reset Oklahoma's reasonable progress goals based on its reasonable progress analysis for Texas sources. EPA also finds it necessary to disapprove Oklahoma's reasonable progress goals because they did not include the emission reductions from the Oklahoma SO_2 BART FIP and the revised BART SIP for the AEP units that were subsequently promulgated. However, EPA's proposed SIP does not correct this error either.

Response: The comment that we disapproved the reasonable progress goals for the Wichita Mountains because they do not include the emission reductions from the SO_2 BART FIP and the revised BART SIP for the AEP units that have subsequently been promulgated is taken out of context and does not fully capture the rationale for our disapproval. We are disapproving the reasonable progress goals for the Wichita Mountains because they do not account for emission reductions from reasonable measures at Texas sources. We stated in the proposal that the reasonable progress goals selected by Oklahoma for the Wichita Mountains do not include the level of reductions necessary to meet the requirements under 40 CFR 51.308(e) for BART. We further explain that ''BART is a component of developing the reasonable progress goals, and the reasonable progress goals are inadequate because BART controls were not adequately considered. We note this deficiency is addressed by our Oklahoma BART FIP and the revised Oklahoma BART SIP.'' [188] The visibility modeling developed for CENRAP and used by Oklahoma in support of its SIP revision submittal assumed SO_2 reductions from the six BART sources that Oklahoma subsequently did not secure when making its BART determinations for these sources. We believe that the BART limits in our Oklahoma BART FIP [189] have adequately addressed the deficiency. We also provide in our proposal additional reasons for disapproving the reasonable progress goals, stating ''Oklahoma's consultations with Texas were flawed, which prevented Oklahoma from adequately developing its reasonable progress goals for the Wichita Mountains,'' and, because Oklahoma's consultations with Texas were flawed, Oklahoma did not adequately demonstrate that the reasonable progress goals it established were reasonable based on the four statutory factors under § 51.308(d)(1)(ii).[190] Comments regarding how we calculated the reasonable progress goals for the Wichita Mountains, Big Bend, or the Guadalupe Mountains, and our consideration of emission reductions from BART requirements in Oklahoma are addressed in a separate response to comment.

Comment: EPA's proposed disapproval of Texas' reasonable progress goals and its substitution with new reasonable progress goals in the proposed FIP is based on EPA's flawed interpretation of what the CAA requires for ''reasonable progress goals.'' This action is based on the EPA's conclusion that ''reasonable progress'' must be determined based on source-specific cost of controls even though such a requirement did not exist in the statute, the Regional Haze Rule, or the guidance available in 2009. The Texas 2009 regional haze SIP established reasonable progress goals for both Big Bend and the Guadalupe Mountains that provide for visibility improvement for the most impaired days over the period of the SIP and ensure no degradation in visibility for the least impaired days over the same period. The EPA agrees the SIP meets these requirements and also agrees that the TCEQ considered the four statutory factors in establishing the reasonable progress goals for its Class I areas in accordance with the Regional Haze Rule. Furthermore, the four statutory factors in and of themselves do not determine the reasonableness of the goals for the planning period. The Regional Haze Rule, in 40 CFR 51.308(d)(1)(iii), requires the EPA to evaluate whether the state's goal for visibility improvement provides for reasonable progress based on a demonstration of which the four statutory factors are only one element. Therefore, EPA's proposed disapproval of Texas' reasonable progress goals and its proposed new reasonable progress goals is flawed.

Response: We disagree that our proposed disapproval of Texas' reasonable progress goals is based on a flawed interpretation of what the CAA requires for reasonable progress goals. As we discuss in our responses to other similar comments, we believe that our evaluation of cost, including visibility benefits, on a source-specific basis was an appropriate and reasonable interpretation of the analysis required in this instance, in order to determine what, if any, level of control for Texas sources constituted reasonable progress for this planning period.

We agree that § 51.308(d)(1) requires more than just the consideration of the four factors in the establishment of the reasonable progress goals. Also, although we agree Texas conducted an evaluation of the four reasonable progress factors, we determined that that evaluation was flawed. Texas did not fully satisfy the requirements under § 51.308(d)(1) related to the evaluation of the four reasonable progress factors and establishment of the reasonable progress goals for the two Texas Class I areas. We note that § 51.308(d)(1)(iii) provides that in determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the State pursuant to paragraphs (d)(1)(i) and (ii). Thus, we are specifically directed to judge the quality of a state's submission of these key parts

[187] 40 CFR 51.308(d)(1)(ii).

[188] 79 FR 74871, 74872.

[189] 76 FR 81728.

[190] 79 FR 74872.

of its reasonable progress goals development, which we found to be flawed. In particular, as we discussed in detail in our proposal, we disagree with the set of potential controls identified by Texas and how it analyzed and weighed the four reasonable progress factors under § 51.308(d)(1)(i)(A) [191] and we further proposed to disapprove Texas' reasonable progress goals under § 51.308(d)(1)(ii).[192] For the reasons given in the proposal and affirmed in this final action, we cannot approve Texas' reasonable progress goals. In this action, we are finalizing our disapproval of Texas' reasonable progress goals for Big Bend and the Guadalupe Mountains and we are establishing new reasonable progress goals for these Class I areas, as discussed in our proposal.

Comment: EPA fails to take into consideration the TCEQ's 2014 Five-Year Regional Haze SIP Revision or the effects of early action or emission reduction accomplished or to be accomplished by other EPA programs before imposing additional requirements beyond the state submitted SIPs. Considering that the visibility improvements of these programs have not yet been quantified, and the gradual progress anticipated in establishing such a long-term goal, EPA should be patient and not take such aggressive action in overriding reasonable state SIPs and imposing additional controls.

Response: We stated in our proposal that the TCEQ submitted the first five-year report in March 2014, but we are not including our analysis of that SIP revision within this action.[193] The five-year progress report is a requirement that is separate from the regional haze SIP required for the first planning period, and it has separate content and criteria for us to review. We therefore believe we are not obligated to consider or take action on the five-year progress report at the same time we take action on the regional haze SIP for the first planning period. Even so, we acknowledge that recent monitoring data from IMPROVE monitors indicate that the more recent five-year average measurements of visibility extinction at Texas and Oklahoma Class I areas on the 20% worst days contained in the progress report are lower (*i.e.,* indicate better visibility conditions) than the numerical reasonable progress goals we are establishing for these Class I areas. This issue is addressed in detail elsewhere in this final action and in the RTC document.

We disagree with the commenter's contention that we should not impose additional controls on Texas sources and instead approve the Texas regional haze SIP and the remaining portion of the Oklahoma regional haze SIP because there may be potential visibility improvements that have not yet been quantified, resulting from early actions and emission reductions accomplished or expected to be accomplished through other EPA programs. If it is determined based on the demonstrations developed pursuant to § 51.308(d)(1)(i) and (ii) that there are reasonable and cost-effective controls available that would provide for reasonable progress, the statute and regional haze regulations do not allow for a delay in requiring these controls to allow time for the quantification and consideration of possible future visibility improvements. Therefore, we are finalizing our proposed disapproval of Texas' and Oklahoma's reasonable progress goals and are finalizing the control requirements we proposed for Texas sources under the reasonable progress and long-term strategy reasonable progress requirements.

Comment: The regional haze program tasks states with determining what is reasonable progress toward elimination of man-made visibility impairment, along with specific progress milestones (10-year planning and SIP revisions, with program reviews in the middle of the 10-year planning periods). The regional haze program contemplates gradual visibility improvements along a ''glide path'' that considers the 2064 goal, and does not require immediate reductions that exceed ''reasonable progress'' as determined by the state based on the four statutory factors. Thus, it neither requires nor authorizes the frontloading of extensive control requirements.

Response: The commenter's contention concerning reasonable progress is premised on the assumption that the emissions reductions that are part of the state's long-term strategy and upon which its reasonable progress goals are based do in fact constitute reasonable progress. The determination of what constitutes reasonable progress must be made pursuant to § 51.308(d)(1). Based on its analyses under § 51.308(d)(1), a state (or EPA in the context of a FIP) may determine that a greater or lesser amount of visibility improvement than what is needed to get on the glide path is what constitutes reasonable progress.[194] As discussed in our proposal and within this action, we disagree with the set of potential controls identified by the TCEQ as having the greatest impact on visibility on the three Class I areas and how it analyzed and weighed the four reasonable progress factors in a number of key areas.[195] Therefore, we proposed to disapprove Texas' reasonable progress goals for its Class I areas and conducted our own analysis of the four reasonable progress factors to fill in the regulatory gap that would be created by our disapproval action. We are replacing Texas' flawed reasonable progress analysis with our own and are finalizing the cost-effective reasonable progress controls we proposed on the small number of Texas point sources that have the greatest visibility impacts on the Class I areas of interest.

Comment: Texas' four-factor analysis and its reasonable progress goals were reasonable and within the state's broad discretion, and are supported by recent monitoring data showing the reasonable progress goals will be met for Oklahoma and Texas Class I areas without the additional controls EPA proposed for Texas sources. The most recent five-year (2009–2013) averages of visibility monitoring data from IMPROVE monitors indicates that visibility impairment at the Guadalupe Mountains, Big Bend, and the Wichita Mountains, are lower than both the 2018 reasonable progress goals proposed by the states and the more stringent 2018 reasonable progress goals proposed by EPA. The Texas five-year regional haze progress report issued in 2014 includes a projection of further reductions of haze-forming SO_2 and NO_X emissions from point sources through 2018. Therefore, the commenter concludes that it is expected that visibility improvements observed through 2013 for Big Bend, the Guadalupe Mountains, and the Wichita Mountains will continue and that the 2018 reasonable progress goals that EPA proposes will be met without the further emission controls EPA proposes. These current data also show that Wichita Mountains is projected to meet the EPA approved uniform rate of progress for Oklahoma, and the Guadalupe Mountains is projected to meet the EPA-proposed uniform rate of progress by 2018, without the emission controls that EPA is proposing. Yet EPA ignores these actual conditions in developing its reasonable progress goals and in concluding that its reasonable progress goals are more reasonable. EPA has no authority to require further controls from Texas sources and should

[191] 79 FR 74838.

[192] 79 FR 74843.

[193] 79 FR 74864.

[194] 64 FR 35732.

[195] 79 FR 74838.

withdraw its FIP and approve the Texas SIP.

Response: These comments are predicated on two false tests: (1) If a Class I area meets its uniform rate of progress, or (2) if subsequent monitoring shows a Class I area meets its reasonable progress goals, it is automatically relieved of any obligation to address the reasonable progress and long-term strategy requirements in § 51.308(d)(1) and (3).

We discuss elsewhere in this final action that, while we agree that the Regional Haze Rule requires states to consider the uniform rate of improvement in visibility when formulating reasonable progress goals, we disagree that a state's consideration of the uniform rate of progress and establishment of reasonable progress goals that provide for a slightly greater rate of improvement in visibility than would be needed to attain the uniform rate of progress is all that is needed to satisfy the reasonable progress goal requirements in the Regional Haze Rule. We also disagree that the Regional Haze Rule requires additional analysis only when a state establishes reasonable progress goals that provide for a slower rate of improvement than the uniform rate of progress. Even when recent data from IMPROVE monitors indicate that visibility conditions in the Class I area are better than the established reasonable progress goals and/or that the area may be projected to meet the uniform rate of progress by 2018, the state must still address the requirements under § 51.308(d)(1) and (d)(3)(i) in evaluating controls for additional sources and in establishing reasonable progress goals for its Class I areas.

With regard to the assertion that Texas' five-year regional haze progress report projects SO_2 and NO_X emissions from point sources to continue to decline through 2018 (with corresponding visibility improvement trends at the three Class I areas), Texas' five-year regional haze progress report is pending evaluation as a SIP revision, and we intend to take action on it in a future rulemaking. We note that the portion of the Texas' five-year regional haze progress report referred to by the commenters [196] compares actual annual emissions from 2002 through 2011 against a linear change between 2002 actual emissions and the 2018 CENRAP modeled emissions and concludes that emissions from 2002 to 2011 have trended downward better than or as predicted in the CENRAP modeling projections. However, we noted in our proposal that the CENRAP projected visibility impacts in 2018 from Texas point sources, and EGUs in particular, are significant. As noted in our proposed rulemaking, based on information provided by the TCEQ in materials other than the progress report, we do not expect large additional emission reductions of SO_2 in Texas between 2013 and 2018 under Federal programs and the SIP as submitted.[197] We have not seen evidence in support of something different. Furthermore, emissions from some of the Texas EGUs that we are requiring controls for and that impact visibility at the three Class I areas the most, are still above the emission level projected in the 2018 CENRAP modeling. We are not aware of any upcoming controls or changes in operation to suggest that future actual emissions at these specific sources will decrease to those predicted levels.

We also remind the commenters that even with the controls we are requiring for Texas EGUs under our FIP, additional reductions would be needed for visibility conditions to meet or exceed every uniform rate of progress goal in 2018 as calculated by us in our proposal. For example, current conditions at the Wichita Mountains (based on 2009–2013) is 21.2 dv. Additional reductions would be needed for the area to meet the uniform rate of progress goal of 20.01 dv in 2018.

Comment: The SO_2 emissions from Luminant's units, for which EPA proposed controls, have steadily trended downward over the first planning period, further underscoring the effectiveness of the measures relied on in Texas' SIP and the unreasonableness of EPA's proposed FIP. From 2009 to 2014, SO_2 emissions from Luminant's Big Brown, Martin Lake, Monticello, and Sandow Unit 4 were reduced by 27%. The SO_2 emissions for the first quarter of 2015 are sharply lower—approximately 57% lower than the first quarter of 2009 and about 44% lower than the first quarter of 2014. The data unequivocally show that SO_2 emissions at Luminant's units are trending down, and thus there is no basis for EPA's proposal.

Response: The annual and quarterly SO_2 emissions data for Luminant's facilities for 2009–2015 demonstrate that, although there has been an overall downward trend in annual SO_2 emissions during this time period, there has not been a downward trend in SO_2 emissions during Quarter 3 for the six-year period for which full data are available. Except for the years 2011 and 2012, when total SO_2 emissions for Quarter 3 were either sizably higher or lower compared to the other years during the 2009–2014 time period, emissions for Quarter 3 remained relatively unchanged during this six year period. This is significant because Quarter 3 corresponds to the summer months and many of the 20% worst days, which is what the reasonable progress goals are based on, typically occur during the summer months. Emissions reductions during the fall and/or winter months reduce annual emissions, but will not lead to improved visibility during the 20% worst days. The majority of the decline in total annual SO_2 emissions from the Luminant sources is driven by seasonal operation of Monticello units 1 and 2.[198] Furthermore, as we discuss in more detail elsewhere, we do not anticipate any significant reductions at these sources in the near future, and information provided by Texas indicates it agrees.[199] We also note, as discussed above, NO_X emissions for many of these units were updated in our modeling to better reflect the recent actual emissions. Therefore, we disagree that the observed trend in SO_2 emissions at Luminant's units in recent years demonstrates that there is no basis for EPA's proposal.

Comment: To the extent Texas and industry are arguing that the current visibility conditions meet the reasonable progress goals EPA is proposing, that is largely a result of the fact that EPA has not updated the majority of the 2018 projections that CENRAP and Texas relied on. Goals based on the controls EPA has proposed and also on more updated projections would likely be lower than the reasonable progress goals EPA is proposing. The recent improvement is due to a variety of factors, which EPA discusses in the proposed rule, 79 FR 74843, most of which are not enforceable limitations or are beyond the state's control and, therefore, may be temporary. The argument made by Texas and industry does not show that the proposed controls themselves are unnecessary or unreasonable. Further, the argument by Texas and industry reflects a misunderstanding of how reasonable progress goals are set. Reasonable progress goals are set to reflect controls that are reasonable; controls are not required in order to meet pre-set reasonable progress goals. Congress

[196] 2014 Texas Five-Year Reasonable Progress Report, p 4–10, figure 4–2.

[197] TCEQ comment letter to EPA on draft modeling platform dated June 24, 2014.

[198] See Luminant CAMD emissions.xlsx in the docket for this action.

[199] See TCEQ comment letter to EPA on draft modeling platform dated June 24, 2014 available in the docket for this action.

defined reasonable progress as the amount of progress that could be made after consideration of four factors. 42 U.S.C. 7491(g)(1). After the four-factor analysis defines reasonable progress, each haze SIP must include the enforceable measures necessary to make reasonable progress. *Id.* section 7491(b)(2). The reasonable progress goal for 2018 is calculated as the baseline visibility condition minus the amount of reasonable progress (which is established based on consideration of the four statutory factors).

Response: We generally agree with the commenter and agree that these comments provide support of our FIP.

Comment: EPA fails to even consider the four statutory factors with respect to non-BART sources in Oklahoma that are impacting visibility at the Wichita Mountains and to determine whether all existing and reasonable controls on Oklahoma sources, including BART, are sufficient to attain a reasonable rate of progress for the Wichita Mountains for the first planning period. EPA does not explain why it failed to conduct the modeling and perform the statutory analysis that it would expect a state to conduct in determining a reasonable progress goal.

EPA failed to consider the visibility benefit from imposing the same levels of control on these sources as it is proposing to impose on the targeted Texas sources. EPA is applying a different standard to Texas sources than it is to sources in other states. EPA's ''reset'' reasonable progress goal is unlawful; and EPA has no basis for disapproving Oklahoma's reasonable progress goal, no basis for issuing a FIP with a substitute reasonable progress goal for the Wichita Mountains, no basis for disapproving Texas' long-term strategy, and no basis for imposing additional SO_2 limits on Texas sources.

Response: We disapproved Texas' long-term strategy because it was technically flawed and we were under a statutory obligation to evaluate Texas sources and propose a FIP for those facilities where we determined that reasonable emission controls could be installed for improved visibility benefit.

Oklahoma's lack of adequate information from Texas prevented it from properly developing its reasonable progress goals for the Wichita Mountains, and we disagree that we are applying a different standard to Texas sources than we are sources in other states. We note that we were not required to do a four-factor analysis for Oklahoma's non-BART sources because, as discussed in our proposal [200] and OK TSD, we reviewed Oklahoma's four-factor analysis for Oklahoma's non-BART sources, and agree with Oklahoma that it has demonstrated that it is not reasonable to require additional emission reductions for those sources for this planning period. We agree with Oklahoma's reasonable progress analysis for sources within Oklahoma and its assessment that the Wichita Mountains would not meet the uniform rate of progress without significant reductions from Texas sources. Because the reasonable progress goals Oklahoma established for the Wichita Mountains does not include appropriate consideration of reductions at Texas sources, we were required by the Regional Haze Rule to disapprove Oklahoma's reasonable progress goals. We recalculate new reasonable progress goals for 2018 for the Wichita Mountains based on the results of our technical analysis that additional controls at Texas sources were reasonable to meet the reasonable progress/long-term strategy requirement for reasonable progress and accounting for the visibility benefit of the required controls anticipated to be in place by 2018.

R. International Emissions

Comment: EPA acknowledged it failed to account for international sources of emissions, which Texas cannot control. This renders its proposal ineffective in improving visibility to meet the uniform rate of progress and 2064 goal. EPA's action would require over-control of Texas sources to compensate for international emissions. If the TCEQ cannot meet the glide path without ''large emission reductions from international sources,'' it is unreasonable for EPA to require additional controls from Texas without making any effort to seek emissions reductions from international sources.

Response: We agree with the commenters that international emissions significantly impact visibility conditions at Big Bend and the Guadalupe Mountains. However, as we discussed in the preamble to the Regional Haze Rule, ''the States should not consider the presence of emissions from foreign sources as a reason not to strive to ensure reasonable progress in reducing any visibility impairment caused by sources located within their jurisdiction.'' While the goal of the regional haze program is to restore natural visibility conditions at Class I areas by 2064, the rule requires only that reasonable progress be made towards the goal during each planning period, and in cases where it is not reasonable to meet the rate of progress needed to attain the goal in 2064, that the state demonstrate that it is not reasonable and that the selected rate of progress is reasonable for that planning period. We recognize that it may not be possible to attain the goal by 2064, or at all, because of impacts from new or persistent international emissions sources or impacts from sources where reasonable controls are not available. However, states are still required to demonstrate that they are establishing a reasonable rate of progress that includes implementation of reasonable measures within the state to address visibility impairment in an effort to make progress towards the natural visibility goal during each planning period. Nothing in the Regional Haze Rule or our FIP is calculated to hold Texas accountable for emissions from Mexico. We agree those international emissions should be addressed to achieve natural visibility, but our agreement on this point does not in any way relieve Texas of the obligation to make reasonable progress, including through controls on its own sources, and particularly through the emissions addressed with controls through our FIP.

Comment: EPA is not doing enough to seek emission reductions from international sources. Commenters noted that we committed to address international emissions in our 1999 Regional Haze Rule when we stated, ''EPA will work with the governments of Canada and Mexico to seek cooperative solutions on transboundary pollution problems (64 FR 35714, 35736),'' but have thus far done little.

Response: We acknowledge that Texas requested in its SIP that we initiate and pursue Federal efforts to reduce impacts from international transport. There are efforts underway to address public health problems related to air emissions along the United States-Mexico border. Given that emissions contributing to health effects and those contributing to visibility impairment are generally the same, the border studies and continuing emissions inventory development will aid in identifying solutions that we would expect to also address visibility impairment. The Border 2020 program aims to, among other things, reduce air pollution to help meet the NAAQS and reduce emission through the use of energy efficiency and/or alternative/renewable energy projects. We expect that recent commitments from Mexico to reduce its carbon dioxide and black carbon emissions will have ancillary benefits to improve visibility at Class I areas in the future.

Comment: It is not possible for Texas to achieve the uniform rate of progress because of the contribution from

[200] 79 FR 74871.

Mexico. An analysis shows that if every point source in Texas were shut down, it would have only a marginal impact on visibility in the Guadalupe Mountains. Further, the exclusion of all of Texas and other United States elevated point sources resulted in a modeled haze index value of 14.88 dv, meaning that Mexican sources and natural contributions are projected to account for 92%, or all but 1.48 deciviews, of visibility impairment in the Guadalupe Mountains.

Response: The commenter erroneously overstates the size of the visibility impacts from Mexico relative to Texas. As we stated in our proposal, efforts to meet the goal of natural visibility by 2064 ''would require further emissions reductions *not only within Texas,* but also large emission reductions from international sources'' (emphasis added).[201] The commenter's analysis fails to account for impacts from mobile and area sources within Texas and other states, and fails to differentiate Mexican sources from other international sources. The analysis also fails to consider that deciviews are a logarithmic function of extinction, resulting in the underestimation of the percent contribution from Texas and U.S. point sources. Overall impacts from all sources in Texas are larger than all sources in Mexico and the boundary conditions (which represent external sources) combined. As we discuss in our proposal and elsewhere in our response to comments, Texas and we agreed that it was reasonable to focus on impacts from point sources for this planning period. The visibility impairment from Texas point sources is significant, and as our analysis shows, a significant portion of this impairment can be addressed by controlling a small number of sources. Controls on just four units at Tolk and Big Brown are estimated to reduce visibility impairment due to all Texas point sources at the Guadalupe Mountains by approximately 13%. All required controls combined are estimated to reduce visibility impairment at the Guadalupe Mountains from all Texas point sources by approximately 22%.

Comment: CCP (through its contractor, AECOM) stated that back trajectories for 2011–2013 indicate that approximately 77% of the 20% worst day trajectories at the Guadalupe Mountains passed through Mexico. For Big Bend, this percentage increases to about 96%. Mexican point sources, particularly Carbon I and Carbon II, are only about 230 km away from Big Bend, while the nearest Texas facility with a proposed new emission limit is about 500 km away. Emissions from these large power plants are noteworthy—Carbon II emitted 162,329 tons of SO_2 in 2008, according to the draft EPA 2011 modeling platform, which is an increase from 1997 (129,341 tons at Carbon II). In addition to international point sources, smoke plumes from agricultural fires in Central America travel northward into the U.S. and contribute to haze. Modeling shows that the sources that cause haze in Big Bend and the Guadalupe Mountains are rarely in the area where most of the emission sources targeted by EPA are located. The effect of controlling emissions at a plant like Big Brown would be dwarfed by the massive impact of the international emissions. CCP reasons that since the emissions from its facility, Coleto Creek, are even lower than Big Brown's emissions, it would have a smaller impact. This component of haze must be accounted for in regional haze SIPs in the development of reasonable progress goals and/or natural conditions because these emissions from agricultural burns, power plants, or wildfires from international sources are beyond the jurisdiction of state agencies.

Response: We have reviewed the back trajectories provided and have noted several flaws in the analysis and conclusions. In general, back trajectories are tools that may be used for analyzing potential upwind contribution areas to a monitored value of concern. In this case we generally agree that many back trajectories do pass through upwind areas in Mexico for the 20% worst monitored days at Big Bend and the Guadalupe Mountains. What the commenter fails to point out or conclude is that a very large percentage of the trajectories that the commenter attributes to Mexico also cross over or near areas of Texas, thus indicating that Texas is also a potential contributor to the high monitored values at Big Bend and the Guadalupe Mountains. We do agree that impacts from Mexico are significant and must be addressed to achieve natural visibility, but our agreement on this point does not in any way relieve Texas of the obligation to make reasonable progress, including through controls on its own sources, and particularly through the emissions addressed with controls through our FIP. Past analyses have indicated that impacts from Texas on Big Bend and the Guadalupe Mountains are as large as impacts from Mexico and that reducing impacts from sources in Texas is also necessary to achieve natural visibility.[202] We disagree that impacts from Coleto Creek would be smaller than impacts from Big Brown because it has fewer emissions. The comment failed to consider the location of the source and the meteorology/transport conditions. Coleto Creek is closer to Big Bend and our source apportionment modeling shows that the one unit at Coleto Creek has a larger impact on the 20% worst days at Big Bend than the impact from the two units at Big Brown.

The comment presents a comparison between the visibility impact from one facility *to the visibility impact from all sources around the world that lie outside of the modeling domain,* including long range transport from fires, windblown dust, and significant anthropogenic emissions. The commenter states that annual average visibility impairment from Big Brown is approximately 10% of the annual average contribution from those sources captured by the boundary conditions. This is a significant fraction of the total visibility impairment that can be addressed through the installation of controls on merely two emission units. We also note that visibility impairment on the 20% worst days at each Class I area from Big Brown is larger; and as can be seen by the data submitted by the commenter, on some days, the visibility impairment due to Big Brown's emissions approaches or exceeds that from all emissions sources captured by the boundary conditions. For the Wichita Mountains, controls on just Big Brown address almost 12% of the total visibility impairment due to Texas point sources and 1.63% of the total visibility impairment from all sources. In summary, the visibility impairment from the individual sources analyzed is significant, and controls on these sources provide for meaningful progress towards the goal of natural visibility conditions at one or more Class I areas. This is not inconsistent with the understanding that significant impacts from international emissions and other sources exist and should also be addressed.

Lastly, we agree with CCP that the sources it cites, Carbon I and Carbon II, are responsible for significant levels of pollution. Carbon I is a 1,200 MW power plant and Carbon II is a 1,400 MW coal-fired power plant. These two power plants, less than 1.5 miles apart, are less than 20 miles from the U.S.-Mexico border. Together, these power plants comprise one of the largest

[201] 79 FR 74843.

[202] See FIP TSD pages A–30–32 and A–65–66 and Conclusions of BRAVO study source apportionment techniques (*TX166.017 BravoFactSheet20040915.pdf and BRAVOFinalReportCIRA.pdf*).

uncontrolled sources of SO_2 and NO_X in North America.[203] It has been demonstrated for some time that they are significant contributors to visibility impairment at Big Bend.[204] However, addressing international emissions can be complex. For instance, Texas has recently issued water discharge and mining permits to a coal mine in Maverick County, near the Texas border town of Eagle Pass, to allow the Mexican company Dos Republicas to begin mining coal that will reportedly be sent to these facilities.[205] Prior to our delegation of the National Discharge Elimination System (NPDES) permitting authority to Texas, we issued a NPDES permit for the operation of this mine, and in the process issued an Environmental Impact Statement (EIS).[206] In our EIS, we stated that ''. . . EPA does not have the authority to prohibit export of U.S. resources which will cause the country environmental harm . . . EPA believes that the U.S. policy should be to take actions which will generate the investment capital needed to directly solve the Carbon I/II problem'' [207] Subsequent to that, we attempted to work with the government of Mexico specifically on the problem of installing controls on these sources through a technical work group composed of EPA and SEMARNAP (now SEMARNAT, the Mexican Environment and Natural Resources Secretariat) staff. Unfortunately, these discussions did not result in any control of Carbon I and II. However, EPA is committed to explore opportunities for further discussions with Mexico concerning this subject.

S. Grid Reliability

Comment: The TCEQ recommended that we withdraw the proposed FIP; however, if we do finalize the FIP, it believed we should include an electric reliability safety valve provision in the final rule. The TCEQ stated that we have not evaluated any potential impacts of our proposed FIP to reliability and prices of electricity in Texas. It included a 2014 ERCOT study of the impacts that environmental regulations have in the ERCOT Region. While the ERCOT report included a number of other environmental regulations, such as the MATS rule, Clean Power Plan, and CSAPR, ERCOT also included our proposed regional haze FIP for Texas in its analysis. The TCEQ incorporated the ERCOT report into its comments and encouraged us to consider its findings.

Response: First, we note that controls achieving the level of control that we are requiring are highly cost-effective, are in wide use in the industry, and thus should not require a source to shut down to comply. In response to the TCEQ's comments, however, we contracted with Synapse Energy Economics, Inc., a nationally recognized firm with particular expertise in the subject area. (Synapse).[208] Synapse assessed the information in the ERCOT report and we reproduce its findings below:

1. ERCOT's perspective of market operations is short-sighted. ERCOT raises concerns that reliability could be impacted if numerous coal units choose to retire simultaneously with little notice to either ERCOT or other market participants. Unlike other competitive market regions, ERCOT's rules do not require meaningful notice. ERCOT's charge as a reliability coordinator may obligate it to implement rules requiring reasonable notice for economic retirements.

2. ERCOT's assumptions about new gas turbine capacity are not realistic. While the FIP, along with other environmental regulations ERCOT included in its study, will strain the economic viability of coal plants and likely lead to less coal capacity, ERCOT has not considered new resources that will be available to help address potential reliability challenges. Specifically, ERCOT does not include approximately 4,500 MW of additional gas-fired capacity coming online in Texas in the upcoming years. This represents 7.5 percent of current gas capacity, and would double the modeled baseline gas capacity additions through 2029.

3. The set of regulatory scenarios modeled is both incomplete and (now) outdated. Despite an overall thorough analysis ERCOT excluded a critical scenario that would have modeled the impact of the Regional Haze Program FIP by itself. This limits inferences we can make about impacts. Additionally, since ERCOT finalized its study, EPA finalized the Clean Power Plan. The final rule includes substantive changes that are likely to affect all of the CO_2 limit and price-inclusive scenario modeling results.

4. Electric Generating Unit owners' compliance ''burdens'' with the regional haze FIP may be over-stated. Of the 15 coal-fired units subject to regional haze compliance requirements, eight require upgrades to their existing scrubbers rather than new scrubbers. ERCOT assumed that all of the scrubbers would be priced at the cost of a new retrofit, thereby substantially increasing the cost of the regulation.

We reviewed and accept our contractor's finding and adopt its conclusion that ERCOT's report contained significant flaws. In sum, ERCOT's report cannot support a determination that there is likely to be any significant, adverse effect on the supply, distribution, or use of energy. During our comment period, we received no non-speculative information to validate claims that sources would retire rather than install demonstrably cost-effective controls. Commenters who have alleged grid reliability concerns in response to our proposed controls have not provided adequate documentation for their assertions.

T. Determination of Nationwide Scope and Effect

Several commenters disagreed with our proposed determination of ''nationwide scope and effect,'' which would require all petitions for judicial review to be filed in the U.S. Court of Appeals for the District of Columbia Circuit Court. These commenters argued that our proposed action did not have nationwide scope and effect because it applied only to two states. They further argued that the control requirements in the FIP applied only to sources in Texas. The commenters acknowledged that the proposed action involved our interpretation of our regulations, but asserted that the same is true for many SIP actions. The commenters went on to cite several regional haze SIP actions where we did not make a finding of nationwide scope and effect as evidence that our proposal to do so in this instance was unlawful. Ultimately, these commenters concluded that our proposed action was ''locally or regionally applicable'' and that any future petitions for review must be filed in the appropriate regional circuit. Some commenters suggested that judicial review would only be appropriate in the Fifth Circuit.

We disagree with these comments. The commenters are conflating two distinct portions of the CAA's judicial review provision. Under CAA section 307(b)(1), ''[a] petition for review of . . . nationally applicable regulations promulgated, or final agency action taken, by the Administrator . . . may be filed only in the United States Court of Appeals for the District of Columbia.'' Contrary to the commenter's assertions, we did not assert at proposal, nor do we

[203] Commission for Environmental Cooperation of North America, ''North American Power Plant Air Emissions,'' *http://www.cec.org/storage/56/4876_powerplant_airemission_en.pdf.* TCEQ may keep this in consideration in future studies on the impacts of sources from Mexico on Class I areas or otherwise.

[204] Big Bend Regional Aerosol and Visibility Observational Study (BRAVO), Final Report, September 2004.

[205] *http://www.epbusinessjournal.com/2015/11/dos-republicas-coal-partnership-coal-mine-expanded-water-discharge-permit-application-to-be-heard-november-16th/.*

[206] Authorization to Discharge Under the National Pollutant Discharge Elimination System. Permit No. TX0109011.

[207] Final Environmental Impact Statement on Dos Republicas Resource Company, Inc.'s Proposed Eagle Pass Mine in Maverick County, Texas, December 30, 1994. Page C–51.

[208] Synapse's report, ''ERCOT_Report_Review_Memo_20150908.pdf'' is in our docket to this rulemaking action.

assert now, that our FIP for Texas and Oklahoma is a ''nationally applicable'' regulation. CAA section 307(b)(1) next provides that ''[a] petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 . . . or any other final action of the Administrator . . . which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit.'' The commenters cite this sentence, but ignore the following sentence, which states ''[n]otwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such determination.''

In other words, a final agency action that is locally or regionally applicable, such as a FIP, is appealable only in the D.C. Circuit Court if two conditions are met: (1) The action is based on a determination of nationwide scope or effect, and (2) we find and publish our determination. Both conditions are met here. First, we proposed to find and have confirmed our finding in this final rule that our action on the Texas and Oklahoma regional haze SIPs, which includes the promulgation of a partial FIP for each state, is based on a determination of nationwide scope and effect. Second, we have published that finding in the **Federal Register**.

While the CAA does not provide any guidance regarding the phrase ''nationwide scope and effect,'' the legislative history indicates that a determination of nationwide scope and effect is appropriate if a local or regional action encompasses two or more judicial circuits. The commenters made no effort to explain why this legislative history should not be taken into account. Instead, the commenters cited to other EPA actions on regional haze SIPs where we did not make a determination of nationwide scope and effect. However, the commenters failed to mention that all of these actions involved a single state and thus did not implicate multiple judicial circuits. We have routinely made determinations of nationwide scope and effect when more than one circuit is involved. Last year, for instance, we made a determination of nationwide scope and effect in a SIP approval action that involved the States of Florida and North Carolina, which reside in separate judicial circuits.[209] We have made many other such determinations over the years.

We also determined that this action has nationwide scope and effect because at the core of this rulemaking is our interpretation of the requirements of sections 110(a)(2)(D)(i)(II) and 169A(b)(2) of the CAA and multiple complex provisions of the Regional Haze Rule. Many commenters disagreed with our interpretation of these provisions, with some providing alternative interpretations that would substantially eviscerate the Regional Haze Rule. Congress intended for such issues of national importance to be decided by the D.C. Circuit.

III. Final Action

For the reasons discussed more fully in section II, above and detailed in our proposal and its accompanying TSDs, in this action, we are partially approving and partially disapproving a revision to the Texas SIP received from the State of Texas on March 31, 2009, that intended to address regional haze for the first planning period from 2008 through 2018. We also are disapproving the interstate visibility transport portions of the Texas SIP that address CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state. We also are partially disapproving a revision to the Oklahoma SIP submitted in February 19, 2010, that addresses regional haze for the first planning period. We are finalizing a FIP to remedy certain of the deficiencies and not acting on others. Below is a list of the specific actions we are finalizing in this rulemaking.

A. Texas Regional Haze

We are approving the portions of the Texas regional haze SIP submitted on March 31, 2009, except for the following Regional Haze Rule requirements contained in 40 CFR part 51:

- Section 51.308(d)(1)(i)(A), regarding Texas' reasonable progress four-factor analysis for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(1)(i)(B), regarding Texas' calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(1)(ii), regarding Texas' reasonable progress goals for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(2)(iii), regarding Texas' calculation of natural visibility conditions.
- Section 51.308(d)(2)(iv)(A), regarding Texas' calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions.
- Section 51.308(d)(3)(i), regarding Texas' long-term strategy consultations with Oklahoma.
- Section 51.308(d)(3)(ii), regarding Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains.
- Section 51.308(d)(3)(iii), regarding Texas' technical basis for its long-term strategy for Big Bend, the Guadalupe Mountains the Wichita Mountains.
- Section 51.308(d)(3)(v)(C), regarding Texas' emission limitations and schedules for compliance to achieve the reasonable progress goals for Big Bend and the Guadalupe Mountains and Wichita Mountains.

We are also approving the Texas' BART Rules, 30 TAC 116.1500–116.1540, except for the 30 TAC 116.1510(d) which relies on CAIR and is disapproved.

We are not taking action on 40 CFR 51.308(e) concerning Texas EGU BART.

B. Oklahoma Regional Haze

We are disapproving the portion of the Oklahoma regional haze SIP that addresses the requirements of 40 CFR 51.308(d)(1) with respect to reasonable progress goals, with the exception of § 51.308(d)(1)(vi), which we are approving.

C. Interstate Visibility Transport

We are disapproving portions of Texas SIP submittals that address CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Our final FIP does not cure these defects as that portion of the FIP would have partially relied on CSAPR. We will address the visibility transport requirements for Texas in a future rulemaking, once the issues surrounding the CSAPR partial remand are resolved.

D. Federal Implementation Plan

Our final FIP requires the following SO_2 emission limits for specific emission units in Texas:

[209] See 79 FR 29362.

TABLE 7—FINAL 30-BOILER-OPERATING-DAY SO_2 EMISSION LIMITS

Unit	SO_2 Emission limit (lbs/MMBtu)
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06
San Miguel	0.60

Compliance with these emission limits is based on a 30 BOD period. We are finalizing requirements providing that compliance with these limits be achieved within:

- Five years of the effective date of our final rule for Big Brown Units 1 and 2, Monticello Units 1 and 2, Coleto Creek Unit 1, and Tolk Units 171B and 172B.
- Three years of the effective date of our final rule for Sandow 4; Martin Lake Units 1, 2, and 3; Monticello Unit 3; and Limestone Units 1 and 2.
- One year of the effective date of our final rule for San Miguel. San Miguel may elect an alternative compliance method by doing the following:
- Install a CEMS at the inlet of the scrubber system. The 30 BOD SO_2 average from the existing outlet CEMS must read at or below 6.0% (94% control) of a 30 BOD SO_2 average from the inlet CEMS. San Miguel must inform us in writing of its decision to select this option for compliance by no later than their compliance date.

Based on our technical analysis, we have calculated the following in Tables 8 and 9 for Texas and Oklahoma:

TABLE 8—NATURAL VISIBILITY CONDITIONS, NUMBER OF DECIVIEWS BY WHICH BASELINE CONDITIONS EXCEED NATURAL VISIBILITY CONDITIONS, AND UNIFORM RATE OF PROGRESS FOR TEXAS

Class I area	Natural visibility conditions		Number of deciviews by which baseline conditions exceed natural visibility conditions		Uniform rates of progress at 2018
	20% Worst	20% Best	20% Worst	20% Best	
Guadalupe Mountains	6.65 dv	0.99 dv	10.54 dv	4.96 dv	14.73 dv.
Big Bend	7.16 dv	1.62 dv	10.14 dv	4.16 dv	14.93 dv.

TABLE 9—REASONABLE PROGRESS GOALS FOR TEXAS AND OKLAHOMA

Class I area	Reasonable progress goals	
	20% Worst	20% Best
Guadalupe Mountains	16.26 dv	5.70 dv.
Big Bend	16.57 dv	5.59 dv.
Wichita Mountains	21.33 dv	9.22 dv.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above and the amendments to 40 CFR part 52 set forth below. We have made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. 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 exempt from review by the Office of Management and Budget (OMB) because it is not a rule of general applicability. This action finalizes a source-specific FIP for that applies to eight coal-fired power plants in Texas (Big Brown; Monticello; Coleto Creek; Tolk; Sandow; Martin Lake; Limestone; and San Miguel).

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . . '' 44 U.S.C. 3502(3)(A). Because the FIP applies to only eight facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320.3(c).

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 FIP will apply to eight facilities, none of which are small entities. The final partial approval of the SIP merely approves state law as meeting Federal requirements and does not impose additional requirements.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local,

and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of the UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that Title II of the UMRA does not apply to this rule. In 2 U.S.C. 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms ''regulation'' and ''rule'' have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), ''the term 'rule' does not include a rule of particular applicability relating to . . . facilities.'' Because this rule is a rule of particular applicability relating to eight named facilities, EPA has determined that it is not a ''rule'' for the purposes of Title II of the UMRA.

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. The final rule does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies to eight facilities in Texas and to Federal Class I areas in Oklahoma and Texas. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Moreover, ''regulation'' or ''rule,'' is defined in Executive Order 12866 as ''an agency statement of general applicability and future effect.'' E.O. 12866 does not define ''statement of general applicability,'' but this term commonly refers to statements that apply to groups or classes, as opposed to statements, which apply only to named entities. The FIP therefore is not a rule of general applicability because its requirements apply and are tailored to only eight individually identified facilities. Thus, it is not a ''rule'' or ''regulation'' within the meaning of E.O. 12866. However, as this action will limit emissions of SO_2, it will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions 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

This action involves technical standards. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule would require the eight affected facilities to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

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 increases the level of environmental protection for all

affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This FIP limits emissions of SO_2 from eight facilities in Texas.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 4, 2016.

VI. Judicial Review

The scope and effect of this rulemaking extend to Texas and Oklahoma, which are located in two judicial circuits. In addition, EPA's clarified interpretation of its regulations as set forth in this final action, including the accompanying RTC and TSD documents, is applicable to regional haze actions in all states, not just the specific actions we are taking here with regard to the regional haze obligations for Texas and Oklahoma. Accordingly, the Administrator determines that this is a rulemaking of nationwide scope or effect and any petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit in accordance with CAA section 307(b)(1). Petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by March 7, 2016.

In addition, pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) because it promulgates a FIP under CAA section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of the rule. Per CAA section 307(b)(2), this action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: December 9, 2015.

Gina McCarthy,

Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart LL—Oklahoma

■ 2. Section 52.1920(e) is amended by revising the entry for ''Regional haze SIP'' in the table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
Regional haze SIP: ..... (a) Determination of baseline and natural visibility conditions. (b) Coordinating regional haze and reasonably attributable visibility impairment. (c) Monitoring strategy and other implementation requirements. (d) Coordination with States and Federal Land Managers (e) BART determinations except for the following SO_2 BART determinations: Units 4 and 5 of the Oklahoma Gas and Electric (OG&E) Muskogee plant; and Units 1 and 2 of the OG&E Sooner plant	Statewide	2/17/2010	3/7/2014, 79 FR 12953.	Core requirements of 40 CFR 51.308. Initial approval 12/28/2011, 76 FR 81728. Approval for § 51.308(d)(1)(vi) 1/5/2016 [Insert **Federal Register** citation].
* *	*	*	*	* *

* * * * *

■ 3. Section 52.1928 is amended by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows:

§ 52.1928 Visibility protection.

(a) * * *

(3) ''Greater RP Alternative Determination'' (Section VI.E);

(4) Separate executed agreements between ODEQ and OG&E, and ODEQ and AEP/PSO entitled ''OG&E RH Agreement, Case No. 10–024, and ''PSO RH Agreement, Case No. 10–025,'' housed within Appendix 6–5 of the RH SIP; and

(5) The reasonable progress goals for the first planning period and the reasonable progress consultation with Texas for the Wichita Mountains Class I area.

* * * * *

Subpart SS—Texas

■ 4. Section 52.2270 is amended by:

■ a. In paragraph (c), adding center heading ''Subchapter M: Best Available Retrofit Technology (BART)'' and the sections 116.1500, 116.1510, 116.1520, 116.1530 and 116.1540 under ''Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification''; and

■ b. In paragraph (e), adding an entry for ''Texas Regional Haze SIP'' at the end of the table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP''.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter M: Best Available Retrofit Technology (BART)				
Section 116.1500	Definitions	2/25/2009	1/5/2016 [Insert **Federal Register** citation].	
Section 116.1510	Applicability and Exemption Requirements.	2/25/2009	1/5/2016 [Insert **Federal Register** citation].	116.1510(d) is NOT part of the approved SIP.
Section 116.1520	Best Available Retrofit Technology (BART) Analysis.	2/25/2009	1/5/2016 [Insert **Federal Register** citation].	
Section 116.1530	Best Available Retrofit Technology (BART) Control Implementation.	2/25/2009	1/5/2016 [Insert **Federal Register** citation].	
Section 116.1540	Exemption from Best Available Retrofit Technology (BART) Control Implementation.	2/25/2009	1/5/2016 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Comments
*	* *		* *	* *
Texas Regional Haze SIP.	Statewide	3/19/2009	1/5/2016 [Insert **Federal Register** citation].	The following sections are not approved as part of the SIP: The reasonable progress four-factor analysis, reasonable progress goals and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the RPGs for Big Bend, the Guadalupe Mountains and Wichita Mountains.

■ 6. Section 52.2302 is added to read as follows:

§ 52.2302 Federal implementation plan for regional haze.

(a) Requirements for Martin Lake Units 1, 2, and 3; Monticello Units 1, 2, and 3, Limestone Units 1 and 2; Sandow Unit 4; Big Brown Units 1 and 2; Coleto Creek Unit 1; Tolk Units 1 and 2; and San Miguel affecting visibility.

(1) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the coal burning equipment designated as: Martin Lake Units 1, 2, and 3; Monticello Units 1, 2, and 3, Limestone Units 1 and 2; Sandow Unit 4; Big Brown Units 1 and 2; Coleto Creek Unit 1; Tolk Units 1 and 2; and San Miguel.

(2) *Compliance dates.* Compliance with the requirements of this section is required by February 4, 2019 for Martin Lake Units 1, 2, and 3; Monticello Unit 3, Limestone Units 1 and 2; and Sandow Unit 4. Compliance with the requirements of this section is required by February 4, 2021 for Big Brown Units 1 and 2; Monticello Units 1 and 2; Coleto Creek Unit 1; and Tolk Units 1 and 2. Compliance with the requirements of this section is required by February 4, 2017 for San Miguel. These compliance dates apply unless otherwise indicated by compliance dates contained in specific provisions.

(3) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act (CAA) and in 40 CFR parts 51 and 60. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated in paragraph (a) of this section.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

Unit means one of the coal fired boilers covered under paragraph (a) of this section.

(4) *Emissions limitations—SO_2 emission limit.* The individual sulfur dioxide emission limit for a unit shall be as listed in the table in this paragraph (a)(4) in pounds per million British thermal units (lb/MMBtu) as averaged over a rolling 30-boiler-operating-day period.

Unit	SO_2 Emission limit (lbs/MMBtu)
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06
San Miguel	0.60

(i) For each unit, SO_2 emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of SO_2. For each unit, heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each boiler-operating-day of the thirty-day rolling average for a unit shall be determined by adding together the pounds of SO_2 from that day and the preceding 29-boiler-operating-days and dividing the total pounds of SO_2 by the sum of the heat input during the same 30-boiler-operating-day period. The result shall be the 30-boiler-operating-day rolling

average in terms of lb/MMBtu emissions of SO_2. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the 30-boiler-operating-day rolling average for SO_2.

(ii) In lieu of paragraph (a)(4)(i) of this section, and if San Miguel meets paragraph (a)(5)(i) of this section, it may install a CEMS at the inlet of the scrubber system. The 30 BOD SO_2 average from the existing outlet CEMS must read at or below 6.0% (94% control) of a 30 BOD SO_2 average from the inlet CEMS.

(5) *Testing and monitoring.* (i) No later than the compliance date as set out in paragraph (a)(2) of this section, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO_2 on the units listed in paragraph (a)(1) of this section in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of part 60 of this chapter. No later than the compliance date as set out in paragraph (a)(2), San Miguel must submit a letter to the Regional Administrator that informs the EPA which compliance option it elects, as specified in paragraph (a)(4) of this section. San Miguel must then adhere to the compliance method set forth in that letter to the Regional Administrator. All owners or operators shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for SO_2 shall be determined by using data from a CEMS.

(ii) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 pounds per hour, or SO_2 pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler-operating-days.

(6) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6PD, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS as required in this section, the owner or operator shall comply with the following requirements:

(i) For each emissions limit in this section, comply with the notification, reporting, and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(ii) For each day, provide the total SO_2 emitted that day by each emission unit. For any hours on any unit where data for hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(7) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(8) *Enforcement.* (i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

(b) [Reserved]

■ 7. Section 52.2304 is amended by adding paragraphs (d) and (e) to read as follows:

§ 52.2304 Visibility protection.

* * * * *

(d) Portions of SIPs addressing noninterference with measures required to protect visibility in any other state are disapproved for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2 and 2010 SO_2 NAAQS.

(e) The following portions of the Texas regional haze SIP submitted March 19, 2009 are disapproved: The reasonable progress four-factor analysis, reasonable progress goals and the calculation of the emission reductions needed to achieve the uniform rates of progress for the Guadalupe Mountains and Big Bend; calculation of natural visibility conditions; calculation of the number of deciviews by which baseline conditions exceed natural visibility conditions; long-term strategy consultations with Oklahoma; Texas securing its share of reductions necessary to achieve the reasonable progress goals at Big Bend, the Guadalupe Mountains, and the Wichita Mountains; technical basis for its long-term strategy and emission limitations and schedules for compliance to achieve the reasonable progress goals for Big Bend, the Guadalupe Mountains and Wichita Mountains.

[FR Doc. 2015–31904 Filed 1–4–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 2 January 5, 2016

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Obstetrical and Gynecological Devices; Reclassification of Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2014–N–0297]

Obstetrical and Gynecological Devices; Reclassification of Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a final order to reclassify surgical mesh for transvaginal pelvic organ prolapse (POP) repair from class II to class III. FDA is reclassifying these devices based on the determination that general controls and special controls together are not sufficient to provide reasonable assurance of safety and effectiveness for this device, and these devices present a potential unreasonable risk of illness or injury. The Agency is reclassifying surgical mesh for transvaginal POP repair on its own initiative based on new information.

DATES: This order is effective on January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Sharon Andrews, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. G110, Silver Spring, MD 20993, 301–796–6529, *Sharon.Andrews@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended, established 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).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

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) 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 21 CFR part 807.

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device from rulemaking to an administrative order. Section 513(e) of the FD&C Act provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, *e.g., Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

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 authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, *e.g., Gen. 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).)

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)).)

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final reclassification order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket.

FDA published a proposed order (the 513(e) proposed order) to reclassify this device in the **Federal Register** of May 1, 2014 (79 FR 24634). FDA received and has considered approximately 200 comments on this 513(e) proposed order, as discussed in section II.

FDA held a meeting on September 8 and 9, 2011 (76 FR 41507, July 14, 2011) of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee (''the Panel''), a device classification panel described in section 513(b) of the FD&C Act, to discuss whether surgical mesh for transvaginal POP repair should be reclassified into class III or remain in class II (Ref. 1). The Panel discussed a number of serious adverse events associated with use of surgical mesh for transvaginal POP repair. The Panel consensus was that the safety of surgical mesh for transvaginal POP repair is not well established and that, depending on the compartment, placement of surgical mesh for transvaginal POP repair may not be more effective than traditional ''native-tissue'' repair without mesh. As such, the Panel concluded that the risk-benefit profile of surgical mesh for transvaginal POP repair is not well established. The Panel consensus was that general controls and special controls together would not be sufficient to provide reasonable assurance of the safety and effectiveness of surgical mesh for transvaginal POP repair, and that these devices should be reclassified from class II to class III (Ref. 1). FDA is not aware of new information since the

Panel meeting that would provide a basis for a different recommendation or findings.

In the 513(e) proposed order, FDA also proposed to reclassify surgical instrumentation for urogynecologic surgical mesh procedures from class I to class II and establish special controls. FDA is not finalizing the proposed reclassification and special controls for surgical instrumentation for use with urogynecologic surgical mesh at this time. As stated in the 513(e) proposed order preamble, FDA will convene a panel to discuss specialized surgical instrumentation for use with urogynecologic surgical mesh prior to finalizing reclassification of instrumentation for this use. On February 26, 2016, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee will have a panel meeting to discuss and make recommendations for reclassification of these specialized surgical instrumentation devices.

II. Public Comments in Response to the 513(e) Proposed Order

In response to the 513(e) proposed order to reclassify surgical mesh for transvaginal POP repair, FDA received approximately 200 comments. The comments and FDA's responses to the comments are summarized in this section. Certain comments are grouped together under a single number because the subject matter of the comments is similar. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was submitted.

(Comment 1) Approximately 70 comments were received from individuals or family members of individuals who underwent mesh repair for POP, stress urinary incontinence (SUI), and/or hernias and reported complications or adverse events experienced during or after their procedures. The complications and adverse events reported included organ perforation, bleeding, chronic pain, mesh exposure or extrusion into the vagina and/or visceral organs (in some cases requiring additional surgery), infection, atypical vaginal discharge, painful sexual intercourse, self-catheterization, recurrent prolapse and/or incontinence, additional corrective surgery, and other permanent and/or life-altering adverse events.

(Response) FDA appreciates the comments received from individuals sharing their experiences following surgical mesh repair for POP, SUI, and/or hernias. The complications and adverse events reported by these commenters are consistent with those addressed in the 513(e) proposed order preamble and discussed at the 2011 Panel meeting. The comments did not identify any adverse event information that was not already considered by FDA and the Panel.

(Comment 2) Approximately 50 comments requested reclassification of surgical mesh for indications other than transvaginal POP repair, including for SUI and hernia.

(Response) Surgical mesh for indications other than transvaginal POP repair is outside the scope of the 513(e) proposed order and this document. In the 513(e) proposed order (79 FR 24634 at 24636), FDA stated that this proposed order does not include surgical mesh indicated for surgical treatment of stress urinary incontinence, sacrocolpopexy (transabdominal POP repair), hernia repair, and other non-urogynecologic indications.

(Comment 3) Approximately 50 comments requested a ban, recall, or ''suspension of use'' of all surgical mesh devices.

(Response) As stated previously, surgical mesh for indications other than transvaginal POP repair is outside the scope of this final order. For the reasons discussed in this document, FDA does not believe that a ban, recall or suspension of use of surgical mesh for transvaginal POP repair is warranted at this time.

Section 516 of the FD&C Act (21 U.S.C. 360f) authorizes FDA to ban a device when, on the basis of all available data and information, FDA finds that the device presents substantial deception or an unreasonable and substantial risk of illness or injury and, where such deception or risk could be corrected or eliminated by labeling or change in labeling and with respect to which the Secretary of the Department of Health and Human Services (Secretary) provided written notice to the manufacturer specifying the deception or risk of illness or injury, the labeling or change in labeling to correct the deception or eliminate or reduce such risk, and the period within which such labeling or change in labeling was to be done, such labeling or change in labeling was not done within such period.

FDA does not believe there is sufficient evidence at this time to support the banning of this device. Based on a review of the published literature, as described in the 513(e) proposed order preamble and this document, input from clinical organizations, and the Panel's recommendations, FDA has determined that the safety and effectiveness of surgical mesh for transvaginal POP repair has not been established and that the collection of additional clinical evidence on these devices is needed. Such additional evidence may provide information to allow FDA to impose controls to mitigate the risks and more clearly characterize the benefits of these devices. In addition, FDA believes there are potential benefits from surgical mesh used for transvaginal POP repair including treatment of POP in appropriately selected women with severe or recurrent prolapse. As such, FDA has not determined that this device presents an unreasonable and substantial risk of illness or injury.

FDA also does not believe there is sufficient evidence at this time to support a mandatory recall of this device. Under section 518(e) of the FD&C Act (21 U.S.C. 360h(e)), if the Secretary finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the device) to immediately cease distribution of such device, and to immediately notify health professionals and device user facilities of the order and to instruct such professionals and facilities to cease use of such device.

FDA does not believe a mandatory recall of all currently marketed surgical mesh for transvaginal POP repair is warranted. Based on a review of the published literature as described in the 513(e) proposed order preamble and this document, input from clinical organizations, and the Panel's recommendations, FDA believes that there is not sufficient evidence at this time to support a finding that there is a reasonable probability that surgical mesh for transvaginal repair of POP would cause serious adverse health consequences or death. As described in the 513(e) proposed order preamble and discussed at the 2011 Panel meeting, the safety and effectiveness of surgical mesh for transvaginal repair of POP has not been established and these devices should be evaluated in clinical studies that compare the device to native tissue repair in order to establish a reasonable assurance of safety and effectiveness.

It is unclear what commenters were referencing when they asked FDA to ''suspend the use'' of these devices. As stated previously, FDA does not believe a ban or recall is warranted at this time, and as stated in this document, there are other actions FDA has taken and may take in the future to ensure that there is

a reasonable assurance of the safety and effectiveness of surgical mesh for transvaginal POP repair.

FDA believes other regulatory actions it has taken will help the Agency to better understand the risk-benefit profile of these devices. FDA issued postmarket surveillance orders under section 522 of the FD&C Act (21 U.S.C. 360l) to manufacturers of surgical mesh for transvaginal POP repair starting on January 3, 2012. The postmarket surveillance orders allow FDA to continue to evaluate the benefit-risk profile of the device. Further, by reclassifying these devices to class III and requiring PMA approval, FDA can require an independent demonstration that a reasonable assurance of safety and effectiveness exists for each device within this type. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) (the 515(b) final order) to require the filing of a PMA or notice of completion of a product development protocol for surgical mesh for transvaginal POP repair. The preamble of the 515(b) final order provides further information regarding the data and scientific evidence needed for a PMA.

FDA will consider other regulatory actions relating to this device as appropriate in the future.

(Comment 4) Approximately 20 comments stated that the polypropylene material used to fabricate surgical mesh is inappropriate for implantation. These comments contend that the degradation of the polypropylene mesh in vivo may lead to systemic effects that can cause serious complications.

(Response) FDA believes that a thorough evaluation of the material used to fabricate surgical mesh for transvaginal POP repair is needed to provide a reasonable assurance of safety and effectiveness of the device. The findings set forth in the 515(b) proposed order preamble, as discussed in this document, address this issue (these findings are adopted, as amended, in the 515(b) final order that is published elsewhere in this issue of the **Federal Register**).

In the 515(b) proposed order preamble, FDA stated that manufacturers should provide information in their PMAs regarding biocompatibility, preclinical bench testing and preclinical animal studies, among other proposed information, to demonstrate reasonable assurance of safety and effectiveness of surgical mesh for transvaginal POP repair. Such performance data, which may generally include assessment of the mesh chemical and physical characteristics, in vitro chemical characterization studies, and in vivo preclinical implantation studies, will be reviewed by FDA to determine whether the risks associated with implantation of the polypropylene material are appropriately mitigated. The 515(b) proposed order preamble also stated that a PMA would need to include the information required by section 515(c)(1) of the FD&C Act, which includes manufacturing information. FDA's review of such manufacturing information will allow the Agency to evaluate whether the polypropylene material is safe and effective for transvaginal POP repair.

(Comment 5) One comment stated that FDA should not include non-crosslinked biologic grafts in this reclassification and that such grafts should not be subject to postmarket surveillance studies. The comment stated that the 513(e) proposed order cited relatively few studies that examine the use of biologically derived grafts for POP repair. The comment also noted that FDA's analysis did not distinguish crosslinked versus non-crosslinked biologic grafts. The comment requested that FDA review additional data, including a summary of 18 publications regarding non-crosslinked biologic grafts submitted by the commenter, and consider the different risk profiles of biologic grafts and specifically whether non-crosslinked biologic grafts should be reclassified.

(Response) As discussed in the response to comment 9, FDA performed an updated review of the literature to consider new clinical information available since publication of the 513(e) and 515(b) proposed orders and additional publications cited by the commenter, and whether non-crosslinked biologic grafts should be reclassified. Based on this review, FDA believes that there is currently insufficient evidence to support a finding that the benefit-risk profile of non-crosslinked biologic grafts differs from that of synthetic meshes. There is little evidence overall on biologic grafts (as compared to synthetic meshes), and the majority of studies evaluating non-crosslinked biologic grafts are on small populations and are not prospective. Moreover, the limited clinical evidence that is available indicates that like synthetic surgical mesh for transvaginal POP repair, non-crosslinked biologic mesh is associated with adverse events and does not demonstrate effectiveness compared to traditional (*i.e.,* native tissue) repair of POP.

The commenter cited 18 publications reporting outcomes for non-crosslinked biologic graft for use in transvaginal or transabdominal POP repair (Refs. 2 through 19). As described in this document, these publications in totality do not provide sufficient evidence of the reasonable safety and effectiveness of non-crosslinked biologic grafts.

Of these publications, 6 of the 18 report outcomes on fewer than 15 study subjects (Refs. 2 through 7). Due to the small sample size, the outcomes from these publications are difficult to interpret and FDA could not conclude that the risk profiles of non-crosslinked biologic grafts were different than synthetic meshes.

Of the remaining 12 publications, 1 describes outcomes after sacrocolpopexy (Ref. 2), 1 describes use of a non-crosslinked biologic graft to cover a vaginal wall defect following explantation of a synthetic mesh to treat prolapse (Ref. 3), and 1 describes transperineal repair of rectocele (Ref. 4). These uses are outside the scope of the reclassification.

One publication reported a retrospective review of non-contemporaneous mesh-augmented (non-crosslinked biologic and synthetic) versus native tissue anterior compartment repair (Ref. 5). One author in that report switched to the mesh-augmented technique part way through the period covered by the study due to dissatisfaction with native tissue repair. This may affect the objectivity of the study results and may lead to a conclusion that inappropriately favors mesh-augmented repair. Anatomic success was greater in mesh-augmented patients; however, objective anatomic success was defined as Stage 0 or 1 using the Baden-Walder system (Stage 0—normal position, Stage 1—descent halfway to the hymen). This may represent an ideal outcome, but does not necessarily represent a clinically relevant outcome. As discussed in the 513(e) proposed order preamble, prolapse staging systems like the Pelvic Organ Prolapse Quantification (POP–Q) are ''not correlated with POP symptoms or patient assessment of improvement [(Barber et al., 2009)].''

Another publication reported long-term followup in a retrospective patient cohort (N = 41) who had undergone graft repair of anterior or posterior vaginal prolapse compared to a contemporaneous cohort of ''matched'' native tissue repair controls (Ref. 6). Subjective outcomes were significantly better in the graft cohort; however, recurrence tended to be greater in the graft cohort when defined strictly as ≥POP–Q Stage 2. This means that the graft cohort experienced greater anatomic failure when using POP–Q

Stage 1 as the cutoff for anatomic success.

One publication described a retrospective case review without native tissue control (Ref. 7). This review (N = 65) found a subjective success (no symptoms and no bulge beyond the hymen) rate of 92 percent. Reoperation rate for de novo and recurrent prolapse was 7.7 percent, and three women had repeat surgery at the same anatomic site (anterior compartment). Because this study did not include a control group, we are unable to compare safety and effectiveness outcomes between patients who received mesh and patients who underwent native tissue repair.

Two publications described prospective cohorts. In one small series (N = 21), women with recurrent prolapse underwent anterior, posterior, or combined anterior/posterior repair with non-crosslinked biologic mesh (Ref. 8). Mean POP–Q scores preoperatively were Ba = 0.63 versus Ba = 1.75 postoperatively. Preoperative Bp score was −0.2 versus Bp −2.2 postoperatively. The authors reported a mean followup of 29 months. Six patients reported persistent bulge, and eight patients reported vaginal discomfort. This study has a small sample size and does not allow for comparison to native tissue repair.

The other prospective cohort study (N = 50) evaluated patient-reported outcomes at 6 months following posterior compartment repair augmented with non-crosslinked mesh (Ref. 9). Although significant improvements were noted for vaginal symptoms, sexual matters score and quality of life on the International Consultation on Incontinence Questionnaire vaginal symptoms questionnaire, anatomic outcomes were not collected. Therefore, effectiveness outcomes cannot be evaluated from this study.

Only three of the remaining publications described prospective randomized controlled trials (RCTs) comparing anterior or posterior vaginal repair using non-crosslinked biologic graft versus native tissue repair (Refs. 10 through 12). None of the three RCTs defined anatomic success as the leading edge of prolapse at or above the hymenal ring, which is considered a more clinically relevant outcome compared to POP–Q score. The criterion for anatomic success of prolapse repair in the American Urogynecologic Society (AUGS) Pelvic Floor Disorders Registry is leading edge at or above the hymen (Ref. 13).

The final publication identified by the commenter described prospective followup of a cohort assembled from a retrospective chart review (N = 59) (Ref. 14). This report does define anatomic success at the hymenal ring. Objective recurrence of prolapse in this study was approximately 31 percent.

Regarding mesh exposure/erosion, the publications cited by the commenter suggests that the risk of vaginal exposure/erosion for the non-crosslinked mesh is low. In the 513(e) proposed order preamble, FDA noted that the incidence of mesh exposure did not differ between nonabsorbable synthetic mesh (10.3 percent) and biologic graft material (10.1 percent) (Ref. 15).

For other types of surgical complications, one RCT (N = 56) found that the number of complications in the mesh group was greater compared to the native tissue repair group (Ref. 10). Blood loss was greater for mesh versus native tissue rectocele repair in another RCT (N = 160) (Ref. 12). In the same RCT, there was a trend towards increased risk of wound separation following non-crosslinked graft repair versus native tissue repair; however, the outcome did not reach statistical significance.

In addition, serious adverse events are reported in association with non-crosslinked biologic graft, including pain necessitating resurgery (Ref. 14). In this study, surgical complications included cystotomy (6.8 percent) and enterotomy (1.7 percent). Twenty-four percent of subjects had postoperative voiding dysfunction, and there was a 5.1 percent rate of hemorrhage requiring transfusion. (It is unclear whether these complications were device-related). The rate of dyspareunia at followup was 8.3 percent. The study did not include a control group, so it is unknown how the benefits and risks of graft-augmented repair with the non-crosslinked biologic graft would have compared with a native tissue repair.

In summary, there is insufficient available evidence from prospective studies using an appropriate primary endpoint for anatomic success on which to evaluate the effectiveness of transvaginal POP repair using non-crosslinked biologic mesh versus native tissue repair. The available clinical outcomes provide evidence that non-crosslinked biologic mesh is associated with adverse events. There are no data from RCTs with long-term followup that demonstrate clinical effectiveness of this material for transvaginal POP repair compared to native tissue repair.

As a result of these findings, FDA is not differentiating between non-crosslinked biologic grafts and synthetic mesh for transvaginal POP repair in this reclassification order and is reclassifying *all* of these devices from class II to class III. FDA's decision is in line with the 2011 Panel, which did not recommend stratification of surgical mesh for transvaginal POP repair by material characteristics.

(Comment 6) Approximately 20 comments stated that patients were not adequately informed of the possible complications following mesh implantation or that patients were not informed prior to surgery that mesh would be implanted.

(Response) FDA believes that patients should be adequately informed regarding the possible complications associated with surgical mesh. As stated in the FDA Safety Communication published in July 2011 (Ref. 16), health care providers should: (1) Inform patients that implantation of surgical mesh is permanent and that some complications associated with the implanted mesh may require additional surgery that may or may not correct the complication; (2) inform patients about the potential for serious complications and their effect on quality of life, including pain during sexual intercourse, scarring, and narrowing of the vaginal wall in POP repair using surgical mesh; and (3) provide patients with a copy of the patient labeling from the surgical mesh manufacturer, if available. The 2011 Safety Communication also includes recommendations for patients to help them obtain the appropriate information prior to a surgical mesh repair.

The Panel recommended that FDA focus on development of patient labeling and provide patients with benefit-risk information on available treatment options for POP, including surgical and nonsurgical options, to help patients understand long-term safety and effectiveness outcomes (Ref. 1, p. 150).

For these reasons, in the findings of the 515(b) proposed order, which are adopted as amended in the 515(b) final order that is being published elsewhere in this issue of the **Federal Register**, FDA asserted that manufacturers should include in their PMAs for these devices professional and patient labeling, and that the patient labeling would be expected to include, among other things, the risks and benefits of the device and available treatment options. Therefore, it is expected that PMAs for these devices include professional and patient labeling, and that the patient labeling include, among other things, the risks and benefits of the device and available treatment options.

(Comment 7) Approximately 30 comments stated that surgical mesh should be adequately tested, including

rigorous clinical evaluation prior to marketing. Comments also emphasized the need to understand the long-term effects of surgical mesh.

(Response) FDA agrees that surgical mesh for transvaginal POP repair should be adequately tested prior to marketing to provide a reasonable assurance of safety and effectiveness. FDA believes that surgical mesh for transvaginal POP repair should undergo mechanical and chemical characterization and performance evaluation, biocompatibility, sterilization validation, shelf life, and preclinical in vivo testing to provide a reasonable assurance of safety and effectiveness of the device prior to marketing. In addition, surgical mesh for transvaginal POP repair should be evaluated clinically, specifically to evaluate the safety and effectiveness of the device compared to native tissue repair. In the 515(b) final order that is being published elsewhere in this issue of the **Federal Register**, FDA is requesting that manufacturers provide this information to support premarket approval of surgical mesh for transvaginal POP repair.

With respect to long-term effects of surgical mesh, FDA believes that the clinical evaluation of surgical mesh for transvaginal POP repair should include long-term followup. FDA issued postmarket surveillance orders under section 522 of the FD&C Act for these devices that will collect long-term followup out to 3 years post implantation.

The comments also referenced surgical mesh for SUI and sacrocolpopexy. As stated previously, surgical mesh for indications other than transvaginal repair of POP is outside the scope of this final order.

(Comment 8) Approximately five comments stated the mesh for treatment of female SUI and sacrocolpopexy should not be reclassified to class III.

(Response) As stated previously, surgical mesh for indications other than transvaginal POP repair are outside the scope of this final order.

(Comment 9) One comment stated that FDA should evaluate recent data on POP mesh repair as the recent literature is more representative of current technologies, instructions for use, and physician training of currently marketed devices and that erosion rates and complication rates are lower in current literature than compared to rates cited in the 513(e) proposed order.

(Response) FDA conducted an updated review of the literature published since the 513(e) and 515(b) proposed orders were issued and reviewed additional publications cited by the commenter, summarized in further detail in this document, and determined that the weight of the evidence indicates that use of surgical mesh for transvaginal POP repair is not strongly or consistently associated with increased benefits over native tissue repair in the treatment of stage 2 or higher POP. Overall, the evidence indicates that mesh surgeries take longer to perform, result in greater blood loss, and have a considerable risk of postoperative mesh erosion in comparison to native tissue repair. In addition, there is suggestive evidence that use of surgical mesh for transvaginal POP repair may pose a higher risk of de novo POP relative to native tissue repair.

The majority of studies identified by the commenter, and considered in the updated literature review conducted by FDA, assessed the anterior compartment; therefore, it is difficult to draw conclusions on the differential effects of mesh by compartment, relative to native tissue repair. Furthermore, data from prospective, randomized studies comparing surgical mesh and native tissue repair using a clinically relevant definition of success are limited at this time. The benefit-risk profile comparison favors native tissue repair over use of surgical mesh for transvaginal POP repair. FDA concludes that the updated literature review further supports the reclassification of surgical mesh for transvaginal POP repair from class II to class III as reasonable assurance of safety and effectiveness for the device has not been demonstrated.

The comment stated that four recent systematic reviews on surgical options for POP continue to support use of transvaginal mesh to treat anterior wall prolapse (Refs. 17 through 20). One of these systematic reviews was cited in the 513(e) proposed order preamble (Ref. 19) and therefore is not discussed in detail here. This systematic review evaluated surgical management of POP in women and concluded that ''The use of grafts (biological or synthetic) reduces the risk of prolapse symptoms and recurrent anterior vaginal prolapse on examination when compared to native tissue repairs (colporrhaphy). However, the advantages of a permanent polypropylene mesh must be weighed against disadvantages including longer operating time, greater blood loss, prolapse in other areas of the vagina, new onset urinary stress incontinence, and the mesh becoming exposed in the vagina in 11 percent of women. In general, there is a lack of evidence to support transvaginal mesh operations used in apical or posterior compartment surgery.'' The second of these two reviews reported on anterior vaginal compartment repair specifically (Ref. 18). The review specific to anterior vaginal compartment repair noted that improved anatomic outcomes conferred by surgical mesh used for anterior POP repair are not always accompanied by improvement in subjective outcomes. Whereas polypropylene mesh appears to lead to improvement in both anatomic and subjective outcomes, these results did not lead to improved functional outcomes using validated questionnaires or to a lower reoperation rate for POP. This review concluded that surgical mesh is significantly associated with longer operating time, greater blood loss, and development of POP in another vaginal compartment. The author also noted a nonsignificant tendency towards higher cystotomy, de novo dyspareunia, and de novo SUI rate compared to native tissue anterior repair.

The third systematic review cited by the commenter was to address nonsurgical treatments for POP, effects of POP surgery by vaginal compartment, and how different mesh materials affect surgical repair of POP (Ref. 17). Regarding anterior prolapse repair with mesh, the author did not reach a conclusion regarding the need for reoperation for POP or SUI following index POP surgery; however, anterior repair using surgical mesh was found to increase risk for revision of the vaginal wound due to mesh exposure.

The focus of the fourth systematic review cited by the commenter described complications following POP repair using surgical mesh (Ref. 20). The review found that the mean total complication rate in the anterior compartment was 27 percent and that there was an 8 percent rate of complications ≥ grade III on the Clavien-Dindo classification system (*i.e.,* requiring surgical, endoscopic, or radiological intervention).

The comment also stated that these recent systematic reviews report complication rates that required surgical intervention ranging from 6.3 to 9 percent in the anterior compartment versus the ''upper bound of 22 percent cited in the proposed order.'' In the 513(e) proposed order preamble, FDA stated the following: ''From the one RCT that directly compared sacrocolpopexy to transvaginal POP repair with mesh (both using synthetic nonabsorbable mesh), overall re-surgery within 2 years postoperative was significantly more common following transvaginal POP repair with mesh than laparoscopic sacrocolpopexy, with rates of 22 percent (12/55) and 5 percent (3/53),

respectively (p = 0.006) (79 FR 24637).'' The 22 percent cited by FDA in the 513(e) proposed order preamble was not specific for anterior repair, but rather included all vaginal compartments.

In addition to the four recent systematic reviews discussed previously, the commenter cited 43 published reports, of which 31 are abstracts or poster presentations. Based on the limited scientific evidence in these abstracts and poster presentations, they are difficult to evaluate, and therefore, FDA was unable to draw any conclusions from these publications. The comment stated that collectively, the studies report mesh exposure rates of 0 to 8 percent and of the mesh exposures, only approximately 38 percent required surgical intervention. The comment stated this outcome represents a reduction compared to the 7.2 percent rate cited in the 513(e) proposed order. However, the 7.2 percent rate cited by FDA in the 513(e) proposed order preamble was the rate of reoperation due to any complication, and not specifically for mesh exposure-related complications.

The comment also stated that the more recent literature defines success as improved anatomic and subjective outcomes compared to native tissue repair. Of the publications that were not abstracts or posters, there is only one in which surgical mesh repair was compared to native tissue (Ref. 21). In that study, the primary outcome was ideal anatomic support based on POP–Q stage, and not subjective outcomes. Anatomic success, defined as POP–Q stage 0 or 1 was greater for the surgical mesh repair in the anterior compartment; however, improvement in quality of life was not statistically significant between groups. In addition, subjects in the surgical mesh group had statistically significant longer hospital stays, operative time, and estimated blood loss.

With one exception, of the publications cited by the commenter to represent success rates for one line of mesh products, the definition of a success was ideal anatomic support (Refs. 22 through 27). As noted in the 513(e) proposed order preamble, ideal anatomic support is not a prerequisite for improvement in patient symptoms. As stated previously in this document, the anatomic criterion for success following surgical repair of prolapse in the AUGS Pelvic Floor Disorders Registry is absence of leading edge of prolapse beyond the hymen, not POP–Q Stage ≤ 1. In addition, because these studies did not compare outcomes between mesh repair and native tissue repair, it is unknown whether the success among mesh subjects would have exceeded that of native tissue repair.

One publication that evaluated more clinical and/or subjective outcomes compared two mesh products (Ref. 26). The failure of the mesh repair ranged from 24 percent to 46 percent, depending on the outcome measure. Mesh exposure occurred at a rate of 8 percent. Pelvic pain was reported at 7.4 percent, and of study subjects who were sexually active, 12.7 percent reported painful intercourse. In one prospective study (N = 30), no anatomic outcomes were reported; however, the report stated that no patients had symptoms of recurrent prolapse at 12 months of followup. Two patients in this cohort had mesh erosion which required partial mesh excision (Ref. 28).

The remaining publications cited in the comment address mesh exposure, mesh repair as an ambulatory procedure, and stability of an anchor device used to attach the mesh to an anatomic target (Refs. 29 through 31). The rate of mesh exposure in the first study was 8.1 percent (Ref. 28). None of these publications compared mesh repair to native tissue repair, nor does any reflect a study designed to evaluate surgical success.

In summary, FDA concludes that the literature published since the 513(e) and 515(b) proposed orders were issued and the additional literature cited by the commenter further supports the reclassification of surgical mesh for transvaginal POP repair from class II to class III.

(Comment 10) One comment noted that direct comparison of safety results between sacrocolpopexy, transvaginal repair, and native tissue repair can be misleading if the vaginal repair does not have a vaginal vault component.

(Response) Based on the evidence cited in the 513(e) proposed order preamble, FDA concluded that the types of risks associated with transvaginal mesh for POP repair are similar across different vaginal compartments. FDA is unaware of any new evidence that supports the conclusion that the types of risk associated with transvaginal mesh for POP are different across different vaginal compartments. However, FDA acknowledges that the frequency of different types of adverse events may vary across different vaginal compartments. FDA's conclusion is in line with the Panel, which did not recommend that reclassification be stratified by compartment. For the reasons discussed in the 513(e) proposed order preamble and in this document, the reclassification applies to all transvaginal mesh for POP repair regardless of location of repair.

(Comment 11) One comment stated that the 513(e) proposed order makes definitive statements regarding benefit/risk, when in fact additional studies are needed to establish benefit/risk.

(Response) FDA disagrees that the 513(e) proposed order makes definitive statements regarding benefit/risk. Throughout the 513(e) proposed order preamble, FDA described its conclusions as ''tentative.''

III. The Final Order

Under section 513(e) of the FD&C Act, FDA is adopting its findings as published in the preamble to the 513(e) proposed order (79 FR 24634). FDA is issuing this final order to reclassify surgical mesh for transvaginal POP repair from class II to class III. FDA is reclassifying these devices based on the determination that general controls and special controls together are not sufficient to provide reasonable assurance of safety and effectiveness for this device. In addition, in the absence of an established positive benefit-risk profile, FDA has determined that the risks to health associated with the use of surgical mesh for transvaginal POP repair identified previously present a potential unreasonable risk of illness or injury.

FDA has modified the proposed identification in § 884.5980(a) for surgical mesh for transvaginal pelvic organ prolapse repair to clarify that the materials of construction may include synthetic material, non-synthetic material, or a combination of synthetic and non-synthetic materials.

IV. Analysis of Environmental Impact

The Agency has 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 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 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) of the FD&C Act, as amended, requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, we are codifying the reclassification of surgical mesh for transvaginal POP repair into class III in 21 CFR 884.5980.

VII. References

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

1. Transcript of the September 8 and 9, 2011, Meeting of the Obstetrics and Gynecological Devices Panel. Available at *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/ObstetricsandGynecologyDevices/UCM275043.pdf* and *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/ObstetricsandGynecologyDevices/UCM275061.pdf*.
2. Deprest, J., D. de Ridder, J.P. Roovers, et al., ''Medium Term Outcome of Laparoscopic Sacrocolpopexy With Xenografts Compared to Synthetic Grafts.'' *Journal of Urology* 182: 2362–2368, 2009.
3. Jeffery, S.T . and A. Nieuwoudt, ''Beyond the Complications: Medium-Term Anatomical, Sexual and Functional Outcomes Following Removal of Trocar-Guided Transvaginal Mesh. A Retrospective Cohort Study.'' *International Urogynecology Journal* 23(10): 1391–1396, 2012.
4. Ellis, C. N., ''Outcomes After the Repair of Rectoceles With Transperineal Insertion of a Bioprosthetic Graft.'' *Diseases of the Colon and Rectum* 53: 213–218, 2010.
5. Reid, R. I. and K. Luo, ''Site-Specific Prolapse Surgery. II. Vaginal Paravaginal Repair Augmented With Either Synthetic Mesh or Remodeling Xenograft.'' *International Urogynecology Journal* 22(5): 601–609, 2011.
6. Mouritsen, L., M. Kronschnabl, and G. Lose, ''Long-Term Results of Vaginal Repairs With and Without Xenograft Reinforcement.'' *International Urogynecology Journal* 21:467–473, 2010.
7. Armitage, S., E. I. Seman, and M. J. Keirse, ''Use of Surgisis for Treatment of Anterior and Posterior Vaginal Prolapse.'' *Obstetrics and Gynecology International* 376251, January 15, 2012.
8. Jeffery, S. T., S. K. Doumouchtsis, S. Parappallil, et al., ''Outcomes, Recurrence Rates, and Postoperative Sexual Function After Secondary Vaginal Prolapse Surgery Using the Small Intestinal Submucosal Graft.'' *Female Pelvic Medicine & Reconstructive Surgery* 15: 151–156, 2009.
9. Madhu, C., J. Cooke, P. Harber, and D. Holmes, ''Functional Outcomes of Posterior Vaginal Wall Repair and Prespinous Colpopexy With Biological Small Intestinal Submucosal (SIS) Graft.'' *Archives of Gynecology and Obstetrics* May 8, 2014.
10. Feldner, P. C., R. A. Castro, L. A. Cipolotti, et al., ''Anterior Vaginal Wall Prolapse: A Randomized Controlled Trial of SIS Graft Versus Traditional Colporrhaphy.'' *International Urogynecology Journal* 21: 1057–1063, 2010.
11. Robert, M., I. Girard, E. Brennand, et al., ''Absorbable Mesh Augmentation Compared With No Mesh for Anterior Prolapse: A Randomized Controlled Trial.'' *Obstetrics & Gynecology* 123: 288–294, 2014.
12. Sung, V., C. Rardin, C. Raker, et al., ''Porcine Subintestinal Submucosal Graft Augmentation for Rectocele Repair.'' *Obstetrics & Gynecology* 119: 125–133, 2012.
13. Pelvic Floor Disorders Registry. Frequently Asked Questions. Available at *http://www.pfdr.org/p/cm/ld/fid=440*.
14. Geoffrion, R., M. Murphy, and M. Robert, ''Vaginal Paravaginal Repair With Porcine Small Intestine Submucosa: Midterm Outcomes.'' *Female Pelvic Medicine & Reconstructive Surgery* 17(4): 174–179, 2011.
15. Abed, H., D. D. Rahn, L. Lowenstein, et al., ''Incidence and Management of Graft Erosion, Wound Granulation, and Dyspareunia Following Vaginal Prolapse Repair With Graft Materials: A Systematic Review.'' *International Urogynecology Journal* 22:789–798, 2011.
16. ''Update on Serious Complications Associated With Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse: FDA Safety Communication,'' issued on July 13, 2011. Available at *http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/ucm262435.htm*.
17. Onwude, J. L., ''Genital Prolapse in Women.'' *BMJ Clinical Evidence* (Online) March 14, 2012.
18. Maher, C., ''Anterior Vaginal Compartment Surgery.'' *International Urogynecology Journal* 24: 1791–1802, 2013.
19. Maher, C., B. Feiner, K. Baessler, and C. Schmid, ''Surgical Management of Pelvic Organ Prolapse in Women.'' *Cochrane Database of Systematic Reviews* 4:CD004014, April 30, 2013.
20. Barski, D., T. Otto, and H. Gerullis, ''Systematic Review and Classification of Complications After Anterior, Posterior, Apical, and Total Vaginal Mesh Implantation for Prolapse Repair.'' *Surgical Technology International* 24:217–224, March 2014.
21. Su, T. H., H. H. Lau, W. C. Huang, et al., ''Single-Incision Mesh Repair Versus Traditional Native Tissue Repair for Pelvic Organ Prolapse: Results of a Cohort Study.'' *International Urogynecology Journal* January 28, 2014.
22. Azais, H., C. J. Charles, P. Delporte, and P. Debondinance, ''Prolapse Repair Using the Elevate Kit: Prospective Study on 70 Patients.'' *International Urogynecology Journal* March 1, 2012.
23. Stanford, E. J., R. D. Moore, J. P. Roovers, et al., ''Elevate Anterior/Apical: 12-month Data Showing Safety and Efficacy in Surgical Treatment of Pelvic Organ Prolapse.'' *Female Pelvic Medicine & Reconstructive Surgery* 19(2): 79–83, March–April, 2013.
24. Lubkan J., J. P. Roovers, D. M. Vandrie, et al., ''Single-Incision Apical and Posterior Mesh Repair: 1-year Prospective Outcomes.'' *International Urogynecology Journal* March 15, 2012.
25. Rapp, D. E., A. B. King, B. Rowe, and J. P. Wolters, ''Comprehensive Evaluation of Anterior Elevate System in the Treatment of Anterior and Apical Pelvic Floor Descent: 2-year Follow-up.'' *Journal of Urology* 191(2): 389–394, February 2014.
26. Wong, V., K. L. Shek, A. Rane, et al., ''A Comparison of Two Different Mesh Kit Systems for Anterior Compartment Prolapse Repair.'' *Australian and New Zealand Journal of Obstetrics and Gynaecology* February 25, 2014.
27. Moore, R. D., G. K. Mitchell, and J. R. Miklos, ''Single-Incision Vaginal Approach To Treat Cystocele and Vault Prolapse With an Anterior Wall Mesh Anchored Apically to the Sacrospinous Ligaments.'' *International Urogynecology Journal* 23(1): 85–91, 2012.
28. Gustapane, S., M. Leombroni, E. Falo, et al., ''Surgical Repair of Pelvic Organ Prolapse and Follow-Up: An Institutional Multi-Center Experience.'' *World Journal of Obstetrics and Gynecology* 2(4): 176–180, 2013.
29. Sirls, L. T., G. P. McLennan, K. A. Killinger, et al., ''Exploring Predictors of Mesh Eexposure After Vaginal Prolapse Repair.'' *Female Pelvic Medicine & Reconstructive Surgery* 19(4): 206–209, 2013.
30. Sinhal, D., J. Iyer, M. Mous, et al., ''Anterior-Apical Mesh Repair System in

an Ambulatory Setting.'' *Ambulatory Surgery* 19(4): 130–133, 2013.
31. Brennand, E. A., D. Bhayana, S. Tang, et al., ''Anchor Placement and Subsequent Movement in a Mesh Kit With Self-Fixating Tips: 6-Month Follow-Up of a Prospective Cohort.'' *British Journal of Obstetrics and Gynaecology;* DOI:10.1111/1471–0528.12536, 2014.

List of Subjects in 21 CFR Part 884

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 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

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

■ 2. Add § 884.5980 to subpart F to read as follows:

§ 884.5980 Surgical mesh for transvaginal pelvic organ prolapse repair.

(a) *Identification.* Surgical mesh for transvaginal pelvic organ prolapse repair is a prescription device intended to reinforce soft tissue in the pelvic floor. This device is a porous implant that is made of synthetic material, non-synthetic material, or a combination of synthetic and non-synthetic materials. This device does not include surgical mesh for other intended uses (§ 878.3300 of this chapter).

(b) *Classification.* Class III (premarket approval).

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33165 Filed 1–4–16; 8:45 am]

BILLING CODE 4164–01–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 2 January 5, 2016

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Effective Date of Requirement for Premarket Approval for Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2014–N–0298]

Effective Date of Requirement for Premarket Approval for Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a final order to require the filing of a premarket approval application (PMA) or notice of completion of a product development protocol (PDP) for surgical mesh for transvaginal pelvic organ prolapse (POP) repair.

DATES: This order is effective on January 5, 2016.

FOR FURTHER INFORMATION CONTACT: Sharon Andrews, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G110, Silver Spring, MD 20993, 301–796–6529, *sharon.andrews@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended, 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).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (section 510(k) of the FD&C Act (21 U.S.C. 360(k)) procedures to such a preamendments device or to a device within that type (both the preamendments and substantially equivalent devices are referred to as preamendments class III devices) may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

Under section 515(f) of the FD&C Act, the manufacturer of a preamendments class III device may comply with a call for PMAs by filing a PMA or notice of completion of a PDP. In practice, however, the option of filing a notice of completion of a PDP has rarely been used. For simplicity, although the PDP option remains available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for the filing and obtaining approval of a PMA.

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) was enacted. Section 608(b) of FDASIA amended section 515(b) of the FD&C Act, changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order requiring premarket approval. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payors, and providers. FDA published a proposed order to require PMAs for surgical mesh for transvaginal POP repair in the **Federal Register** of May 1, 2014 (79 FR 24642), and convened a meeting of a device classification panel (the ''Panel'') as discussed in the proposed order preamble and in this document. FDA received and has considered approximately 25 comments on this proposed order, as discussed in section III.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination.

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. For surgical mesh for transvaginal POP repair, the later of these two time periods is 30 months after final classification of the device.

Therefore, section 501(f)(2)(B) of the FD&C Act requires that a PMA for such devices be filed by the last day of the 30th calendar month following the effective date of the final order to reclassify these devices into class III. If a PMA is not filed by this date, then the device would be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Other enforcement actions include, but are not limited to, the following: Shipment of devices in interstate commerce may be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment may be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). FDA requests that manufacturers take action

to prevent the further use of devices for which no PMA has been filed.

II. Regulatory History of the Device

Surgical mesh is a preamendments device, which was classified into class II (§ 878.3300 (21 CFR 878.3300)) in 1988. Beginning in 1992, FDA cleared premarket notification (510(k)) submissions for surgical mesh indicated for POP repair under the general surgical mesh classification regulation (§ 878.3300). FDA has cleared over 100 510(k) submissions for surgical mesh with a POP repair indication.

In September 2011, FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to surgical mesh for transvaginal POP repair (Ref. 1). The Panel discussed a number of serious adverse events associated with use of surgical mesh for transvaginal POP repair. The Panel consensus was that the safety of surgical mesh for transvaginal POP repair is not well established and that, depending on the compartment, vaginal placement of surgical mesh for POP repair may not be more effective than traditional ''native-tissue'' repair without mesh. As such, the Panel concluded that the risk/benefit profile of surgical mesh for transvaginal POP repair is not well established. The Panel consensus was that general controls and special controls together would not be sufficient to provide reasonable assurance of the safety and effectiveness of surgical mesh indicated for transvaginal POP repair, and that these devices should be reclassified from class II to class III (Ref. 1). FDA is not aware of new information since the Panel meeting that would provide a basis for a different recommendation or findings. FDA published proposed orders to reclassify surgical mesh for transvaginal POP repair from class II to class III (the 513(e) proposed order) and to require the filing of a PMA if the reclassification is finalized (the 515(b) proposed order) in the **Federal Register** of May 1, 2014 (79 FR 24634; 79 FR 24642). Elsewhere in this issue of the **Federal Register**, FDA is issuing a final order to reclassify these devices from class II to class III.

III. Public Comments in Response to the Proposed Order

In response to the 515(b) proposed order, FDA received 26 comments. The comments and FDA's responses to the comments are summarized in this section. Certain comments are grouped together under a single number because the subject matter of the comments is similar. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was submitted.

(Comment 1) Nine comments were received from individuals or family members of individuals who underwent mesh repair for POP and/or stress urinary incontinence (SUI) and reported complications or adverse events experienced during or after their procedures. The complications and adverse events reported including organ perforation, mesh exposure, or extrusion into the vagina and/or visceral organs (in some cases requiring additional surgery), chronic pain, infection, lack of mobility, painful sexual intercourse, self-catheterization, recurrent prolapse and/or incontinence, blood loss during surgery (in some cases requiring transfusion), nerve damage, need for mesh removal and/or additional corrective surgery, and other permanent and/or life-altering adverse events.

(Response) FDA appreciates the comments received from individuals sharing their experiences following surgical mesh repair for POP and SUI. The complications and adverse events reported by these commenters are consistent with those addressed in the 513(e) and 515(b) proposed order preambles, and discussed at the 2011 meeting of the Panel. The comments did not identify any adverse event information that was not already considered by FDA and the Panel.

(Comment 2) Thirteen comments requested reclassification of surgical mesh for indications other than transvaginal POP repair, including for SUI and hernia.

(Response) Surgical mesh for indications other than transvaginal POP repair are outside the scope of the proposed order and this final order. As stated in the 513(e) proposed order preamble, ''This proposed order does not include surgical mesh indicated for surgical treatment of stress urinary incontinence, sacrocolpopexy (transabdominal POP repair), hernia repair, and other non-urogynecologic indications.''

(Comment 3) Eight comments requested a ban, recall, or ''suspension of use'' of all surgical mesh devices.

(Response) As stated previously, surgical mesh for indications other than transvaginal POP repair is outside the scope of this final order. For the reasons discussed in this document, FDA does not believe that a ban, recall, or suspension of use of surgical mesh indicated for transvaginal POP repair is warranted at this time.

Section 516 of the FD&C Act (21 U.S.C. 360f) authorizes FDA to ban a device when, on the basis of all available data and information, FDA finds that the device presents substantial deception or an unreasonable and substantial risk of illness or injury and, where such deception or risk could be corrected or eliminated by labeling or change in labeling and with respect to which the Secretary of the Department of Health and Human Services (Secretary) provided written notice to the manufacturer specifying the deception or risk of illness or injury, the labeling or change in labeling to correct the deception or eliminate or reduce such risk, and the period within which such labeling or change in labeling was to be done, such labeling or change in labeling was not done within such period.

As stated earlier in this document, FDA issued a proposed order (79 FR 24642) under section 515(b) of the FD&C Act to require the filing of PMAs for these devices following reclassification, which would require an individual demonstration of a reasonable assurance of safety and effectiveness for surgical mesh for transvaginal POP repair. In the 515(b) proposed order preamble, FDA recognized the recommendations from the Panel that additional work should be focused on patient labeling and providing patients with benefit-risk information on available treatment options for POP, including surgical and nonsurgical options, so patients understand potential long-term safety and effectiveness outcomes. In the 515(b) proposed order, FDA tentatively asserted that it expects PMAs for these devices to include professional and patient labeling, and that the patient labeling include, among other things, the risks and benefits of the device and all available treatment options. These findings are adopted, in part, in the final order (see section IV, ''The Final Order'').

Therefore, FDA does not believe that there is sufficient evidence at this time to support the banning of this device. Based on a review of the published literature as described in the 513(e) proposed order preamble and this document, input from clinical organizations, and the Panel's recommendations, FDA has determined that the safety and effectiveness of surgical mesh for transvaginal POP repair has not been established and that the collection of additional clinical evidence on these devices is needed. Such additional evidence may provide information to allow FDA to impose controls to mitigate the risks and more clearly characterize the benefits of these devices. In addition, FDA believes there are potential benefits from surgical

mesh used for transvaginal POP repair including treatment of POP in appropriately selected women with severe or recurrent prolapse. As such, FDA has not determined that this device presents ''an unreasonable and substantial risk of illness or injury.''

FDA also does not believe that there is sufficient evidence at this time to support a mandatory recall of this device. Under section 518(e)(1) of the FD&C Act (21 U.S.C. 360h(e)(1)) if the Secretary finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the device) to immediately cease distribution of such device and to immediately notify health professionals and device user facilities of the order and to instruct such professionals and facilities to cease use of such device.

FDA does not believe a mandatory recall of all currently marketed surgical mesh for transvaginal POP repair is warranted. Based on a review of the published literature as described in the 513(e) proposed order preamble and this document, input from clinical organizations, and the Panel's recommendations, FDA believes that there is not sufficient evidence at this time to support a finding that there is a reasonable probability that surgical mesh for transvaginal repair of POP would cause serious adverse health consequences or death. As described in the 513(e) proposed order preamble and discussed at the 2011 Panel meeting, the safety and effectiveness of surgical mesh for transvaginal repair of POP has not been established and these devices should be evaluated in clinical studies that compare the device to native tissue repair in order to establish a reasonable assurance of safety and effectiveness.

It is unclear what commenters were referencing when they asked FDA to ''suspend the use'' of these devices. As stated previously, FDA does not believe a ban or recall is warranted at this time, and as stated in this document, there are other actions FDA has taken and may take in the future to ensure that there is a reasonable assurance of safety and effectiveness of surgical mesh for transvaginal POP repair based on valid scientific evidence.

FDA believes other regulatory actions it has taken will help the Agency to better understand the risk-benefit profile of these devices. FDA issued postmarket surveillance orders to manufacturers of surgical mesh for transvaginal POP repair starting on January 3, 2012. The postmarket surveillance orders allow FDA to continue to evaluate the benefit-risk profile of the device. Further, by reclassifying these devices to class III and requiring PMA approval, FDA can require an independent demonstration that a reasonable assurance of safety and effectiveness exists for each device within this type.

FDA will consider other regulatory actions relating to this device as appropriate in the future.

(Comment 4) Two comments were related to the need for testing prior to marketing, including an evaluation of the polypropylene material used to fabricate surgical mesh. One commenter stated that polypropylene material is inappropriate for implantation.

(Response) FDA believes that a thorough evaluation of the material used to fabricate the surgical mesh is needed to provide a reasonable assurance of safety and effectiveness of the device. FDA discussed in the 515(b) proposed order preamble information that should be submitted in a PMA to address these issues. FDA is adopting these findings, in part, in the final order (see section IV, ''The Final Order'').

Specifically, in the proposed order, FDA stated that manufacturers should provide biocompatibility, preclinical bench testing and preclinical animal studies, among other information, to demonstrate reasonable assurance of safety and effectiveness of surgical mesh for transvaginal POP repair. Such performance data, which may generally include assessment of the mesh chemical and physical characteristics, in vitro chemical characterization studies, and in vivo preclinical implantation studies, will be reviewed by FDA to determine whether the risks associated with implantation of the polypropylene material are appropriately mitigated. The proposed order preamble also states that a PMA would need to include the information required by section 515(c)(1) of the FD&C Act, which includes manufacturing information. FDA's review of such manufacturing information will allow the Agency to evaluate whether the polypropylene material is safe and effective for transvaginal POP repair. FDA is adopting these findings in the final order (see section IV, ''The Final Order'').

(Comment 5) Two comments were related to the timeline for requiring PMAs and requested that the requirement for premarket approval be immediately implemented. One commenter requested that the PMA requirement be retroactively applied to devices currently on the market.

(Response) Section 501(f)(2)(B) of the FD&C Act outlines the timeframe in which a PMA must be filed by manufacturers of currently marketed devices that are subject to a 515(b) order for the manufacturers to continue legally marketing their device. For devices subject to a 515(b) order, the provision states that a PMA must be submitted by the 90th day after the date the order to require PMAs is issued or the last day of the 30th calendar month beginning after the month in which the classification in class III becomes effective, whichever occurs later. For surgical mesh for transvaginal POP repair, the later of these two time periods is 30 months after final classification of the device. FDA must abide by the timeframe outlined in the FD&C Act, and therefore may not require manufacturers of devices subject to the final order to submit a PMA immediately.

(Comment 6) One comment suggested that the timeframe for filing a PMA (within 30 months of the final reclassification) may not allow for adequate patient followup of ongoing clinical studies and requested that FDA consider the current status of clinical studies that may be used to support PMA submission.

(Response) FDA has carefully considered the current status of ongoing clinical studies of currently marketed surgical mesh for transvaginal POP repair, including studies being conducted in response to FDA postmarket surveillance study orders issued starting on January 3, 2012, under section 522 of the FD&C Act (21 U.S.C. 360l), and has concluded that the statutory timeframe for filing a PMA (the last day of the 30th calendar month beginning after the month in which the classification in class III becomes effective) is appropriate to allow adequate patient followup of ongoing clinical studies. In the 515(b) proposed order preamble, FDA stated the expectation that ''[a]t least 1 year of outcome data should be provided in the PMA and an additional 2–4 years of followup should be conducted postmarket.'' FDA believes it is reasonable to expect that a manufacturer of surgical mesh who is subject to a section 522 postmarket surveillance study order issued in 2012 or 2013 will be able to collect 1 year of outcome data within 30 months of the final reclassification.

(Comment 7) One comment addressed FDA's ability to review a PMA submitted for surgical mesh for transvaginal POP repair within 180 days. The comment stated that a 180-day PMA review commitment may not

be attainable and the timeline does not allow for panel review. The commenter requested clarification regarding what actions will be taken should the PMA not be approved within the 180-day review period.

(Response) Under section 515(d)(1)(A) of the FD&C Act, unless an exception applies, FDA must either issue an order approving or deny approval of a PMA within 180 days after receipt of a PMA. FDA can provide an extension for review when a major amendment is submitted by the applicant or requested by FDA (21 CFR 814.37(c)(1)). The extended time period for submitting an amendment allows for, among other things, additional time for panel review of specific device data. Generally, a major amendment includes a previously unreported study, significant updated data from a previously reported study, detailed new analyses of previously submitted data, or required information previously omitted.

FDA intends to review any submitted PMA for this device type within the required timeframe. As soon as it completes its review of a PMA, FDA will issue an approval order (§ 814.45(d) (21 CFR 814.45(d))), an approvable letter (§ 814.45(e)), a not approvable letter (§ 814.45(e)), or an order denying approval (§ 814.45(a)). FDA strongly encourages manufacturers to meet with the Agency early through the presubmission program for any assistance in preparation of their PMA to help to expedite the PMA review process.

(Comment 8) One comment questioned FDA's reviewing urogynecologic surgical mesh instrumentation in a PMA if the instrumentation is packaged with the surgical mesh versus reviewing instrumentation in a 510(k) notification if the instrumentation is packaged separately from the surgical mesh. The commenter stated that the regulatory requirements for instrumentation should be based on indication and not its packaging configuration.

(Response) FDA agrees that the regulatory requirements for urogynecological surgical mesh instrumentation should be based upon the indications for use of the instruments and the risk of the instrumentation when used as intended. Based on the indications for use and the risks posed by these devices, in the 515(e) proposed order, FDA proposed to reclassify these devices from class I to class II and establish special controls. FDA is not finalizing this proposed reclassification and special controls at this time. On February 26, 2016, FDA will convene a panel to discuss these devices prior to finalizing their reclassification. These devices are currently classified as class I under (21 CFR 876.4730) (*Manual gastroenterology-urology surgical instrument and accessories*) and may be legally marketed without premarket review, but would require 510(k) notification if the proposed reclassification of the devices is finalized.

When these devices and surgical mesh for transvaginal POP repair are packaged together, after 510(k) notification is required for the instrumentation, manufacturers may wish to include both products in a PMA for convenience. Manufacturers are permitted but not required to do so. If such instrumentation is included in a PMA, FDA is clarifying that information regarding the manufacturing process of the instrumentation does not need to be submitted in a premarket submission, as previously stated in the 515(b) proposed order preamble (see section IV, ''The Final Order'').

(Comment 9) One comment related to the types of bench testing FDA outlined in the 515(b) proposed order that should be included in a PMA and whether the various type of tests apply to all mesh types. For example, the commenter noted that many currently marketed surgical meshes indicated for transvaginal POP repair use integrated anchors or are self-fixating and do not utilize sutures; therefore suture pullout strength, which was identified in the 515(b) proposed order as a mesh characteristic that should be evaluated, would not be a relevant performance specification for these types of meshes. The commenter requested that FDA allow manufacturers to include a justification as to why certain testing is not relevant to performance specifications of a particular device design.

(Response) FDA recognizes that the data required to support premarket approval may vary by device. In the 515(b) proposed order preamble, FDA identified the information that should be included in a PMA to provide a reasonable assurance of safety and effectiveness of surgical mesh for transvaginal POP repair, including evaluation of specific mechanical characteristics. FDA agrees that manufacturers should be allowed to justify why specific tests are not relevant to their specific mesh design in lieu of testing. As noted in the 515(b) proposed order preamble, FDA strongly encourages manufacturers to meet with the Agency early through the presubmission program for any assistance in preparation of their PMA.

(Comment 10) One comment related to FDA's expectations regarding biocompatibility and preclinical animal study evaluation. The commenter requested clarification regarding why FDA recommended conducting biocompatibility testing prior to initiation of animal studies. The commenter also noted that in the 515(b) proposed order, FDA identified a biocompatibility test (haemocompatibility), which is not outlined in the Center for Devices and Radiological Health (CDRH) Blue Book Memo #G–95–1—''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,' '' as a test for consideration for a permanent implant with tissue/bone contact. The commenter seeks clarity regarding the specific biocompatibility testing FDA believes should be conducted and a rationale for any testing not outlined in the Blue Book Memo.

(Response) The biocompatibility testing outlined in the 515(b) proposed order preamble is consistent with that recommended in the FDA guidance document ''Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance: Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh'' issued on March 2, 1999 (Ref. 2). There are two biocompatibility studies recommended in the guidance document (and the 515(b) proposed order) that are not included in CDRH's Blue Book Memorandum #G95–1—''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,' '' dated May 1, 1995 (Ref. 3)—pyrogenicity and hemolysis. FDA recommended pyrogenicity testing to help protect patients from the risk of febrile reaction (Ref. 4). FDA recommended hemolysis testing on surgical mesh for transvaginal POP repair because red blood lysis in the surgical field may adversely affect the healing process.

FDA generally recommends that biocompatibility testing be completed prior to preclinical animal study evaluation to ensure that the preclinical animal study evaluation results are valid and can be used to support the final device design. If biocompatibility testing and the preclinical animal study evaluation are conducted simultaneously and biocompatibility testing results are problematic or identify a safety concern resulting in changes to the device design or materials, the preclinical animal study evaluation may need to be repeated. In addition, the results of biocompatibility

testing may prompt the need for additional preclinical evaluation. As noted in the 515(b) proposed order preamble, FDA strongly encourages manufacturers to meet with the Agency early through the presubmission program for any assistance in preparation of their PMA.

(Comment 11) One comment stated that the preclinical animal study requirements outlined in the 515(b) proposed order are not clearly defined and requested that FDA provide additional information on study design and animal model selection as well as the risks that are intended to be mitigated by the proposed animal study.

(Response) Preclinical animal studies are intended to evaluate the safety of the device, specifically the local and systemic effects of the device. Preclinical animal studies may not be needed to evaluate all surgical mesh for transvaginal POP repair; however, preclinical animal studies may be appropriate in some situations, for example, to evaluate a new mesh material or characterize the resorption rate of a resorbable surgical mesh product. FDA strongly encourages manufacturers to meet with the Agency early through the presubmission program to receive feedback regarding the need for preclinical animal studies, study design, and animal model selection to evaluate a specific surgical mesh for transvaginal POP repair.

(Comment 12) One comment stated that the use of postmarket surveillance studies to fulfill clinical requirements for the PMA creates confusion regarding how such a study can have two purposes (postmarket surveillance and PMA approval) without compromising the study design and statistical rigor of the study. The comment also stated that the 5-year followup implied in the 515(b) proposed order is not in line with 3-year followup requested in the postmarket surveillance orders.

(Response) In the 515(b) proposed order preamble, FDA outlined expectations for data collection, safety and effectiveness outcomes, and study followup. FDA noted that we intend to consider proposals for different study designs and will decide on a case-by-case basis whether each proposed study design is likely to generate data adequate to support a PMA (79 FR 24642 at 24647). In addition, we noted that FDA intends to consider the use of study data collected by manufacturers in response to FDA issued postmarket surveillance study orders (79 FR 24642 at 24647). FDA believes that data from the section 522 postmarket surveillance studies may be able to fulfill the clinical requirements to support PMA approval—in addition to fulfilling the regulatory requirements of the orders issued under section 522 of the FD&C Act—if appropriately designed. However, as noted in the 515(b) proposed order preamble, FDA strongly encourages manufacturers to meet with the Agency to discuss specific proposals utilizing the presubmission program.

In addition, FDA noted the following in the postmarket surveillance orders issued under section 522 of the FD&C Act: ''Although FDA has not come to a final decision on reclassification, you may wish to consider the data requirements for a PMA in deciding the design of your 522 study. If you are interested in utilizing data collected to fulfill this 522 order to also fulfill a possible future PMA, we suggest you indicate your interest on the cover letter of your 522 study plan and discuss with FDA possible 522 study designs that may be sufficient to support a PMA application.'' For those manufacturers who indicated interest in using a 522 study to support a future PMA, FDA's review of their 522 protocol assessed both the requirements of the 522 order and the ability to generate sufficient data to support premarket approval.

FDA also notes that the 522 orders requested collection of safety and effectiveness outcomes for surgical mesh for transvaginal POP repair at 6 months, 12 months, 18 months, 24 months, and 36 months following surgery. Therefore, FDA expects that the 522 studies should be designed to collect the 1-year outcomes requested to support premarket approval. FDA acknowledges that the 522 orders requested 3-year followup. However, FDA notes that based on its detailed review of the information provided in a PMA, we may request additional postmarket followup.

(Comment 13) One comment stated that FDA's expectation, set forth in the 515(b) proposed order, that patient labeling include a notice of availability of an FDA Safety Communication could be ''conflicting'' and lead to confusion because it is unclear how a reference to this communication would be appropriate for a device with an approved PMA establishing its safety and effectiveness. The commenter stated that the patient labeling should be focused on the benefit-risk profile of each product as established in the related PMA and requested that FDA consider alternative methods for providing the information found in the FDA communication to patients.

(Response) FDA agrees that patient labeling should be reflective of the risks and benefits of individual devices. FDA also believes that there is important, relevant information in FDA's Safety Communication that may be helpful to patients even after PMAs are approved for this device type (Ref. 5). For example, the Safety Communication included information regarding the potential risks of surgical mesh for transvaginal POP repair, nonsurgical options, and recommended questions that patients should ask their surgeon, which may be relevant even after PMAs are approved for this device type. However, FDA acknowledges that including the notice of availability of the Safety Communication may not be the best way to provide patients with the relevant information. As a result, FDA is revising this expectation and is now recommending that patient labeling include relevant information from FDA's Safety Communication and/or FDA's Urogynecologic Surgical Mesh Implants Web page (Ref. 6), including but not limited to, recommended patient questions for their surgeon, FDA activities related to surgical mesh for transvaginal POP repair, and FDA contact information.

To help ensure that patients are adequately informed, FDA also recommends that a link to FDA's Urogynecologic Surgical Mesh Implants Web page be included in the patient labeling because it provides timely and transparent information to the public, including appropriate stakeholders and patients.

(Comment 14) One comment regarding the patient identification card discussed in the 515(b) proposed order noted that the card can be easily provided by the manufacturer, compliance with use of the card is dependent on the implanting physician, and should not lead to followup activities for the manufacturer.

(Response) FDA recognizes that a successful identification system requires support from parties other than the manufacturer, such as the implanting physician and patient. FDA's expectation, as set forth in the 515(b) proposed order preamble, was that patient labeling include a patient identification card, which would be initially provided by the manufacturer. FDA does not anticipate further followup actions by the manufacturer. These findings are adopted, in part, in the final order (see section IV, ''The Final Order'').

IV. The Final Order

Under section 515(b)(3) of the FD&C Act, FDA is adopting its findings, in part, as published in the preamble of the 515(b) proposed order (79 FR 24642) and issuing this final order to require the filing of a PMA for surgical mesh for

transvaginal POP repair. As discussed in this document, FDA is amending certain previous findings. The Agency now finds that: (1) Manufacturing process information of the specialized instrumentation should not be included in a premarket submission and (2) patient labeling should include relevant information from FDA's Safety Communication and/or FDA's Urogynecologic Surgical Mesh Implants Web page rather than the notice of availability of FDA's Safety Communication. The patient labeling should also include a link to the FDA's Urogynecologic Surgical Mesh Implants Web page. This final order will revise 21 CFR part 884.

Under the final order, a PMA for surgical mesh for transvaginal POP repair is required to be filed on or before July 5, 2018, for any preamendments class III devices that were in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before July 5, 2018. Any other device subject to this order is required to have an approved PMA in effect before it may be marketed.

If a PMA for any of the preamendments class III devices subject to this order is not filed by this date, that device will be deemed adulterated under section 501(f)(1)(A) of the FD&C Act, and commercial distribution of the device must cease immediately.

The device may, however, be distributed for investigational use, if the applicable requirements of the IDE regulations (part 812), including obtaining IDE approval, are met on or before 30 months after the effective date of this order. There will be no extended period for filing an IDE, nor exemption from the IDE requirements (see § 812.2(d)), and studies may not be initiated without appropriate IDE approvals, as required.

V. Analysis of Environmental Impact

The Agency has 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.

VI. 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 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; the collections of information in part 812 have been approved under OMB control number 0910–0078; the collections of information under 21 CFR 822 have been approved under OMB control number 0910–0449; and the collections of information under 21 CFR 801 have been approved under OMB control number 0910–0485.

VII. Codification of Orders

Prior to the amendments by FDASIA, section 515(b) of the FD&C Act provided for FDA to issue regulations to require PMA approval for preamendments devices or devices found substantially equivalent to preamendments devices. Section 515(b) of the FD&C Act, as amended by FDASIA, provides for FDA to require PMA approval for such devices by issuing a final order following the issuance of a proposed order in the **Federal Register**. FDA will continue to codify the requirement for a PMA approval in the Code of Federal Regulations. Therefore, under section 515(b)(1)(A) of the FD&C Act, as amended by FDASIA, in this final order, we are requiring PMA approval for surgical mesh for transvaginal POP repair and we are making the language in 21 CFR 884.5980 consistent with this final order.

VIII. References

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

1. FDA Meeting of the Obstetrics & Gynecological Devices Panel, September 8–9, 2011. Available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/ObstetricsandGynecologyDevices/ucm262488.htm*.
2. ''Guidance for Industry and/or for FDA Reviewers/Staff and/or Compliance: Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh'' issued on March 2, 1999. Available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm073791.pdf*.
3. Blue Book Memorandum #G95–1—''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing' '' issued on May 1, 1995. Available at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm080735.htm*.
4. ''Guidance for Industry Pyrogen and Endotoxins Testing: Questions and Answers,'' June 2012. Available at *http://www.fda.gov/downloads/drugs/guidancecompliance regulatoryinformation/guidances/ucm310098.pdf*.
5. ''Update on Serious Complications Associated with Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse: FDA Safety Communication'' issued on July 13, 2011. Available at *http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/ucm262435.htm*.
6. FDA's Urogynecologic Surgical Mesh Implants Web page. Available at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ImplantsandProsthetics/UroGynSurgicalMesh/default.htm*.

List of Subjects in 21 CFR Part 884

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 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

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

■ 2. Add paragraph (c) to § 884.5980 to read as follows:

§ 884.5980 Surgical mesh for transvaginal pelvic organ prolapse repair.

* * * * *

(c) *Date premarket application approval or notice of completion of a product development protocol is required.* A premarket application approval or notice of completion of a product development protocol for a device is required to be filed with the Food and Drug Administration on or before July 5, 2018, for any surgical mesh described in paragraph (a) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 5, 2018, been found substantially equivalent to a surgical mesh described in paragraph (a) of this section that was in commercial distribution before May 28, 1976. Any other surgical mesh for transvaginal

pelvic organ prolapse repair shall have an approved premarket application or declared completed product development protocol in effect before being placed in commercial distribution.

Dated: December 30, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–33163 Filed 1–4–16; 8:45 am]

BILLING CODE 4164–01–P

Reader Aids

Federal Register

Vol. 81, No. 2

Tuesday, January 5, 2016

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.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **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**

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, JANUARY

1–144 4
145–370 5

CFR PARTS AFFECTED DURING JANUARY

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.

14 CFR
39 ..... 145, 147
61 1
121 1
135 1
Proposed Rules:
39 ..... 22, 24, 27, 28, 30, 32, 34, 38, 191
382 193

15 CFR
902 150

16 CFR
1109 2
1500 2

17 CFR
232 3

20 CFR
Proposed Rules:
404 41

21 CFR
176 5
884 ..... 354, 364
Proposed Rules:
172 42

22 CFR
Proposed Rules:
147 44

26 CFR
Proposed Rules:
1 194

32 CFR
706 8

33 CFR
117 10
151 173
165 11
Proposed Rules:
110 194

38 CFR
Proposed Rules:
17 196

40 CFR
52 296
141 13

47 CFR
20 173
Proposed Rules:
20 204

49 CFR
Proposed Rules:
512 47

50 CFR
635 19
660 183
679 ..... 150, 184, 188
Proposed Rules:
17 214
660 215

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 December 23, 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.